

SPECIAL CITY COUNCIL MEETING
APRIL 24, 2017

1. Agenda Only

Documents:

[AGENDA ONLY 2017-04-24.PDF](#)

2. Agenda And Packet

Documents:

[AGENDA AND PACKET 2017-04-24.PDF](#)

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

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

AGENDA
SPECIAL CITY COUNCIL MEETING
APRIL 24, 2017

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber”, Maine Youth Rock Orchestra (MYRO)

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) April 5, 2017 Special City Council Meeting Minutes

PROCLAMATIONS:

**Proc 27-16/17 Proclamation Honoring Thomas Doyle, Health and Human Services
(Tab 2) Department, Social Services Division, as Employee of the Month for
February, 2017 – Sponsored by Mayor Ethan K. Strimling.**

APPOINTMENTS:

**Order 199-16/17 Order Appointing Kyle O’Neil as a Constable for 2017
(Tab 3) Re: Department of Parks, Recreation & Facilities – Sponsored by Jon
P. Jennings, City Manager.**

This order appoints Kyle O’Neil, Park Ranger for the Department of Parks, Recreation & Facilities as a constable for 2017.

This appointment is made pursuant to Portland City Code, Sections 20-19 and 20-19.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests, or issue parking tickets. Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

Order 200-16/17 (Tab 4) Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Luis Garcia – Sponsored by Jon P. Jennings, City Manager.

Portland Police seized assets that were deemed to be either proceeds from the sale of illicit substances or assets intended to be furnished in exchange for illicit substances. A judgment has been received by the Superior Court awarding the assets to the State and allowing transfer to the City of Portland. The Civil Forfeiture statute, 15 M.R.S.A. § 5821(6) and § 5824(3), 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.

The amount of \$14,451.00 may be transferred to the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the Department's Law Enforcement Addiction Advocacy Program.

Order 201-16/17 (Tab 5) Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Mose Losuk – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$500.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Moses Losuk.

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

Order 202-16/17 (Tab 6) Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Craig Carrigan – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$14,200.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Craig Carrigan.

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

**Order 203-16/17
(Tab 7)**

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

This order authorizes the City Council to approve the transfer of \$4,603.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Erica Burwell.

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

**Order 204-16/17
(Tab 8)**

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

This order authorizes the City Council to approve the transfer of \$2,260.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Innocent Ochan.

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

**Order 205-16/17
(Tab 9)**

Order Declaring June 9 to June 17, 2017 Portland Pride! Week and Portland Pride! Celebration and Festival – Sponsored by Jon P. Jennings, City Manager.

This order declares the Pride Portland! Pride Celebration and Festival to be held June 19-June 17, 2017. The festival itself will be held on Saturday, June 17, 2017, and is comprised of two components: the Pride Parade and the Festival at Deering Oaks Park.

All event times and street closures are included in the agenda backup.

**Order 206-16/17
(Tab 10)**

Order Declaring June 9 to 11, 2017 The Old Port Festival Summer Kick Off Weekend – Sponsored by Jon P. Jennings, City Manager.

This order declares the Old Port Festival Summer Kick Off Weekend to be held Friday, June 9, 2017 to Sunday, June 11, 2017.

Friday, June 9 kicks off with the 1st Annual Square Hop featuring performances by the Peaks Island Ukulele Ensemble, Circus Maine, Maine Marimba Ensemble, and Port Fringe. The performances will take place in Longfellow Square, Congress Square Park, and Post Office Park from 6:00 to 8:00 p.m.

Saturday, June 10, 2017 Shop for a Cause raises funds for The Locker Program and takes place at private businesses all day and evening. Although Saturday's event is not held on public property, the organizer has requested that it be included in the Council order to allow them to regulate the festival zone for all three days of the festival.

Sunday, June 11, 2017 is the 44th Annual Old Port Festival which runs from 11:00 a.m. to 5:00 p.m. in the Old Port District.

The festival zone and street closures are included in the agenda backup.

**Order 207-16/17
(Tab 11)**

Order Declaring July 29, 2017, The 15th Annual Greater Portland Festival of Nations – Sponsored by Jon P. Jennings, City Manager.

This order declares Saturday, July 29, 2017 the 15th Annual Greater Portland Festival of Nations, a festival of music, crafts and cuisine from around the world to be held at Deering Oaks Park, 11:00 a.m. - 7:00 p.m.

Admission is FREE. Refreshments, crafts, artwork, and other items will be for sale. The Festival is held rain or shine.

The festival will again be held on Saturday. The Farmers Market is held in Deering Oaks Park on Saturdays. For just the date of the festival, they will move their setup to Bowling Green Lane so that setup for the Festival of Nations can take place at the Bandstand and along Farmers Market Road. The Friends of Deering Oaks Park have reviewed and endorsed the festival.

**Order 208-16/17
(Tab 12)**

**Order Declaring September 28 and 29, 2017 Portland Ovations’
BANDALOOOP Festival – Sponsored by Jon P. Jennings, City Manager.**

This is a brand new event/festival to Portland. Portland Ovations is bringing BANDALOOOP to the city and is asking City Council for permission to use city property for public viewing of this dance troupe. BANDALOOOP is a U.S. based, internationally touring pioneer in vertical dance performance. By using the sides of building, museums, bridges, skyscrapers, and even the sides of cliffs in China, BANDALOOOP (via rigging and tethered ropes) turns the dance floor on its side. BANDALOOOP will be in residence in Portland from September 23 – 30, 2017, and is slated to perform outside for the public two of those days. These performances are free to the public (no admission charge).

The actual dance performances will be held outside, on the sides of The Westin Hotel on Thursday, Sept. 28, 2017 and One City Center on Friday, September 29, 2017, and last only 15 minutes. There may be two performances scheduled at each of those locations, respectively.

City sidewalks, squares, parks, and streets will be viewing areas for the public performances. There will be days leading up to the performances when BANDALOOOP members are rehearsing outside (rehearsals begin Tuesday, September 26). Portland Ovations has already secured partnership agreements with both sites and Friends of Congress Square Park.

Street closures are included in the agenda backup.

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

LICENSES:

**Order 209-16/17
(Tab 13)**

**Order Granting Municipal Officer’s Approval of Eighteen Twenty
Wines. Application for a Winery License with Outdoor Dining on
Private Property at 219 Anderson Street – Sponsored by Michael
Russell, Director of Permitting and Inspections.**

Application was filed on 3/27/2017. New City application.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

**Order 210-16/17
(Tab 14)**

**Order Receiving and Referring the Portland Board of Public Education’s
Fiscal Year 2018 Budget Estimate and Setting a Public Hearing Thereon –
Sponsored by Jon P. Jennings, City Manager.**

Under this order the City Council receives the Portland Board of Public Education's proposed Fiscal Year budget and refers it to the Finance Committee for review and recommendations.

The City Council public hearing on the school budget will be held Monday, May 1 at 6:00 p.m. Council action on the school budget will take place Monday, May 15, 2017. The public referendum on the school budget will be held on Tuesday, June 13, 2017.

COMMUNICATIONS:

RESOLUTIONS:

**Resolve 6-16/17
(Tab 15)**

Resolution Recognizing May 20, 2017 to May 26, 2017 as National Safe Boating Week – Sponsored by Councilor Spencer Thibodeau.

This Resolution proclaims May 20-May 26, 2017 to be National Safe Boating Week in Portland, Maine with a kick-off Wear Your Life Jacket to Work Day on Friday, May 19, 2017 and Ready, Set, Wear It! Life Jacket World Record Day gathering at noon in the Robert Ganley City Hall Plaza on Saturday, May 20, 2017.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

**Order 192-16/17
(Tab 16)**

Order Approving Collective Bargaining Agreement with Communications Employee Association – Sponsored by Jon P. Jennings, City Manager.

Staff has reached a tentative agreement with the Communications Employee Association on a successor two (2) year contract. The prior collective bargaining agreement expired June 30, 2016.

The Communications Employee Association, which is comprised of 36 Telecommunicators, Fire Alarm Specialist, Radio Systems Specialist, and Telecommunications Supervisors, has reached a tentative agreement with the City.

The tentative agreement is within the guidance received by the City Council on August 1, 2016.

The tentative agreement has a 2.0% general wage increase for Fiscal Year 2017 retroactive to July 3, 2016 and a 2.0% general wage increase effective July 5, 2017.

This item must be read on two separate days. It was given a first reading on

April 5, 2017. Five affirmative votes are required for passage after public comment.

ORDERS:

**Order 211-16/17
(Tab 17)**

**Order Approving Amended and Restated Lease with Bay Ferries Limited
Re: Ocean Gateway Facility – Sponsored by the Economic Development
Committee, Councilor David Brenerman, Chair.**

The Economic Development Committee met on April 4, 2017, and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

In 2016, Bay Ferries returned to the Port of Portland operating the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The City Council approved a lease with Bay Ferries Limited on May 2, 2016. The lease was for a two-year term with a single, one-year renewal option.

Minor amendments to the approved lease are needed to support the 2017 ferry season, including extending the 2017 season two weeks, use of the ground level space of the Terminal Building, and adjusted rental for use of that ground level space for an additional \$1,400 per month to a total of \$16,629 during the season.

Five affirmative votes are required for passage after public comment.

**Order 212-16/17
(Tab 18)**

**Order Approving Purchase and Sale Agreement with AIM Riverside,
LLC for Sale of City Property at 636 Riverside Street – Sponsored by the
Economic Development Committee, Councilor David Brenerman, Chair.**

The Economic Development Committee met on April 4, 2017 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Under the direction of the Economic Development Committee, a draft Purchase and Sale Agreement has been negotiated with AIM Riverside II, LLC to sell a seven-acre, City-owned property adjacent to Lucas Tree located at 636 Riverside Street in the amount of \$604,800.

Staff has been marketing the availability of this City-owned industrial property, for several years, through the local commercial broker network. A number of interested parties have looked at this property for various types of development projects. This proposed development plan, which includes multi-industrial tenant type development, with over 75,000 square feet, optimizes the site in terms of the amount of square footage, and provides much needed industrial tenant flexible space options to generate the highest overall development value and associated job creation to the City.

Five affirmative votes are required for passage after public comment.

**Order 213-16/17
(Tab 19)**

Order Approving and Authorizing the Land Exchange Agreement Between CPB2 Management LLC, Maine Department of Transportation and the City of Portland Re: 58 Fore Street - Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.

The Economic Development Committee met on March 29, 2017 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The exchange of lands involves CPB2 Management LLC (CPB2), the State of Maine Department of Transportation (MDOT,) and the City of Portland. The CPB2-approved master plan shows a southerly shift in location of an existing MDOT rail right-of-way to accommodate the new private roadway extending from Thames Street onto the Portland Company complex.

The shift in right-of-way encroaches onto the northerly corner of the City's Amethyst Lot resulting in a 2,537 sq. ft. transfer of land from the City of Portland to MDOT. CPB2 compensates the City for this loss with a grant of an equivalent area of land located along the water.

Taken together with four other discrete slivers of property transfers proposed along the MDOT right-of-way, the total land area owned by the City would remain consistent. Staff analysis concludes that the properties in this Land Exchange Agreement are of similar size and equal value so no funds will be transferred.

Five affirmative votes are required for passage after public comment.

**Order 214-16/17
(Tab 20)**

Order Placing Ballot Question on the June 13, 2017 School Budget Referendum – Sponsored by Katherine L. Jones, City Clerk.

The Finance Director of the School Department has asked the City Clerk to put a second question on the ballot that would allow the City Council to approve the use of additional school funds from the State without going back out to referendum. If additional funds are received, the School Board would make recommendation to the City Council. The question gives three options for the use of the additional funds.

1. Appropriate additional funds for school expenditures
2. Allocate funds to a reserve account
3. Reduce the property tax support required for school expenses

The question as proposed by the School Department and consistent with State law is as follows:

In the event that the Portland Public Schools receives more state education subsidy than the amount included in its budget, shall the School Board be authorized to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the School Board, increase the allocation of finances in a reserve fund approved by the School Board, and/or decrease the local cost share expectation, as defined in Title 20-A, section 15671-A(1)(B), for local property taxpayers for funding public education as approved by the Portland Board of Public Education? (yes/no)

Five affirmative votes are required for passage after public comment.

**Order 215-16/17
(Tab 21)**

Order Adopting the City of Portland Comprehensive Plan – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board met on April 13, 2017, and voted 6-0 (Mazer absent) to forward this item to the City Council with a recommendation for approval.

A comprehensive plan is a long-range planning document required under Maine's Growth Management Act, and serves to guide decision making in Portland for the next 12 years. It continues the City's long history of comprehensive and long range planning, and serves as a guide and resource in multiple ways: it provides valuable information about the state of the City today; it establishes a policy roadmap for implementation; it identifies how other planning efforts, past and future, relate to each other; it forms a reference point for decision making, and it articulates a vision for Portland's values today and for the future. It is also a requirement under Maine's Growth Management Act, and qualifies the City for certain state funding programs.

From the launch, in 2015, of the creation of this new plan the Planning Board and City staff sought diverse public input, and strove to ultimately create a succinct and accessible document out of that process, for the entire community.

This item must be read on two separate days. This is its first reading. The second reading of this item will be on June 5, 2017.

**Order 216-16/17
(Tab 22)**

Order Appropriating \$125,000 in Urban Development Action Grant Revenue Re: Surface Parking Lot Bounded by Fore, Cotton, Middle, and Cross Streets – Sponsored by the Jon P. Jennings, City Manager.

At the April 5, 2017 City Council meeting, the council approved the sale of a City-owned parking lot on Cotton Street. The parcel was established as a parking lot many years ago through a federal program entitled Urban Development Action Grant (UDAG). The city received rental income from the parking lot which was utilized by the City as CDBG program income and was incorporated into the annual CDBG budget. Over the last five years the CDBG program received an average of \$119,426 annually. The proceeds from the sale of the lot can only be

used for CDBG eligible activities. The use of the proceeds must be identified in the City's HUD Consolidated Plan and Annual Action Plan and a separate accounting of the funds must be maintained.

At their March 7, 2017 meeting, the Economic Development Committee voted 2-0-1 (Thibodeau abstained) to recommend to the City Council that \$100,000 of the sales proceed be used to fund an expansion at the Milestone Foundation, \$25,000 be used to be used to help fund a panhandling pilot program, and a *hybrid approach* be utilized for future use of the remaining proceeds and for ensuring that CDBG program income funding levels are maintained.

The *hybrid approach* would utilize approximately \$120,000 in Downtown TIF funds for TIF-eligible projects such as staffing costs and public infrastructure improvements. Approximately \$20,000 per year from the remaining sale proceeds (\$1,050,000) would be used for social service program funding and other TIF-ineligible activities.

The Milestone Foundation improvements and the panhandling pilot program are described below:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

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

**Order 217-16/17
(Tab 23)**

Order Approving Substantial Amendment to the 2016-2020 Housing and Urban Development Consolidated Plan and Fiscal Year 2018 Housing and Urban Development Annual Action Plan Re: Use of Proceeds from Sale of City-Owned Surface Parking Lot Bounded by Fore, Cotton, Middle and Cross Streets – Sponsored by Jon P. Jennings, City Manager.

The FY 17/18 HUD Annual Action Plan was approved by the City Council at their April 5th meeting. Subsequent to that approval, the council approved the sale of the City-owned Cotton Street parking lot which will generate proceeds from federal UDAG funding.

The receipt of these proceeds must be included in the City's 2016-2020 HUD Consolidated Plan and the use of \$125,000 from the proceeds must be included in the FY17/18 HUD Annual Action Plan.

The Cotton Street parcel was established as a parking lot many years ago through a federal program entitled Urban Development Action Grant (UDAG).

The proceeds from the sale of the lot can only be used for CDBG eligible activities. The use of the proceeds must be identified in the City's HUD Consolidated Plan and Annual Action Plan and a separate accounting of the funds must be maintained.

During FY17/18 the City proposes to use \$125,000 from the sale proceeds to address immediate, urgent needs within our community, which are identified as:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

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

**Order 218-16/17
(Tab 24)**

Order Appropriating \$3,975,000 for Improvements to the Portland International Jetport Passenger Terminal – Sponsored by Jon P. Jennings, City Manager.

The Portland International Jetport is requesting an appropriation from its unrestricted fund balance to make improvements to the passenger terminal

building. The Jetport completed a significant expansion in 2012 which greatly improved the passenger experience, but left the inbound passenger approach to baggage claim and gates 1-6 unimproved. At this time Jetport staff is proposing to make the following improvements.

• New vertical circulation from gate concourse down to baggage claim	\$ 2,325,000
• Restroom renovations in gate concourse and baggage claim	\$ 275,000
• Gate 2 & 3 passenger boarding bridge rehabilitation	\$ 1,050,000
• Flight Information Display System (FIDS) upgrade	<u>\$ 325,000</u>
Total	\$ 3,975,000

These improvements represent a first phase in the Jetport's plan to completely match the older sections of the terminal to the level of amenities and finish of the 2012 terminal expansion.

The Jetport's unrestricted cash fund balance was \$21,446,955 as of June 30, 2016. If approved, the Jetport will use \$3.975 million of its unrestricted cash fund balance to complete these proposed terminal improvements. Airports, like many industries, have substantially increased their liquidity since 2008 in response to the recession. This has resulted in unrestricted cash holdings in excess of 500 days of operating expenses, a level that is high historically.

The Jetport has followed this trend, as of June 30, 2016 the unrestricted cash fund balance was equal to 505 days of operating expenses on hand. At the last rating review with S&P and Moody's I outlined the Jetport's capital improvement program and noted it was our plan to maintain a more appropriate floor of 365 days of operating cash on hand.

If this appropriation is approved the Jetport will remain well above this floor at 404 days of cash on hand.

The Jetport is an enterprise fund of the City that is fiscally self-sustaining. FAA grant assurances and the covenants for the Jetport's General Airport Revenue Bonds (GARBs) require all revenues generated at the Jetport be pledged to cover only Jetport expenses. The approval of this appropriation has no impact to the City of Portland's general fund or tax rate.

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

**Order 219-16/17
(Tab 25)**

**Order Amending Order 153-16/17 (FY2018 CIP Projects) - Sponsored
by Councilor Pious Ali and Mayor Ethan K. Strimling.**

On April 5, 2017 the City Council approved Order 153-16/17, the FY18 Capital Improvement Plan. The plan was the result of a lengthy public process which included all City Departments and the School Department submitting and presenting their prioritized capital improvement plan requests in late 2017, the City Manager presenting the Capital Improvement Plan to Finance Committee, and the Finance Committee and City Council both unanimously endorsing that plan as

presented. The School Board has subsequently requested a change to the normal process and voted to ask the City Council to consider an amendment removing seven school projects from the FY18 approved CIP (Deering High School Windows, District Phone System, Deering High School Kitchen / Remodel Upgrade, Energy Management Control Upgrades, Engineering for Roofs, King – Fire Alarm Replacement Engineering, Lyman Moore – Fire Alarm Replacement Engineering) and reallocating that funding to the Casco Bay High School New Entrance and Engineering project.

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

Order 220-16/17 (Tab 26) **Order Amending Order 154-16/17 (FY2018 CIP Projects) – Sponsored by Councilor Pious Ali and Mayor Ethan K. Strimling.**

This is a companion order to Order 218-16/17 above.

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

AMENDMENTS:

Order 221-16/17 (Tab 27) **Amendment to Portland City Code Chapter 14 Re: Institutional Overlay Zone - Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

The Planning Board met on March 28, 2017, and voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

The new Institutional Overlay Zone (IOZ) ordinance will make available a process for the growth and development of major institutions (initially MMC, Mercy, UNE and USM) in view of their central economic, academic, and health care roles in the city and region.

The process aims to foster transparency; formalize regular public engagement between the institutions and neighborhoods, the city, and third parties (e.g. METRO and utilities); and provide mechanisms that address the implications of institutional growth and development.

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

Order 222-16/17 (Tab 28) **Amendment to Portland City Code Chapter 17. Re: Extension of Moratorium of Retail Marijuana Establishment and Social Clubs – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

A 180-day moratorium on licenses for recreational marijuana retail shops and social clubs was approved by the City Council by Order 84-16/17 on November 21, 2016. It applied retroactively to November 8, 2016, and will expire on May 7, 2017. The Moratorium should be extended, in accordance with 30-A M.R.S.

§4356(2), to allow local licensing, zoning, and other ordinances to be drafted in accordance with state rules, which are still being developed.

On November 8, 2016, Maine voters approved the Marijuana Legalization Act (the “Act”), allowing the consumption, distribution and business development of and for marijuana products. The Act allows municipalities to regulate retail marijuana establishments, including stores, cultivation facilities, retail testing facilities, and also marijuana social clubs.

The extension of the Moratorium on these businesses will allow the City of Portland to ensure that its ordinances are consistent with the State of Maine rules, which have not yet been released. City staff is developing draft ordinances to regulate the sale of recreational marijuana, including licensing requirements, zoning restrictions, and safety rules, among other things.

Staff is requesting emergency enactment in order to make the extended Moratorium effective on May 7, 2017.

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

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

UNFINISHED BUSINESS: continued

Order 155-16/17 (Tab 29) 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.

Order 155-16/17 received a public hearing on March 20, 2017. It subsequently failed to pass by a vote of 6-3 (Mavodones, Duson, and Ray in opposition), short of the seven (7) affirmative votes required by the City Charter for passage of orders approving bonds. Pursuant to City Council Rule 19, this order automatically appears on the next City Council agenda as unfinished business.

Seven affirmative votes are required for passage. A public hearing for this item was held on March 20th. On April 5, 2017 this item was postponed to the April 24th Council meeting.

**Order 156-16/17
(Tab 30)**

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. Five affirmative votes are required for passage. A public hearing for this item was held on March 20, 2017. On April 5, 2017 this item was postponed to the April 24th Council meeting.

**Order 157-16/17
(Tab 31)**

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. Five affirmative votes are required for passage. A public hearing for this item was held on March 20, 2017. On April 5, 2017 this item was postponed to the April 24th Council meeting.

**Order 193-16/17
(Tab 32)**

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 Subject to the Conditions in This Order – Sponsored by Councilor Belinda Ray.

This \$24 Million Bond will fund a complete renovation of Harrison Lyseth Elementary school while also addressing short-term needs at seven other schools and preserving the City of Portland's opportunity to obtain state funding for the schools determined to have the best chance of obtaining that funding.

The projects to be addressed by this bond were identified in consultation with City Operations staff and are consistent with recommendations put forth in the Facilities Assessment of School Buildings Capital Plan recently completed by Sebago Technics and Lavallee Brensinger Architects.

Passing this bond will put the City of Portland in a position to continue addressing short-term school facility needs through its annual Capital Improvement Plan. It will also enable the City to create a long-term plan that makes the best use of local tax dollars and state funding to address the system's longer term needs, including large scale renovations at some schools.

Specifically, the bond will cover the following renovations, repairs, and upgrades:

Lyseth Elementary School: Complete renovation of existing facility. 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. Bus loop, field work, and drainage issues resolved.

Lyman Moore Middle School: Parking improvements. Engineering for Fire Alarm. Installation of Fire Alarm.

King Middle School: Engineering for Fire Alarm. Installation of Fire Alarm.

Ocean Avenue Elementary: Addition of four classrooms to add capacity and swing space within the district. As is state practice, Ocean Avenue was designed so that these classrooms could easily be added at a later date if the extra capacity became necessary. These four classrooms were first requested to address system capacity needs in 2011.

Reiche Elementary: Engineering and construction of a new Brackett Street entry to address student health and safety issues. The ramp on the Brackett Street side of the school 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.

Peaks Island: Ceiling & lighting upgrades throughout facility, addressing operations, maintenance, and energy efficiency issues.

Riverton: Installation of heat piping in new wing. Replacement of original rooftop AC.

Deering High: Installation of sprinkler system. Fire alarm upgrades.

This item must be read on two separate days. It was given a first reading on April 5th. Seven affirmative votes are required for passage after public comment.

**Order 194-16/17
(Tab 33)**

Order Appropriating \$24,000,000 of Bond Proceeds – Sponsored by Councilor Belinda Ray.

This item is a companion Order to Order 193 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment

**Order 195-16/17
(Tab 34)**

Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by Councilor Belinda Ray.

This is a companion order to Order 193 and 194 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment

**Order 196-16/17
(Tab 35)**

Order Approving Lyseth and Presumpscot Elementary School Renovation Projects with Total Project Costs not to exceed \$31,626,000 and Authorizing General Obligation Bonds Therefore Subject to the Conditions Contained in this Order – Sponsored by Councilors Nicholas M. Mavodones, Jr. and Jill C. Duson.

This order approves a bond in the amount of \$31,626,000 which would allow for construction of Lyseth and Presumpscot Elementary Schools, and for waiting to see where the Reiche and Longfellow Elementary Schools rank in the upcoming Spring 2018 State Department of Education Major Capital Construction Priority list (which provides State funding for construction of schools). If Reiche and Longfellow Elementary Schools rank highly on that list, the City would then be able to move forward with construction of all four elementary schools, with two of the schools being funded locally and two of the schools being funded by the State.

Finally, however, this order would also allow for the City to be able to take the necessary steps to allow for local funding of Reiche and Longfellow Elementary Schools if State funding was not obtained."

This item must be read on two separate days. It was given a first reading on April 5th. Seven affirmative votes are required for passage after public comment

**Order 197-16/17
(Tab 36)**

Order Appropriating \$31,616,000 of Bond Proceeds – Sponsored by Councilors Nicholas M. Mavodones, Jr. and Jill C. Duson.

This is a companion order to Order 197-16/17 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment.

**Order 198-16/17
(Tab 37)**

Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by Nicholas M. Mavodones, Jr. And Jill C. Duson.

This is a companion Order to Order 196 and Order 197 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment.

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

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

AGENDA
SPECIAL CITY COUNCIL MEETING
APRIL 24, 2017

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber”, Maine Youth Rock Orchestra (MYRO)

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) April 5, 2017 Special City Council Meeting Minutes

PROCLAMATIONS:

**Proc 27-16/17 Proclamation Honoring Thomas Doyle, Health and Human Services
(Tab 2) Department, Social Services Division, as Employee of the Month for
February, 2017 – Sponsored by Mayor Ethan K. Strimling.**

APPOINTMENTS:

**Order 199-16/17 Order Appointing Kyle O’Neil as a Constable for 2017
(Tab 3) Re: Department of Parks, Recreation & Facilities – Sponsored by Jon
P. Jennings, City Manager.**

This order appoints Kyle O’Neil, Park Ranger for the Department of Parks, Recreation & Facilities as a constable for 2017.

This appointment is made pursuant to Portland City Code, Sections 20-19 and 20-19.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests, or issue parking tickets. Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

Order 200-16/17 (Tab 4) Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Luis Garcia – Sponsored by Jon P. Jennings, City Manager.

Portland Police seized assets that were deemed to be either proceeds from the sale of illicit substances or assets intended to be furnished in exchange for illicit substances. A judgment has been received by the Superior Court awarding the assets to the State and allowing transfer to the City of Portland. The Civil Forfeiture statute, 15 M.R.S.A. § 5821(6) and § 5824(3), 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.

The amount of \$14,451.00 may be transferred to the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the Department's Law Enforcement Addiction Advocacy Program.

Order 201-16/17 (Tab 5) Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Mose Losuk – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$500.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Moses Losuk.

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

Order 202-16/17 (Tab 6) Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Craig Carrigan – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$14,200.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Craig Carrigan.

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

**Order 203-16/17
(Tab 7)**

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

This order authorizes the City Council to approve the transfer of \$4,603.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Erica Burwell.

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

**Order 204-16/17
(Tab 8)**

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

This order authorizes the City Council to approve the transfer of \$2,260.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Innocent Ochan.

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

**Order 205-16/17
(Tab 9)**

Order Declaring June 9 to June 17, 2017 Portland Pride! Week and Portland Pride! Celebration and Festival – Sponsored by Jon P. Jennings, City Manager.

This order declares the Pride Portland! Pride Celebration and Festival to be held June 19-June 17, 2017. The festival itself will be held on Saturday, June 17, 2017, and is comprised of two components: the Pride Parade and the Festival at Deering Oaks Park.

All event times and street closures are included in the agenda backup.

**Order 206-16/17
(Tab 10)**

Order Declaring June 9 to 11, 2017 The Old Port Festival Summer Kick Off Weekend – Sponsored by Jon P. Jennings, City Manager.

This order declares the Old Port Festival Summer Kick Off Weekend to be held Friday, June 9, 2017 to Sunday, June 11, 2017.

Friday, June 9 kicks off with the 1st Annual Square Hop featuring performances by the Peaks Island Ukulele Ensemble, Circus Maine, Maine Marimba Ensemble, and Port Fringe. The performances will take place in Longfellow Square, Congress Square Park, and Post Office Park from 6:00 to 8:00 p.m.

Saturday, June 10, 2017 Shop for a Cause raises funds for The Locker Program and takes place at private businesses all day and evening. Although Saturday's event is not held on public property, the organizer has requested that it be included in the Council order to allow them to regulate the festival zone for all three days of the festival.

Sunday, June 11, 2017 is the 44th Annual Old Port Festival which runs from 11:00 a.m. to 5:00 p.m. in the Old Port District.

The festival zone and street closures are included in the agenda backup.

**Order 207-16/17
(Tab 11)**

Order Declaring July 29, 2017, The 15th Annual Greater Portland Festival of Nations – Sponsored by Jon P. Jennings, City Manager.

This order declares Saturday, July 29, 2017 the 15th Annual Greater Portland Festival of Nations, a festival of music, crafts and cuisine from around the world to be held at Deering Oaks Park, 11:00 a.m. - 7:00 p.m.

Admission is FREE. Refreshments, crafts, artwork, and other items will be for sale. The Festival is held rain or shine.

The festival will again be held on Saturday. The Farmers Market is held in Deering Oaks Park on Saturdays. For just the date of the festival, they will move their setup to Bowling Green Lane so that setup for the Festival of Nations can take place at the Bandstand and along Farmers Market Road. The Friends of Deering Oaks Park have reviewed and endorsed the festival.

**Order 208-16/17
(Tab 12)**

**Order Declaring September 28 and 29, 2017 Portland Ovations’
BANDALOOOP Festival – Sponsored by Jon P. Jennings, City Manager.**

This is a brand new event/festival to Portland. Portland Ovations is bringing BANDALOOOP to the city and is asking City Council for permission to use city property for public viewing of this dance troupe. BANDALOOOP is a U.S. based, internationally touring pioneer in vertical dance performance. By using the sides of building, museums, bridges, skyscrapers, and even the sides of cliffs in China, BANDALOOOP (via rigging and tethered ropes) turns the dance floor on its side. BANDALOOOP will be in residence in Portland from September 23 – 30, 2017, and is slated to perform outside for the public two of those days. These performances are free to the public (no admission charge).

The actual dance performances will be held outside, on the sides of The Westin Hotel on Thursday, Sept. 28, 2017 and One City Center on Friday, September 29, 2017, and last only 15 minutes. There may be two performances scheduled at each of those locations, respectively.

City sidewalks, squares, parks, and streets will be viewing areas for the public performances. There will be days leading up to the performances when BANDALOOOP members are rehearsing outside (rehearsals begin Tuesday, September 26). Portland Ovations has already secured partnership agreements with both sites and Friends of Congress Square Park.

Street closures are included in the agenda backup.

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

LICENSES:

**Order 209-16/17
(Tab 13)**

**Order Granting Municipal Officer’s Approval of Eighteen Twenty
Wines. Application for a Winery License with Outdoor Dining on
Private Property at 219 Anderson Street – Sponsored by Michael
Russell, Director of Permitting and Inspections.**

Application was filed on 3/27/2017. New City application.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

**Order 210-16/17
(Tab 14)**

**Order Receiving and Referring the Portland Board of Public Education’s
Fiscal Year 2018 Budget Estimate and Setting a Public Hearing Thereon –
Sponsored by Jon P. Jennings, City Manager.**

Under this order the City Council receives the Portland Board of Public Education's proposed Fiscal Year budget and refers it to the Finance Committee for review and recommendations.

The City Council public hearing on the school budget will be held Monday, May 1 at 6:00 p.m. Council action on the school budget will take place Monday, May 15, 2017. The public referendum on the school budget will be held on Tuesday, June 13, 2017.

COMMUNICATIONS:

RESOLUTIONS:

Resolve 6-16/17 (Tab 15) Resolution Recognizing May 20, 2017 to May 26, 2017 as National Safe Boating Week – Sponsored by Councilor Spencer Thibodeau.

This Resolution proclaims May 20-May 26, 2017 to be National Safe Boating Week in Portland, Maine with a kick-off Wear Your Life Jacket to Work Day on Friday, May 19, 2017 and Ready, Set, Wear It! Life Jacket World Record Day gathering at noon in the Robert Ganley City Hall Plaza on Saturday, May 20, 2017.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 192-16/17 (Tab 16) Order Approving Collective Bargaining Agreement with Communications Employee Association – Sponsored by Jon P. Jennings, City Manager.

Staff has reached a tentative agreement with the Communications Employee Association on a successor two (2) year contract. The prior collective bargaining agreement expired June 30, 2016.

The Communications Employee Association, which is comprised of 36 Telecommunicators, Fire Alarm Specialist, Radio Systems Specialist, and Telecommunications Supervisors, has reached a tentative agreement with the City.

The tentative agreement is within the guidance received by the City Council on August 1, 2016.

The tentative agreement has a 2.0% general wage increase for Fiscal Year 2017 retroactive to July 3, 2016 and a 2.0% general wage increase effective July 5, 2017.

This item must be read on two separate days. It was given a first reading on

April 5, 2017. Five affirmative votes are required for passage after public comment.

ORDERS:

**Order 211-16/17
(Tab 17)**

**Order Approving Amended and Restated Lease with Bay Ferries Limited
Re: Ocean Gateway Facility – Sponsored by the Economic Development
Committee, Councilor David Brenerman, Chair.**

The Economic Development Committee met on April 4, 2017, and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

In 2016, Bay Ferries returned to the Port of Portland operating the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The City Council approved a lease with Bay Ferries Limited on May 2, 2016. The lease was for a two-year term with a single, one-year renewal option.

Minor amendments to the approved lease are needed to support the 2017 ferry season, including extending the 2017 season two weeks, use of the ground level space of the Terminal Building, and adjusted rental for use of that ground level space for an additional \$1,400 per month to a total of \$16,629 during the season.

Five affirmative votes are required for passage after public comment.

**Order 212-16/17
(Tab 18)**

**Order Approving Purchase and Sale Agreement with AIM Riverside,
LLC for Sale of City Property at 636 Riverside Street – Sponsored by the
Economic Development Committee, Councilor David Brenerman, Chair.**

The Economic Development Committee met on April 4, 2017 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Under the direction of the Economic Development Committee, a draft Purchase and Sale Agreement has been negotiated with AIM Riverside II, LLC to sell a seven-acre, City-owned property adjacent to Lucas Tree located at 636 Riverside Street in the amount of \$604,800.

Staff has been marketing the availability of this City-owned industrial property, for several years, through the local commercial broker network. A number of interested parties have looked at this property for various types of development projects. This proposed development plan, which includes multi-industrial tenant type development, with over 75,000 square feet, optimizes the site in terms of the amount of square footage, and provides much needed industrial tenant flexible space options to generate the highest overall development value and associated job creation to the City.

Five affirmative votes are required for passage after public comment.

**Order 213-16/17
(Tab 19)**

Order Approving and Authorizing the Land Exchange Agreement Between CPB2 Management LLC, Maine Department of Transportation and the City of Portland Re: 58 Fore Street - Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.

The Economic Development Committee met on March 29, 2017 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The exchange of lands involves CPB2 Management LLC (CPB2), the State of Maine Department of Transportation (MDOT,) and the City of Portland. The CPB2-approved master plan shows a southerly shift in location of an existing MDOT rail right-of-way to accommodate the new private roadway extending from Thames Street onto the Portland Company complex.

The shift in right-of-way encroaches onto the northerly corner of the City's Amethyst Lot resulting in a 2,537 sq. ft. transfer of land from the City of Portland to MDOT. CPB2 compensates the City for this loss with a grant of an equivalent area of land located along the water.

Taken together with four other discrete slivers of property transfers proposed along the MDOT right-of-way, the total land area owned by the City would remain consistent. Staff analysis concludes that the properties in this Land Exchange Agreement are of similar size and equal value so no funds will be transferred.

Five affirmative votes are required for passage after public comment.

**Order 214-16/17
(Tab 20)**

Order Placing Ballot Question on the June 13, 2017 School Budget Referendum – Sponsored by Katherine L. Jones, City Clerk.

The Finance Director of the School Department has asked the City Clerk to put a second question on the ballot that would allow the City Council to approve the use of additional school funds from the State without going back out to referendum. If additional funds are received, the School Board would make recommendation to the City Council. The question gives three options for the use of the additional funds.

1. Appropriate additional funds for school expenditures
2. Allocate funds to a reserve account
3. Reduce the property tax support required for school expenses

The question as proposed by the School Department and consistent with State law is as follows:

In the event that the Portland Public Schools receives more state education subsidy than the amount included in its budget, shall the School Board be authorized to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the School Board, increase the allocation of finances in a reserve fund approved by the School Board, and/or decrease the local cost share expectation, as defined in Title 20-A, section 15671-A(1)(B), for local property taxpayers for funding public education as approved by the Portland Board of Public Education? (yes/no)

Five affirmative votes are required for passage after public comment.

**Order 215-16/17
(Tab 21)**

Order Adopting the City of Portland Comprehensive Plan – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board met on April 13, 2017, and voted 6-0 (Mazer absent) to forward this item to the City Council with a recommendation for approval.

A comprehensive plan is a long-range planning document required under Maine’s Growth Management Act, and serves to guide decision making in Portland for the next 12 years. It continues the City’s long history of comprehensive and long range planning, and serves as a guide and resource in multiple ways: it provides valuable information about the state of the City today; it establishes a policy roadmap for implementation; it identifies how other planning efforts, past and future, relate to each other; it forms a reference point for decision making, and it articulates a vision for Portland’s values today and for the future. It is also a requirement under Maine’s Growth Management Act, and qualifies the City for certain state funding programs.

From the launch, in 2015, of the creation of this new plan the Planning Board and City staff sought diverse public input, and strove to ultimately create a succinct and accessible document out of that process, for the entire community.

This item must be read on two separate days. This is its first reading. The second reading of this item will be on June 5, 2017.

**Order 216-16/17
(Tab 22)**

Order Appropriating \$125,000 in Urban Development Action Grant Revenue Re: Surface Parking Lot Bounded by Fore, Cotton, Middle, and Cross Streets – Sponsored by the Jon P. Jennings, City Manager.

At the April 5, 2017 City Council meeting, the council approved the sale of a City-owned parking lot on Cotton Street. The parcel was established as a parking lot many years ago through a federal program entitled Urban Development Action Grant (UDAG). The city received rental income from the parking lot which was utilized by the City as CDBG program income and was incorporated into the annual CDBG budget. Over the last five years the CDBG program received an average of \$119,426 annually. The proceeds from the sale of the lot can only be

used for CDBG eligible activities. The use of the proceeds must be identified in the City's HUD Consolidated Plan and Annual Action Plan and a separate accounting of the funds must be maintained.

At their March 7, 2017 meeting, the Economic Development Committee voted 2-0-1 (Thibodeau abstained) to recommend to the City Council that \$100,000 of the sales proceed be used to fund an expansion at the Milestone Foundation, \$25,000 be used to be used to help fund a panhandling pilot program, and a *hybrid approach* be utilized for future use of the remaining proceeds and for ensuring that CDBG program income funding levels are maintained.

The *hybrid approach* would utilize approximately \$120,000 in Downtown TIF funds for TIF-eligible projects such as staffing costs and public infrastructure improvements. Approximately \$20,000 per year from the remaining sale proceeds (\$1,050,000) would be used for social service program funding and other TIF-ineligible activities.

The Milestone Foundation improvements and the panhandling pilot program are described below:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

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

**Order 217-16/17
(Tab 23)**

Order Approving Substantial Amendment to the 2016-2020 Housing and Urban Development Consolidated Plan and Fiscal Year 2018 Housing and Urban Development Annual Action Plan Re: Use of Proceeds from Sale of City-Owned Surface Parking Lot Bounded by Fore, Cotton, Middle and Cross Streets – Sponsored by Jon P. Jennings, City Manager.

The FY 17/18 HUD Annual Action Plan was approved by the City Council at their April 5th meeting. Subsequent to that approval, the council approved the sale of the City-owned Cotton Street parking lot which will generate proceeds from federal UDAG funding.

The receipt of these proceeds must be included in the City's 2016-2020 HUD Consolidated Plan and the use of \$125,000 from the proceeds must be included in the FY17/18 HUD Annual Action Plan.

The Cotton Street parcel was established as a parking lot many years ago through a federal program entitled Urban Development Action Grant (UDAG).

The proceeds from the sale of the lot can only be used for CDBG eligible activities. The use of the proceeds must be identified in the City's HUD Consolidated Plan and Annual Action Plan and a separate accounting of the funds must be maintained.

During FY17/18 the City proposes to use \$125,000 from the sale proceeds to address immediate, urgent needs within our community, which are identified as:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

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

**Order 218-16/17
(Tab 24)**

Order Appropriating \$3,975,000 for Improvements to the Portland International Jetport Passenger Terminal – Sponsored by Jon P. Jennings, City Manager.

The Portland International Jetport is requesting an appropriation from its unrestricted fund balance to make improvements to the passenger terminal

building. The Jetport completed a significant expansion in 2012 which greatly improved the passenger experience, but left the inbound passenger approach to baggage claim and gates 1-6 unimproved. At this time Jetport staff is proposing to make the following improvements.

• New vertical circulation from gate concourse down to baggage claim	\$ 2,325,000
• Restroom renovations in gate concourse and baggage claim	\$ 275,000
• Gate 2 & 3 passenger boarding bridge rehabilitation	\$ 1,050,000
• Flight Information Display System (FIDS) upgrade	<u>\$ 325,000</u>
Total	\$ 3,975,000

These improvements represent a first phase in the Jetport's plan to completely match the older sections of the terminal to the level of amenities and finish of the 2012 terminal expansion.

The Jetport's unrestricted cash fund balance was \$21,446,955 as of June 30, 2016. If approved, the Jetport will use \$3.975 million of its unrestricted cash fund balance to complete these proposed terminal improvements. Airports, like many industries, have substantially increased their liquidity since 2008 in response to the recession. This has resulted in unrestricted cash holdings in excess of 500 days of operating expenses, a level that is high historically.

The Jetport has followed this trend, as of June 30, 2016 the unrestricted cash fund balance was equal to 505 days of operating expenses on hand. At the last rating review with S&P and Moody's I outlined the Jetport's capital improvement program and noted it was our plan to maintain a more appropriate floor of 365 days of operating cash on hand.

If this appropriation is approved the Jetport will remain well above this floor at 404 days of cash on hand.

The Jetport is an enterprise fund of the City that is fiscally self-sustaining. FAA grant assurances and the covenants for the Jetport's General Airport Revenue Bonds (GARBs) require all revenues generated at the Jetport be pledged to cover only Jetport expenses. The approval of this appropriation has no impact to the City of Portland's general fund or tax rate.

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

**Order 219-16/17
(Tab 25)**

**Order Amending Order 153-16/17 (FY2018 CIP Projects) - Sponsored
by Councilor Pious Ali and Mayor Ethan K. Strimling.**

On April 5, 2017 the City Council approved Order 153-16/17, the FY18 Capital Improvement Plan. The plan was the result of a lengthy public process which included all City Departments and the School Department submitting and presenting their prioritized capital improvement plan requests in late 2017, the City Manager presenting the Capital Improvement Plan to Finance Committee, and the Finance Committee and City Council both unanimously endorsing that plan as

presented. The School Board has subsequently requested a change to the normal process and voted to ask the City Council to consider an amendment removing seven school projects from the FY18 approved CIP (Deering High School Windows, District Phone System, Deering High School Kitchen / Remodel Upgrade, Energy Management Control Upgrades, Engineering for Roofs, King – Fire Alarm Replacement Engineering, Lyman Moore – Fire Alarm Replacement Engineering) and reallocating that funding to the Casco Bay High School New Entrance and Engineering project.

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

Order 220-16/17 (Tab 26) **Order Amending Order 154-16/17 (FY2018 CIP Projects) – Sponsored by Councilor Pious Ali and Mayor Ethan K. Strimling.**

This is a companion order to Order 218-16/17 above.

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

AMENDMENTS:

Order 221-16/17 (Tab 27) **Amendment to Portland City Code Chapter 14 Re: Institutional Overlay Zone - Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

The Planning Board met on March 28, 2017, and voted unanimously (7-0) to forward this item to the City Council with a recommendation for passage.

The new Institutional Overlay Zone (IOZ) ordinance will make available a process for the growth and development of major institutions (initially MMC, Mercy, UNE and USM) in view of their central economic, academic, and health care roles in the city and region.

The process aims to foster transparency; formalize regular public engagement between the institutions and neighborhoods, the city, and third parties (e.g. METRO and utilities); and provide mechanisms that address the implications of institutional growth and development.

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

Order 222-16/17 (Tab 28) **Amendment to Portland City Code Chapter 17. Re: Extension of Moratorium of Retail Marijuana Establishment and Social Clubs – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

A 180-day moratorium on licenses for recreational marijuana retail shops and social clubs was approved by the City Council by Order 84-16/17 on November 21, 2016. It applied retroactively to November 8, 2016, and will expire on May 7, 2017. The Moratorium should be extended, in accordance with 30-A M.R.S.

§4356(2), to allow local licensing, zoning, and other ordinances to be drafted in accordance with state rules, which are still being developed.

On November 8, 2016, Maine voters approved the Marijuana Legalization Act (the “Act”), allowing the consumption, distribution and business development of and for marijuana products. The Act allows municipalities to regulate retail marijuana establishments, including stores, cultivation facilities, retail testing facilities, and also marijuana social clubs.

The extension of the Moratorium on these businesses will allow the City of Portland to ensure that its ordinances are consistent with the State of Maine rules, which have not yet been released. City staff is developing draft ordinances to regulate the sale of recreational marijuana, including licensing requirements, zoning restrictions, and safety rules, among other things.

Staff is requesting emergency enactment in order to make the extended Moratorium effective on May 7, 2017.

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

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

UNFINISHED BUSINESS: continued

Order 155-16/17 (Tab 29) 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.

Order 155-16/17 received a public hearing on March 20, 2017. It subsequently failed to pass by a vote of 6-3 (Mavodones, Duson, and Ray in opposition), short of the seven (7) affirmative votes required by the City Charter for passage of orders approving bonds. Pursuant to City Council Rule 19, this order automatically appears on the next City Council agenda as unfinished business.

Seven affirmative votes are required for passage. A public hearing for this item was held on March 20th. On April 5, 2017 this item was postponed to the April 24th Council meeting.

**Order 156-16/17
(Tab 30)**

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. Five affirmative votes are required for passage. A public hearing for this item was held on March 20, 2017. On April 5, 2017 this item was postponed to the April 24th Council meeting.

**Order 157-16/17
(Tab 31)**

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. Five affirmative votes are required for passage. A public hearing for this item was held on March 20, 2017. On April 5, 2017 this item was postponed to the April 24th Council meeting.

**Order 193-16/17
(Tab 32)**

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 Subject to the Conditions in This Order – Sponsored by Councilor Belinda Ray.

This \$24 Million Bond will fund a complete renovation of Harrison Lyseth Elementary school while also addressing short-term needs at seven other schools and preserving the City of Portland's opportunity to obtain state funding for the schools determined to have the best chance of obtaining that funding.

The projects to be addressed by this bond were identified in consultation with City Operations staff and are consistent with recommendations put forth in the Facilities Assessment of School Buildings Capital Plan recently completed by Sebago Technics and Lavallee Brensinger Architects.

Passing this bond will put the City of Portland in a position to continue addressing short-term school facility needs through its annual Capital Improvement Plan. It will also enable the City to create a long-term plan that makes the best use of local tax dollars and state funding to address the system's longer term needs, including large scale renovations at some schools.

Specifically, the bond will cover the following renovations, repairs, and upgrades:

Lyseth Elementary School: Complete renovation of existing facility. 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. Bus loop, field work, and drainage issues resolved.

Lyman Moore Middle School: Parking improvements. Engineering for Fire Alarm. Installation of Fire Alarm.

King Middle School: Engineering for Fire Alarm. Installation of Fire Alarm.

Ocean Avenue Elementary: Addition of four classrooms to add capacity and swing space within the district. As is state practice, Ocean Avenue was designed so that these classrooms could easily be added at a later date if the extra capacity became necessary. These four classrooms were first requested to address system capacity needs in 2011.

Reiche Elementary: Engineering and construction of a new Brackett Street entry to address student health and safety issues. The ramp on the Brackett Street side of the school 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.

Peaks Island: Ceiling & lighting upgrades throughout facility, addressing operations, maintenance, and energy efficiency issues.

Riverton: Installation of heat piping in new wing. Replacement of original rooftop AC.

Deering High: Installation of sprinkler system. Fire alarm upgrades.

This item must be read on two separate days. It was given a first reading on April 5th. Seven affirmative votes are required for passage after public comment.

**Order 194-16/17
(Tab 33)**

Order Appropriating \$24,000,000 of Bond Proceeds – Sponsored by Councilor Belinda Ray.

This item is a companion Order to Order 193 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment

**Order 195-16/17
(Tab 34)**

Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by Councilor Belinda Ray.

This is a companion order to Order 193 and 194 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment

**Order 196-16/17
(Tab 35)**

Order Approving Lyseth and Presumpscot Elementary School Renovation Projects with Total Project Costs not to exceed \$31,626,000 and Authorizing General Obligation Bonds Therefore Subject to the Conditions Contained in this Order – Sponsored by Councilors Nicholas M. Mavodones, Jr. and Jill C. Duson.

This order approves a bond in the amount of \$31,626,000 which would allow for construction of Lyseth and Presumpscot Elementary Schools, and for waiting to see where the Reiche and Longfellow Elementary Schools rank in the upcoming Spring 2018 State Department of Education Major Capital Construction Priority list (which provides State funding for construction of schools). If Reiche and Longfellow Elementary Schools rank highly on that list, the City would then be able to move forward with construction of all four elementary schools, with two of the schools being funded locally and two of the schools being funded by the State.

Finally, however, this order would also allow for the City to be able to take the necessary steps to allow for local funding of Reiche and Longfellow Elementary Schools if State funding was not obtained."

This item must be read on two separate days. It was given a first reading on April 5th. Seven affirmative votes are required for passage after public comment

**Order 197-16/17
(Tab 36)**

Order Appropriating \$31,616,000 of Bond Proceeds – Sponsored by Councilors Nicholas M. Mavodones, Jr. and Jill C. Duson.

This is a companion order to Order 197-16/17 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment.

**Order 198-16/17
(Tab 37)**

Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by Nicholas M. Mavodones, Jr. And Jill C. Duson.

This is a companion Order to Order 196 and Order 197 above. This item must be read on two separate days. It was given a first reading on April 5th. Five affirmative votes are required for passage after public comment.

IN COUNCIL SPECIAL MEETING APRIL 5, 2017 VOL. 133 PAGE 77

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (Councilors Duson, Ali, arrived during proclamations; Councilor Thibodeau arrived during Order 185.)

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber”, Pigeon – Street Artist and Speaker

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Ray and seconded by Councilor Costa for approval of the March 27, 2017 Special City Council Minutes. Passage 6-0.

PROCLAMATIONS:

Proc 24-16/17 Proclamation Honoring Officer Christopher Coyne as Police Officer of the Month – Sponsored by Mayor Ethan K. Strimling.

Proc 25-16/17 Proclamation Recognizing Starting Strong Day, April 2017 – Sponsored by Mayor Ethan K. Strimling.

Proc 26-16/17 Proclamation Recognizing Longfellow Park’s 90th Anniversary - Sponsored by Councilor Brian Batson.

APPOINTMENTS:

CONSENT ITEMS:

Order 181-16/17 Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Wade Roma– Sponsored by Jon P. Jennings, City Manager.

Order 182-16/17 Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Andrea Comeau – Sponsored by Jon P. Jennings, City Manager.

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

LICENSES:

Order 183-16/17 Order Granting Municipal Officers' Approval of Pizza Pie on the Fly dba Noble BBQ. Application for a Class I License at 1706 Forest Avenue – Sponsored by Michael Russell, Director of Permitting and Inspections.

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

Order 184-16//17 Order Granting Municipal Officer's Approval of Portland Mash Tun LLC dba Portland Mash Tun. Application for Outdoor Dining on Public Property at 29 Wharf Street – Sponsored by Michael Russell, Director of Permitting and Inspections.

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

Order 185-16/17 Order Granting Municipal Officers' Approval of Bujabelle LLP dba Bujabelle. Application for Class XI Restaurant/Lounge, Entertainment with Dance, After Hours Entertainment and Outdoor Dining on Private Property at 249 St. John Street – Sponsored by Michael Russell, Director of Permitting and Inspections.

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

Order 186-16/17 Order Approving Municipal Officers' Approval of Nguoi Dep LLC dba Cong Tu Bot. Application for a Class I FSE License at 59 Washington Avenue – Sponsored by Michael Russell, Director of Permitting and Inspections.

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

Order 187-16/17 Order Granting Municipal Officers' Approval of Bonfire LLC dba Bonfire Country Bar. Application for Entertainment with Dancing and After Hours Entertainment at 37 Wharf Street – Sponsored by Michael Russell, Director of Permitting and Inspections.

Councilor Thibodeau disclosed that his company may have done work for Bonfire.

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Motion failed 1-8 (Mavodones, Duson, Brenerman, Ali, Costa, Ray, Batson, Strimling).

Motion was made by Councilor Duson and seconded by Councilor Costa to postpone Order 187 indefinitely. Passage 9-0.

BUDGET ITEMS:

Order 188-16/17 Order Receiving and Referring City Manager's Fiscal Year 2018 Municipal Budget to the Finance Committee and Setting Date of Public Hearing on the Fiscal Year 2018 Municipal Budget and Fiscal Year 2018 Appropriation Resolve – Sponsored by Jon P. Jennings, City Manager

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

COMMUNICATIONS:

RESOLUTIONS:

Resolve 5-16/17 Resolution Adopting the FY 2017-2018 Housing and Community Development Annual Action Plan Including Appropriations For Community Development Block Grant Program, Home Program, and Emergency Solutions Grant Program and Certifications Pertaining Thereto – Sponsored by Jon P. Jennings, City Manager. This item was given first reading and public comment on March 27, 2017.

Councilor Ali recused himself from the vote; he was a former Board Member of the YMCA.

Motion was made by Councilor Thibodeau and seconded by Councilor Costa for passage. Passage 8-0 (Councilor Ali recused)
IN COUNCIL SPECIAL MEETING APRIL 5, 2017 VOL. 133 PAGE 80

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

UNFINISHED BUSINESS:

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 item was given first reading on March 6th. This item was given first public comment on March 27, 2017.

Motion was made by Councilor Mavodones and seconded by Councilor Brenerman for passage.

Motion was made by Mayor Strimling and seconded by Councilor Mavodones to amend Order 153 by removing Thames Street Extension Excavating and Construction from the CIP and changing the bond amount from \$24, 340,500 to \$22,940,500. Motion failed 1-8 (Duson, Mavodones, Brenerman, Ali, Costa, Ray, Thibodeau, Batson).

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

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 item was given first reading on March 6, 2017.

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

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 item was given first reading on March 6, 2017, on March 27 this item was postponed to the April 5, 2017 City Council meeting.

Motion was made by Councilor Batson and seconded by Councilor Ray for passage.

Motion was made by Mayor Strimling and seconded by Councilor Thibodeau to add the language for a tie breaker. Passage 9-0.

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Motion was made by Councilor Duson and seconded by Councilor Ray to postpone Order 155 to April 24, 2017. Passage 9-0.

Order 156-16/17 Order Appropriating \$64,260,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair. This item was given first reading on March 6, 2017; on March 27th this item was postponed to April 5, 2017.

Motion was made by Councilor Duson and seconded by Councilor Ray for passage.

Motion was made by Mayor Strimling and seconded by Councilor Duson to amend Order 156 to add the language “and the satisfaction of any necessary conditions”. Passage 9-0.

Motion was made by Councilor Ray and seconded by Councilor Batson to postpone Order 156 to April 24, 2017. Passage 9-0.

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 item was given first reading on March 6, 2017. Public hearing on March 20, 2017, on March 27th this item was postponed to April 5, 2017.

Motion was made by Councilor Costa and seconded by Councilor Ray for passage.

Motion was made by Mayor Strimling and seconded by Councilor Duson to add the date of a second public hearing and change the date of the School Bond Election to November 7, 2017. Passage 9-0.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to postpone Order 157 to April 24, 2017. Passage 9-0.

Order 174-16/17 Order Approving Traffic Schedule Amendment Re: Cove Street to Two-Hour and No Parking - Sponsored by Jon P. Jennings, City Manager. This item was given first reading on March 20, 2017.

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

IN COUNCIL SPECIAL MEETING APRIL 5, 2017 VOL. 133 PAGE 82

Order 175-16/17 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 item was given first reading on March 20, 2017.

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

Order 178-16/17 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. This item was given first reading on March 20, 2107.

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

Order 180-16/17 Order Approving Airport Improvement Program Grants - Sponsored by Jon P. Jennings, City Manager. This item was given first reading on March 27, 2017.

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

ORDERS:

Order 189-16/17 Order Setting Time for Opening of Polls on May 9, 2017 Re: School Budget Referendum – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Mavodones and seconded by Councilor Costa for passage.

Motion was made by Councilor Mavodones and seconded by Councilor Ray to amend Order 189 by changing the date of the election to June 13, 2017. Passage 8-1(Costa).

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

IN COUNCIL SPECIAL MEETING APRIL 5, 2017 VOL. 133 PAGE 83

Order 190-16/17 Order Approving and Authorizing the Fifth Amended Land Exchange Agreement between J.B. Brown & Sons and the City of Portland Upon the Signing of the Related Letter Agreement Re: Canco Road Site for Department of Public Works and Cotton Street Parking Lot – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.

Councilor Thibodeau recused himself; his employer represents J.B. Brown & Sons.

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

Order 191-16/17 Order Accepting and Adopting the 2017 Housing Trust Fund Annual Plan - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

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

Order 192-16/17 Order Approving Collective Bargaining Agreement with Communications Employee Association – Sponsored by Jon P. Jennings, City Manager.

This is its first reading.

Order 193-16/17 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 Subject to the Conditions in This Order – Sponsored by Councilor Belinda Ray.

This is its first reading.

Order 194-16/17 Order Appropriating \$24,000,000 of Bond Proceeds – Sponsored by Councilor Belinda Ray.

This is its first reading.

**Order 195-16/17 Order Submitting Elementary School Renovation Projects Bond
Order to Referendum – Sponsored by Councilor Belinda Ray.
IN COUNCIL SPECIAL MEETING APRIL 5, 2017 VOL. 133 PAGE 84**

This is its first reading.

**Order 196-16/17 Order Approving Lyseth and Presumpscot Elementary School
Renovation Projects with Total Project Costs not to Exceed
\$31,626,000 and Authorizing General Obligation Bonds Therefore
Subject to the Conditions Contained in this Order – Sponsored by
Councilors Nicholas M. Mavodones, Jr. and Jill C. Duson.**

This is its first reading.

**Order 197-16/17 Order Appropriating \$31,616,000 of Bond Proceeds – Sponsored
by Councilors Nicholas M. Mavodones, Jr. and Jill C. Duson.**

This is its first reading.

**Order 198-16/17 Order Submitting Elementary School Renovation Projects Bond
Order to Referendum – Sponsored by Nicholas M. Mavodones, Jr.
And Jill C. Duson.**

This is its first reading.

Motion was made by Councilor Duson and seconded by Councilor Costa to
adjourn. Passage 8-1 (Councilor Thibodeau) 10:20 P.M..

A TRUE COPY.

Katherine L. Jones, City Clerk

Proc 27-16/17
Tab 2 4-24-17

PROCLAMATION

Honoring

Thomas Doyle

Employee of the Month

February 2017

WHEREAS: **Thomas Doyle** of the Health and Human Services Department, Social Services Division, has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and

WHEREAS: This award is presented in recognition of **Thomas'** work as a Maintenance Worker III with over seventeen years of City service. One of the biggest parts of **Thomas'** job is to clean and maintain the Oxford Street Shelter. The shelter takes in approximately 225 people per night; and

WHEREAS: **Thomas** is recognized and praised by his co-workers for the job that he does in cleaning and maintaining the shelter. The large clientele can create a challenge for cleaning and **Thomas** always works hard to meet the challenge and prepare for the next night. **Thomas** is good with the clients he is in contact with; and

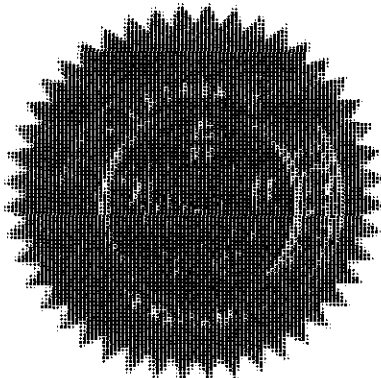
WHEREAS: **Thomas** was a great help in moving furniture, cleaning and disposing of unneeded items from the Refugee Services office space to prepare for rent. **Thomas** is also recognized for his work supervising and training Work Fare clients daily. **Thomas** is always willing to help, always cheerful and with a smile. **Thomas** truly is an asset to the Health and Human Services Department, Social Services Division, and to the City.

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

Signed and Sealed this 24th day of April, 2017



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



*Order 199-16/17
Tab 3 4-24-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPOINTING KYLE O'NEIL AS CONSTABLE FOR 2017
RE: DEPARTMENT OF PARKS, RECREATION & FACILITIES**

ORDERED, that Kyle O'Neil, Park Ranger, is hereby appointed as constable for the remaining calendar year 2017; and

BE IT FURTHER ORDERED, that this appointment shall be effective from the effective date of this order until 12:00 midnight, December 31, 2017; and

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

MEMORANDUM
City Council Agenda Item

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

FROM: Joe Dumais

DATE: April 11, 2017

SUBJECT: Appointment of Constable

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 _____ Final Action April 24, 2017

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

Constables need to be appointed for the beginning of the summer season.

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

I. ONE SENTENCE SUMMARY

Appointment of Constable for Department of Parks, Recreation & Facilities

II. AGENDA DESCRIPTION

The Department of Parks, Recreation, and Facilities is requesting that Kyle O'Neil, Park Ranger, be appointed as constable for the remaining calendar year 2017.

This appointment shall be effective from the effective date of this order until 12:00 midnight, December 31, 2017.

This appointment is made pursuant to Portland City Code, Sections 20-19 and 20-19.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests or issue parking tickets.

III. BACKGROUND

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Prepared by:

Joseph Dennis

Date:

4/12/17

*Order 200-16/17
Tab 4 4-24-17*

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. §§ 5821(6) and 5824(3)
RE: LUIS GARCIA**

ORDERED, that the City Council hereby accepts the amount of \$14,451.00 in forfeited assets in the case of State of Maine vs. Luis Garcia from the State of Maine to the City of Portland, pursuant to 15 M.R.S. §§ 5821(6) and 5824(3) and as provided in the attached "Approval of Transfer."

MEMORANDUM
City Council Agenda Item

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

FROM: Richard Bianculli, Neighborhood Prosecutor (Police)

DATE: March 22, 2017

SUBJECT: Civil Forfeiture Approval Request

SPONSOR: N/A

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

COUNCIL MEETING DATE ACTION IS REQUESTED: NEXT AVAILABLE (4/19/17)
1st reading _____ Final Action X

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

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

I. ONE SENTENCE SUMMARY

The statute requires Council approval of the Court-approved transfer of forfeited assets (\$14,451.00) to the Portland Police Department.

II. AGENDA DESCRIPTION

Portland Police seized assets that were deemed to be either proceeds from the sale of illicit substances or assets intended to be furnished in exchange for illicit substances. A judgment has been received by the Superior Court awarding the assets to the State and allowing transfer to the City of Portland. The Civil Forfeiture statute, 15 M.R.S.A. § 5821(6) and § 5824(3), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.

III. BACKGROUND

The money was seized during an investigation conducted by the Portland Police Department.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The amount of \$14,451.00 may be transferred to 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.

V. FINANCIAL IMPACT

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

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

N/A

VII. RECOMMENDATION

Staff recommends approval.

VIII. LIST ATTACHMENTS

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

Prepared by: Richard Bianculli
Date: March 22, 2017.

STATE OF MAINE
Cumberland, ss

SUPERIOR COURT
Docket No. CV-2016-0449

STATE OF MAINE,)
Plaintiff,)
)
)
v.)
)
\$14,451.00 in U.S. Currency,)
Defendant(s) *In Rem*,)
)
and)
)
LUIS GARCIA,)
Party-in-Interest.)

CITY OF PORTLAND
APPROVAL OF TRANSFER
15 MRS §§ 5821(6), 5824(3)

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Sections 5821(6) and 5824(3) of Title 15 of the Maine Revised Statutes, to the transfer of the above captioned Defendant *In Rem*, namely \$14,451.00 in US Currency, on the grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant *In Rem* to the City of Portland, Maine pursuant to 15 M.R.S. §§ 5821(6) and 5824(3).

Dated: May ____, 2017.

Mayor

(Impress Legislative Body Seal Here)

STATE OF MAINE

SUPERIOR COURT

Cumberland, ss.

Docket No. CV-2016-449

DISTRICT COURT

Location

Docket No.

STATE OF MAINE

Plaintiff

v.

\$14,451.00 in U.S. Currency

Defendant

AFFIDAVIT AND REQUEST FOR
DEFAULT AND DEFAULT JUDGMENT
M.R. Civ. P. 55

(Attorney for Plaintiff) (Plaintiff), represents, under oath, that each of the statements marked below is true, of the affiant's own knowledge as to the defendant, \$14,451.00 in U.S. Currency and Luis Garcia (Party-in-Interest).

1. a) ☐ Defendant has failed to appear, plead or otherwise defend this action as required by the Maine Rules
 b) ☒ Defendant has appeared, but has failed to plead or otherwise defend this action in that Defendant accepted service on December 21, 2014. Defendant's answer was due no later than January 30, 2017. To date, no answer has been filed with the Court nor provided to counsel for the State.
2. a) ☒ Defendant is not a minor or incompetent person.
 b) ☐ Defendant is a (minor) (incompetent person) and appearance has been entered for Defendant by (guardian), (guardian ad litem), (conservator) or (other representative.)
3. ☒ To the personal knowledge of the undersigned, Defendant is not in the Military Service of the United States, as defined in the Servicemembers Civil Relief Act of 2003, (50 App USC § 511)(no default against servicemembers allowed per 50 App USC §521).
 This fact is evidenced by the following facts as to residence, employment, etc.: Defendant, In Rem, was seized by the Portland Police Department on October 12, 2016 in the City of Portland, County of Cumberland.
4. a) ☒ Plaintiff's claim against Defendant is for a sum certain, or for a sum which can by computation be made certain, and the amount now due by the Defendant to the Plaintiff on the claim set forth in the complaint in this action is the sum of \$ 14,451.00, plus interest and costs.
 b) ☐ The original or copy of any negotiable obligation upon which this action is brought is transmitted to the Court herewith.
 c) ☐ The Plaintiff's claim against Defendant is not for a sum certain, nor for a sum that can by computation be made certain.
5. ☒ To the personal knowledge of the undersigned, venue was properly laid in this Court, as shown by the following facts: Defendant, In Rem, was seized by the Portland Police Department on October 12, 2016 in the City of Portland, County of Cumberland.

Date: 02/22/2017

[Signature]
Affiant

Personally appeared the above-named affiant and made oath to the foregoing affidavit.

Date: 02/22/2017

STATE OF MAINE
Cumberland, ss. Clerk's Office

[Signature]
Notary Public/Attorney at Law

CV-061, Rev. 01/15

FEB 27 2017 Page 1 of 2

BAR # 2587

RECEIVED

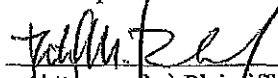
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REQUEST FOR DEFAULT AND DEFAULT JUDGMENT

The Plaintiff requests:

- (1) That the Clerk enter the default of \$14,451.00 in U.S. Currency and Luis Garcia (Party-in-Interest), defendant.
- (2) ☒ (a) That judgment by default against the defendant, \$14,451.00 in U.S. Currency and Luis Garcia (Party-in-Interest), be entered by the clerk in the sum of \$ 14,451.00, with interest and costs.
- ☐ (b) That judgment by default against the defendant, _____, be granted by the Court ex parte.
- ☐ (c) That judgment by default against the defendant, _____, be granted by the Court upon notice to the defendant or his representative and hearing.

Date: 02/22/2017


(Attorney for) Plaintiff
Richard M. Bianculli Jr., Esq., Bar No. 5486, Neighborhood Prosecutor
Portland Police Department, 109 Middle Street, Portland, ME 04101
(Address)

ENTRY OF DEFAULT

The defendant, \$14,451.00 in U.S. Currency and Luis Garcia (Party-in-Interest) has failed to plead or otherwise defend this action, and Defendant's default is entered.

Date: 3/1/17

 ASST
Clerk

DEFAULT JUDGMENT BY THE CLERK

A default having been entered, and it appearing by affidavit that the plaintiff's claim is for a sum certain or which can be made certain by computation; that the defendant is not a minor or incompetent person; that the defendant is not in the military; and that venue is properly laid in this court; (and that the original or copy of the negotiable instrument has been filed with the clerk), judgment is hereby entered for the Plaintiff, State of Maine against the Defendant, \$14,451.00 in U.S. Currency and Luis Garcia (Party-in-Interest) for the sum of \$14,451.00 with pre-judgment interest at the rate of _____, post-judgment interest at the rate of _____ and costs.

Date: 3/1/17

 ASST
Clerk

DEFAULT JUDGMENT BY THE COURT

A default having been entered, and it appearing by affidavit that the plaintiff's claim is for a sum certain or which can be made certain by computation; that the defendant is not a minor or incompetent person; that the defendant is not in the military; and that venue is properly laid in this court; (and that the original or copy of the negotiable instrument has been filed with the clerk), judgment is hereby entered for the Plaintiff, _____ against the Defendant, _____ for the sum of \$ _____ with pre-judgment interest at the rate of _____, post-judgment interest at the rate of _____ and costs.

Date: _____

Judge / Justice

A true copy, Attest: _____

Clerk

*Order 201-16/17
Tab 5 4-24-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that the City Council hereby accepts the amount of \$500.00 in forfeited assets in the case of State of Maine vs. Moses Losuk from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

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: March 22, 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. Moses Losuk, CR-16-1524 and five hundred dollars (\$500.00 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: March 22, 2017

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Moses Losuk,
Defendant

AND
\$500.00 US CURRENCY
DEFENDANT IN REM #1

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-16-1524

}
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}
}
}
}
}

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 \$500.00 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)



**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

Bath
(207) 443-5104

March 20, 2017

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

RE: State v. Moses Losuk, CR-16-1524
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

*Order 2017-16/17
Tab 6 4-24-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that the City Council hereby accepts the amount of \$1,420.00 in forfeited assets in the case of State of Maine vs. Craig Carrigan from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

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: March 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. Craig Carrigan, CR-16-4344 and fourteen thousand two hundred dollars (\$14,200.00 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: March 27, 2017

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Craig Carrigan,
Defendant

AND
\$14,200.00 US CURRENCY
DEFENDANT IN REM

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-16-4344

}
}
} 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 any portion of the above captioned Defendant(s) *In Rem*, **namely \$1,420.00 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)



**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

March 21, 2017

Bath
(207) 443-5104

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

RE: State v. Craig Carrigan, CR-16-4344
City of Portland Approval

Dear Chief:

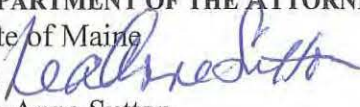
Enclosed please find a City of Portland Approval form for the forfeiture of a portion of the money seized in this case. As you can see, the City/Town Council, or a representative thereof, needs to sign this form and return it to me so that I can provide you with a court order that will transfer a portion of 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
Assistant Attorney General

*Order 203-16/17
Tab 7 4-24-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that the City Council hereby accepts the amount of \$1,841.20 in forfeited assets in the case of State of Maine vs. Erica Burwell from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

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: March 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: ☒ 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. Erica Burwell, CR-16-6015 and four thousand six hundred three dollars (\$4,603.00 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: March 27, 2017

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Erica Burwell,
Defendant

AND

\$4,603.00 US CURRENCY
DEFENDANT IN REM

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-16-6015

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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 any portion of the above captioned Defendant(s) *In Rem*, **namely \$1,841.20**, 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)



**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

Bath
(207) 443-5104

March 21, 2017

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

RE: State v. Erica Burwell, CR-16-6015
City of Portland Approval

Dear Chief:

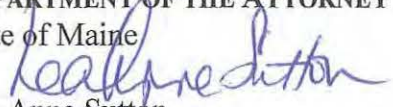
Enclosed please find a City of Portland Approval form for the forfeiture of a portion of the money seized in this case. As you can see, the City/Town Council, or a representative thereof, needs to sign this form and return it to me so that I can provide you with a court order that will transfer a portion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

Assistant Attorney General

*Order 204-16/17
Tab 8 4-24-17*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that the City Council hereby accepts the amount of \$2,260.00 in forfeited assets in the case of State of Maine vs. Innocent Ochan from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

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: March 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. Innocent Ochan, CR-16-6371 and two thousand, two hundred sixty dollars (\$2,260.00 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: March 27, 2017

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Innocent Ochan,
Defendant

AND

\$2,260.00 US CURRENCY
DEFENDANT IN REM #1

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-16-6371

}
}
}
}
}
}
}
}

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 \$2,260.00 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)



**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

Bath
(207) 443-5104

March 21, 2017

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

RE: State v. Innocent Ochan, CR-16-6371
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

Assistant Attorney General

#8786

*Order 205-16/17
Tab 9 4-24-17*

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 9, 2017 THROUGH JUNE 17, 2017
PORTLAND PRIDE! WEEK
AND PORTLAND PRIDE! CELEBRATION AND FESTIVAL**

ORDERED, that June 9, 2017 through June 17, 2017, is hereby declared Portland Pride! Week and Saturday, June 17, 2017, is hereby declared Portland Pride! Celebration and Festival; and

BE IT FURTHER ORDERED, that the Portland Pride! Celebration and Festival area shall be Monument Square, One City Center sidewalk, Preble Street from Cumberland Avenue to Congress Street, Federal Street Extension, and Center Street from Free Street to Congress on Saturday, June 17 from 10:00 a.m. to 12:00 p.m.; and shall be Deering Oaks Park on Saturday, June 17 from 12:00 p.m. to 5:00 p.m., and include reserved parking spaces on the park side of Park Avenue and on State Street Extension from Forest Avenue to Park Avenue;

BE IT FURTHER ORDERED, that the City Manager is authorized to grant permits to Pride Portland!, pursuant to Sec. 25-27 of the Portland City Code for the following activities on Saturday, June 17, 2017:

- a. Use of Monument Square and area sidewalks, Monument Way, One City Center Sidewalk, Center Street, Federal Street Extension and sidewalks, Congress Street sidewalk area and Preble Street (from Cumberland Ave to Congress Street) and Federal Street Extension from 10:00 a.m. to 12:00 p.m., as a gathering point for parade participants;
- b. Use of Congress Street (both sides of the street) from Elm Street to High Street, High Street (from Congress Street to Park Avenue), Park Avenue (from High Street to Deering Avenue), State Street Extension (from Park Avenue to Forest Avenue) and entering Deering Oaks at Bowling Green Pathway in the Mellen Street area (Floats park on Park Avenue) for a parade to begin at 12:00 p.m.;
- c. Use of Deering Oaks Park (the Park Avenue side of the park, i.e. grass areas on the south side of the pond and ravine) for Portland Pride! Celebration and Festival: entertainment, displays, food and non-food vendors from 1:00 p.m. – 7:00 p.m.;

- d. If inclement weather, the Festival at Deering Oaks Park would be cancelled, but the parade would still take place, rain or shine; and

BE IT FURTHER ORDERED, that the following streets shall be closed to traffic on Saturday, June 17, 2017:

1. Federal Street Extension and Preble Street from Cumberland Avenue to Congress Street (9:00 a.m. – to 12:00 p.m.), Preble Street and Federal Street Extension posted “No Parking”;
2. Center Street, from Free Street to Congress Street, closed to traffic and used for parade formation purposes;
3. Streets along the Parade route: Congress Street (Elm to High Street), High Street (Congress Street to Park Avenue), Park Avenue (High Street to Deering Avenue) and State Street Extension entrance to Deering Oaks Park will be closed for short periods of time by police officers in patrol cars and volunteers, blocking the intersection via a rolling barricade (approximately 12:00 p.m. – 1:00 p.m.); 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 parade route and Festival area will also be closed to street vendors pursuant to Section 19-17 and §19-22 of the Portland City Code and is reserved for the use of the Pride Portland! for the purpose of conducting the Festival events, 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 under Section 25-27 of the Municipal Code to the Pride Portland! for the use of the above-described area for said Festival, subject to the following conditions:

1. Some City Department Staff will assist at the Parade for no charge, but Pride Portland! shall reimburse the City for all expenses incurred by City Departments for other additional services at said 2017 Festival;
2. Under no circumstances may alcoholic beverages be sold on the streets or public property of said area during said Festival except in the area restricted to people 21-years-old and older to be partitioned off and staffed by security and set up and overseen by Public Assembly Facilities Division staff, subject to meeting all liquor licensing requirements;
4. Pride Portland! 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;

5. Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division, shall be adhered to;

6. Pride Portland! 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 (for use of Deering Oaks) per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will list the City of Portland as an additional insured for the Portland Pride! Celebration and Festival; and

BE IT FURTHER ORDERED, that 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.



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 30, 2017
RE: **Council Agenda Item - 2017 Pride Portland!**
Pride Celebration and Festival

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

Order declaring June 9 – June 17, 2017 as "Pride Portland! Week" and declaring Saturday, June 17, 2017 as "Pride Portland! Pride Celebration and Festival."
The Festival itself (Saturday, June 17) is comprised of two components:
Pride Parade and the Festival at Deering Oaks Park.

The organization, Pride Portland!, has submitted a request/application for "**Pride Portland! Pride Celebration and Festival**," which includes a number of events (flag raising, sports days, picnics in parks, Dyke March, etc.) taking place all week long. They have requested the following large events be approved for use of city property (which are similar to previous years, including an alcohol service area at the festival at Deering Oaks Park):

1. **Pride Parade:** parade assembly: The use of Monument Square, One City Center sidewalk, Preble Street (from Cumberland Ave. to Congress Street), Federal Street Ext., and Center Street (Free to Congress) on **Saturday, June 17, from 10am to 12pm (Noon)**. Parade assembly begins at 10am. Attendance – 1,500 marchers (some floats).

For Pride Parade itself: The use of city streets – both lanes: Congress Street (Elm to High Street), High Street (Congress Street to Park Avenue), Park Avenue (from High Street to Deering Ave.), and State Street Ext. Once reaching Mellen Street area, marchers enter into Deering Oaks Park, **Saturday, June 17, to begin at 12pm (Noon)**. Estimated onlookers – 3,000: Estimated participants – 1,500 with some floats.

2. **Pride Festival:** The use of Deering Oaks Park (Park Avenue side of the Park): entertainment, displays, food and non-food vendors including a **21+ Beer Garden area** from **1 – 5pm on Saturday, June 17 (beer garden open 1 – 4pm)**.

NOTE: The organizer has requested parking spaces be reserved on State Street Ext. (Forest Ave. to Park Ave.) for volunteers, vendors and political speakers. In addition, as the festival is held on the south side of the pond and ravine area, Farmer's Market will still be held in Deering Oaks Park that day, and farmers will end their sales at the park at the usual time – around 1pm.
Estimated Attendance – 7,000+

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

Festival Zone (areas falling under Pride Portland! Committee's purview):

1. All of parade formation area and parade route, including the streets themselves, and parking lanes, as well as adjoining sidewalks, squares, parks, and plazas (Monument Square, Monument Way, Congress Square Park);
2. The south side of Deering Oaks Park (from the south side of the Ravine and Pond to Park Ave., to State Street Ext., to Deering Ave.), and to include the adjoining sidewalks of adjacent streets as well.

Street Closures:

In order for these events to be held, a number of city streets need to be closed to vehicular traffic on **Saturday, June 17**. In particular, the streets included in the parade formation area and the parade route itself. **(Some of these streets would need to be posted "No Parking.")**

For Parade formation: Federal Street Extension and Preble Street – from Cumberland Ave. to Congress Street; (9am – Noon). Also, Center Street (from Free Street to Congress Street) closed to traffic and used for formation purposes. These streets posted "No Parking."

Streets along the Parade route: Congress Street (Elm to High Street), High Street (Congress Street to Park Ave.), Park Ave. (from High Street to Deering Ave.), and State Street Ext., will be closed for a period of time by police officers in patrol cars, parking control officers, and volunteers, blocking the intersections via a rolling barricade. **(Approximately 12 – 1pm)**. Congress Street and Park Ave. (on the park side of the street) will need to be posted "No Parking."

The Pride Parade will impact some METRO Bus routes. City staff and festival organizers will work with METRO on how to best address those impacts.

If inclement weather on Saturday, June 17, the Festival at Deering Oaks Park would be cancelled, but the Parade would still take place, rain or shine.

Vehicles in violation of the "No Parking" signs in the Festival Zone shall be towed at owner's expense.

Beer Garden at Saturday's Pride Festival (Deering Oaks Park):

Organizers wish to sell alcohol (wine and beer) at the festival at Deering Oaks Park, Saturday June 17. Time frame: 1 – 4pm. **Equality Maine is the sponsor applying for the Off-Premises Liquor Catering License.** The alcohol area has been approved by City Council for 3 years now, with no incidents to report over that time. If approved this year, organizers will contract and hire the city's Public Assembly Facilities Division Staff to setup and oversee this 21+ partitioned-off area. Friends of Deering Oaks have reviewed and endorsed.

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

The parade route and Festival areas above will be closed to street vendors and artists pursuant to Section 19-17 of the Portland City Code and are reserved for the use of Pride Portland! Committee 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 Pride Portland! Committee for the use of the above-described area for said events, subject to the following conditions:

- The Pride Portland! Committee **Co-chairs: Michelle Patrick and Charlie Johnson**, shall reimburse the City for all expenses incurred by City Departments for said **2017 Festival** (assistance at the Parade is in-kind, as that is considered a 1st Amendment use, however organizers will hire some additional officers to assist at the Parade);
- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival, other than an area approved by Portland City Council;
- The Pride Portland! Committee shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the events;
- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division, shall be adhered to; and
- Pride Portland! 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, and alcohol liability coverage, for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the **"Pride Portland! Pride Celebration and Festival"** activities.

The City Manager is also authorized to waive any fees, and 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
 Ted Musgrave tvn@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	23 January, 2017 Revised: 3-20	ORGANIZATION NAME	Pride Portland!					
ORGANIZATION ADDRESS	511 Congress Street Suite 107		CITY	Portland	STATE	ME	ZIP	04101
CONTACT NAME(S)	Rich Beaudoin, At Large Member Michelle Patrick, Chair Charlie Johnson, Co-Chair							
HOME #	WORK	CELL	FAX					
EMAIL	Rbeaudoin68@yahoo.com		EMAIL	portmepride@gmail.com				

PARK AREA OR PUBLIC SPACE REQUESTED	Portland Streets (Mon Square/Preble St/Fed St Ext) – PARADE Deering Oaks Park (south side of Pond & Ravine) – FESTIVAL Congress Square sidewalk area – Small stage (reviewing stand) situated there				
EVENT DAY & DATE(S)	Saturday, June 17, 2017		RAIN DAY & DATE(S) (50% added fee)	NONE – if rain, parade will go on. Festival in Oaks may be canceled	
EVENT START TIME (i.e. set-up start time)	7am – Festival begins. 10am- Parade Formation STAGE- Erected Friday afternoon	EVENT END TIME (i.e. when event cleanup is complete)	1:00pm (parade) 7:00pm (festival clean-up)	ACTUAL START & END TIME OF EVENT	12pm-1pm – PARADE 1pm-5pm - FESTIVAL

EVENT NAME	EXPECTED ATTENDANCE
Pride Portland! Pride Celebration and Festival	Parade: 1,500 marchers 3000+ spectators Festival: 5000+ throughout the day

DESCRIPTION OF EVENT:

Friday, June 9, 2017 – Flag Raising at Equality Community Center, 511 Congress Street. A **SOUND PERMIT** will be needed.
 Set-up at 5:00pm. Flag to be raised at 5:30pm. This is on private property, but we will need a sound permit. End time 6:30pm, followed by immediate break-down.

Sunday, June 11, 2017 – Field Day at Back Cove. A **SOUND PERMIT** will be needed.
 Set-up at 9:00am at Back Cove. Event runs from 10:00am – 1:00pm, with break-down immediately following.

Monday, June 12, 2017 – Picnic in the Park – North Street Park. A grill will be provided for those who wish to bring and cook.
 Set-up beginning at 4:30pm, with the picnic running from 5:30pm – 8:00pm, with break-down immediately following.

Friday, June 16, 2017 – 13th Annual Dyke March, followed by a 'Block Party' at Congress Square Park.
 Normally, set-up begins at 5:30pm. Speakers at Monument Square prior to the march, so a **SOUND PERMIT** will be needed. The March to start at 7:00pm, ending at Congress Square Park, where a 'Block Party' will be held from 7:30pm – 9:00pm, in conjunction with Friends of Congress Square Park. A **SOUND PERMIT** will be needed at both ends of the march (Monument Square and Congress Square Park)

Pride Parade: Saturday, June 17, 2017 Noon Kick-Off Parade forms up on Preble Street (between Cumberland and Congress) and Center Street (from Free to Congress) and Monument Square. Parade down Congress Street to High Street, Park Ave. to Mellen Street intersection, onto sidewalk + pathway to Deering Oaks. Organizer will hire

some Police Officers and PCO's to assist with traffic control. Many volunteers will staff the parade route intersections (barricades). A few of the streets will need to be posted "No Parking." **SOUND PERMIT** needed.

Pride Festival: Saturday, June 17, 2017 1 – 5pm Festival is held in Deering Oaks Park (located on the Park Avenue and Bowling Green Path side of the Oaks) and includes the use of the grass areas and Bowling Green Path, a large stage erected on the grass beside the path (near the pond), and electricity at nearby green box for entertainment (DJ's and bands). **SOUND PERMIT** needed.

Stage comes in on Friday, gets removed on Sunday or Monday.

Many tables set up on the grass, some canopies set up.

There will be food and non-food vendors at the festival. Some gas grills will be used for cooking. The food trucks will need to park in other areas (NOT on grass near trees) – other than beside the Park Avenue sidewalk.

The Bowling Green itself, will NOT be used for any formal events (other than recreation + socializing and blanket seating). Organizer will rent a number of porta-restrooms (10+) to be positioned on grass area just to the side of the Bowling Green Path.

Parking spaces all along Park Ave. (park side, from State Street Ext. to Deering Ave.) need to be set aside for the festival.

*** we are requesting parking spaces to be reserved on State Street between Farmers Market Road and Park Ave. (for volunteers, vendors and political speakers).**

A banner is requested to be hung over the street.

A **Beer Garden** will be set up in the park, past the vendor tables, separate from the stage area. The festival organizers will secure a licensed vendor (State Theatre) to serve alcohol. The sponsor for the Beer Garden is Equality Maine (a non-profit). Only guests 21+ will be admitted to the beer garden. It will run from 1:00-4:00, with a last call. Additionally, 2 porta-restrooms will be inside of the beer garden. A small riser for a DJ will be set up on grass. Generator for power. The city's PAFD Staff will need to be hired by organizers to oversee the security / ID checking for this area.

The Farmers Market will also be in Deering Oaks, therefore the area could be congested with pedestrians as well as bicycles.

Dance Party: Saturday, June 17, 2017 – 7pm-1am - Brick South Even Center, Thompson Point

This is a private event center. However, we've been told, a **SOUND PERMIT** may still be needed, so we've included in this permit. Setting up during the day, and immediate break down.

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

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

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? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List: stage, kids games, bounce house, beer garden	X STAGE KIDS GAMES BOUNCE HOUSE BEER		

		GARDEN		
*	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 FOOD TRUCKS		
*	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 T-SHIRTS CRAFTS ARTWORK		
*	Are you setting up a PA (sound) system? Are you planning on having Amplified Music? Band? DJ? 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 AMPLIFIED MUSIC BAND DJ		
*	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		
*	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? (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 ORGANIZER RENTS		
*	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		
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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.

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. 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.

AVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES

TYPE INITIALS

RMB

DATE

01/23/17

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	RMB	DATE	01/23/17
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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	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					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)	\$	Vest/Cone Deposit: \$10 per/item	\$
Number of Hours of Use:		Barricade Deposit: \$25 per/item	
Admin/Staff Fee (support for events): \$30/hour	\$	Public Space / Park Security Deposit:	\$
Key Deposit: \$50 per key	\$	Sound Security Deposit \$100 - \$1000	
Impact/Street Closure Fee (variable based on impact): \$0-\$500	\$	Other (Porta-Restroom User Fee: \$25, etc.)	\$

FOR OFFICE USE ONLY

DATE REC'D APPLICATION	3-20-2017	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ NEED	SECURITY DEPOSIT	\$ NEED
PAYMENT TYPE							
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT
							\$

*Order 206 -16/17
Tab 10 4-24-17*

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 9 TO 11, 2017
THE OLD PORT FESTIVAL SUMMER KICK OFF WEEKEND**

ORDERED, that June 9, 2017 to June 11, 2017 is hereby declared to be the 44th annual Old Port Festival Summer Kick Off Weekend, sponsored by Portland Downtown; and

BE IT FURTHER ORDERED, that the Old Port Festival Zone from 4:00 to 8:00 p.m. on Friday, June 9, 2017, shall be Longfellow Square, Congress Square Park, Monument Square and Post Office Park, and the Festival Area all day on Sunday, June 11, 2017 shall include Congress Street sidewalks (both sides: from State Street to Franklin Street) and Commercial Street sidewalks (both sides: from Union Street to Franklin Street) and be bordered by and within: Congress, Pearl, Commercial, Center, Union, and Temple Streets (and both sides of the streets' sidewalks on those bordered streets), as well as the Monument Square area, Federal Street Extension and its sidewalks, Monument Way, One City Center sidewalks, and Free Street sidewalks near Temple Street; and

BE IT FURTHER ORDERED, that the Sunday Old Port Festival area will be reserved for concert attendees and music stages will be set up in the Old Port; and

BE IT FURTHER ORDERED, that the following streets shall be closed to traffic:

On Sunday, June 11, 2017, from 6 a.m. to 6 p.m.

Exchange Street (from Congress Street to Fore Street);
Market and Silver Streets (from Congress Street to Commercial Street);
Federal Street (from Temple Street to Pearl Street) and Federal Street Extension;
Middle Street (from Temple/Union Street to Pearl Street);
Fore Street (from Union Street to Pearl Street);
Newbury Street (from Pearl Street to Market Street)
All of Wharf Street, Dana Street, Moulton Street, Milk Street, Silver Street;
Union Street (from Spring Street and Middle Street to Fore Street); and

BE IT FURTHER ORDERED, that the Sunday June 11 parade will begin at 11:00 a.m. on Federal Street (at intersection with Exchange). Parade participants will march east-bound around the corner to Exchange Street and then march down Exchange, taking a left onto Fore Street, then a right onto Silver – where the parade disbands; and

BE IT FURTHER ORDERED, that vehicles in violation of the “no parking” signs in the Festival Zone shall be towed at owner’s expense; and

BE IT FURTHER ORDERED, that the Old Port Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code on both Friday, June 9 from 4:00 to 8:00 p.m. and all day on Sunday, June 11, 2017; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Portland Downtown 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. Portland Downtown 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. Portland Downtown 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 or consumed on the streets or public property during the Festival within the area of the Festival;
3. Conditions for use of grounds and requirements for food service, vending sales, stages, and other items specified in a permit issued from the Public Assembly Facilities Division shall be adhered to;
4. The Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival;
5. Portland Downtown shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the Old Port Festival;
6. City Departments will provide in-kind services at no charge to Portland Downtown for Sunday's traditional Old Port Festival; and

8. In consideration of the City of Portland's support and in-kind services for the Festival, Portland Downtown shall include the City of Portland logo on all festival publicity; and

BE IT FURTHER ORDERED, that the City Manager is authorized 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: April 10, 2017
RE: **Council Agenda Item – 2017 Old Port Festival “Summer Kick Off Weekend”**

I am requesting that the following order be placed on the next City Council agenda:
**Order declaring Friday-Sunday, June 9-11, 2017,
as the Old Port Festival “Summer Kick Off Weekend.”**

This will be the **44th** Annual Old Port Festival. Portland Downtown is again organizing this year's Festival. The Old Port Festival attracts thousands of people to the Old Port District; expected attendance at this year's event is estimated at 40,000+. **The Old Port Festival “Summer Kick Off Weekend” will run from Friday, June 9, 2017 to Sunday, June 11, 2017 (Fri. 6:00-8:00pm, Sat. all day, and Sun. 11:00am to 5:00pm)** and offers musical and visual entertainment, dancing, children's activities, delicious food and drink, and adds a fundraising day to the weekend. There are no rain dates.

Friday, June 9 kicks-off with the 1st Annual “Square Hop” featuring the Peaks Island Ukelele Ensemble, Circus Maine, Maine Marimba Ensemble and Port Fringe. Each act will be in a select location: Longfellow Square, Congress Square Park, Monument Square and Post Office Park, from 6pm-8pm. The Summer Window Display contest will also kick off on Friday night. There will be no street closures required for this event. Portland Downtown approved vendors may be set-up in parks/squares.

Saturday's event (June 10 - “Shop for a Cause”) raises funds for The Locker Project and takes place at private businesses all day and evening. There will be no street closures required for this event.

Sunday, June 11 is the annual **Old Port Festival**, which runs 11am – 5pm in the Old Port District, where streets and parks/squares will be filled with music, entertainment, lots of food, and fun things to do. This will be the only day that requires street closures and will have Portland Downtown approved vendors set-up on public streets.

This year, Portland Downtown is requesting different Festival Zones from previous years: for Friday's “Square Hop” events, the organizer asks that the locations where events are happening be declared Festival Zones: Longfellow Square, Congress Square Park, Monument Square and Post Office Park, (and the adjoining sidewalks), from 4pm-8pm; and that for Sunday's Old Port Festival, that the Festival Zone for that day be increased to include the area of the festival as well as

(continued)



Sally L. DeLuca

Director

Department of Parks, Recreation & Facilities

Andrew J. Downs

Director

Public Assembly Facilities Division

Congress Street sidewalks (both sides: from State Street to Franklin Street) and Commercial Street sidewalks (both sides: from Union Street to Franklin Street): this new Festival Zone is the area bordered by and within: Congress, Pearl, Commercial, Center, Union, and Temple Streets (and both sides of the streets' sidewalks on those bordered streets), as well as the Monument Square area, Federal Street Ext. and its sidewalks, Monument Way, One City Center Sidewalks, and Free Street sidewalks near Temple Street (and the afore mentioned Congress Street and Commercial Street corridors).

Portland Downtown will use existing staff and the downtown cadets to enforce the Festival Zone. Street vendors who are not registered as approved event vendors through Portland Downtown will be asked to set-up outside the Festival Zone (for Friday afternoon/evening and all day Sunday).

The Festival Zone/Areas will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of Portland Downtown for the purpose of conducting the Festival, subject to the direction and control of the City Manager.

In addition, some areas of Portland streets and parks/squares need to be set aside for the organizer's use on those 3 festival days.

For Friday, June 9: Longfellow Square, Congress Square Park, Monument Square and Post Office Park, need to be reserved for performances (Approx. 4 – 9pm). Actual performances taking place from 6-8pm. Festival Zones stated above.

And for Sunday, June 11: the Old Port District needs to be barricaded to traffic, streets and parking areas reserved, and parks/square reserved for the organizer's use. Festival Zones stated above. Streets within the Festival Zone (bordered by Congress, Pearl, Commercial, Center, Union and Temple Streets), as well as Federal Street Ext., will be closed to vehicular traffic from approximately 6:00 a.m. – 6:00 p.m., **on Sunday, June 11, 2017.** Main thoroughfares (like Congress Street, Pearl Street, Temple Street, Union Street and Commercial Street) stay open to vehicle traffic, but all other streets within the festival zone are closed to vehicles (6am – 6pm), and posted "No Parking."

Those streets include:

- Exchange Street (from Congress to Fore St.)
- Market Street (from Congress St. to Commercial St.)
- Federal Street (from Temple St. to Pearl St.) and Federal Street Ext.
- Middle Street (from Temple/Union to Pearl St.)
- Fore Street (from Union St. to Pearl St.)
- All of Wharf, Dana, Moulton, Milk and Silver Streets
- Newbury Street (from Market St. to Pearl St.)
- Union Street (from Spring/Middle to Fore St.)

(continued)



Sally L. DeLuca

Director

Department of Parks, Recreation & Facilities

Andrew J. Downs

Director

Public Assembly Facilities Division

The Sunday "Old Port Festival" will feature the annual Parade, which will be entirely on foot. Beginning at 11am on **Sunday, June 11**, participants assemble on Federal St. (near Exchange Street), and travel down Exchange St., turn left onto Fore, and right onto Silver St. where it will end. Streets used for the parade will have already been closed down to vehicles, starting at 6am.

In addition to the music stages in the Old Port for Sunday's Festival, the patio at One City Center will also host concerts that day. Organizers will reserve Monument Square, One City Center sidewalks, and Monument Way (as well as Federal Street Ext.) for anticipated attendance at these concerts. These areas are to be included in the Festival Zone. Organizers will work with city staff to facilitate safe crossing of spectators across at Temple Street.

Vehicles in violation of the "No Parking" signs in the Festival Zones shall be towed (at owner's expense).

City Departments will provide in-kind services at no charge to Portland Downtown for Sunday's traditional "Old Port Festival" Day.

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

- Portland Downtown shall indemnify the city and hold it harmless from and against all claims arising out of activities during said parade and ceremony, 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 Old Port Festival "Summer Kick Off Weekend" and its activities;
- Under no circumstances may alcoholic beverages be sold or consumed on the streets of public property of said areas during said Festival;
- Conditions for use of grounds and requirements for food service, vending sales, stages, and other items specified in a permit issued from Public Assembly Facilities Division, shall be adhered to;
- The Business Licensing Office will charge the usual fees for licensing food vendors, street goods vendors, outdoor concerts, and other needed licenses for the Festival; and
- In consideration of the City of Portland's support/in-kind services of this Festival, Portland Downtown shall include the City of Portland logo on all Festival publicity.

(continued)

Portland, Maine



Yes. Life's good here.

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 Festival.

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 x0
 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		3/25/17 Revised: 3-30, 4-11		ORGANIZATION NAME		Portland Downtown					
ORGANIZATION ADDRESS				549 Congress Street		CITY	Portland	STATE	ME	ZIP	04101
CONTACT NAME(S)		Sally Newhall Casey Gilbert Adam MacDonald Taffy Eaton		TITLE		Events Manager Executive Director Marketing & Communications Manager Office Manager					
HOME #	WORK 772-6828			CELL				FAX			
EMAIL	sally@seaglasseevents.com			EMAIL	casey@portlandmaine.com						

PARK AREA OR PUBLIC SPACE REQUESTED				"Sumer Kick Off Weekend" June 9-11, 2017 – Portland Downtown Friday Night, Portland Downtown requests the use of the following parks/open spaces for the "Square Hop": Longfellow Square, Congress Square Park, Monument Square and Post Office Park. Entertainment will occur between 6pm-8pm at each location. No additional stages are required, no food or beverage licenses will be requested for the locations. The Summer Window Display Contest will also kick off on Friday night. A Festival Zone is requested for the parks and sidewalks adjacent to the parks. Saturday, Portland Downtown will hold "Shop For A Cause: Summer Edition" – a retail shopping event benefitting The Locker Project, a local nonprofit organization. Sunday, Old Port Festival: A Festival Zone will be declared for select areas of the downtown district footprint. Stages and vendors will be set-up within the Old Port District. Included in the Festival Zone will be: Streets Sidewalks and Parks, within the Old Port District, as well as Monument Square / Monument Way / One City Center patio & sidewalk areas, and the Congress Street sidewalks (State Street to Pearl Street) and Commercial Street sidewalks (Union Street to Pearl Street). Other effected parks will be: Post Office Park (Children's Stage) and Tommy's Park (Information and Communication Hub for OPF). Downtown Streets that are closed to traffic for vendor set-up include: Federal, Market, Exchange, Middle, Fore, Wharf, Dana, Moulton, Milk, Silver, Newbury & Union.			
EVENT DAY & DATE(S)		Friday, June 9, 2017: Square Hop 6pm-8pm. Saturday, June 10, 2017: Shop For A Cause Day. Sunday, June 11, 2017: Old Port Festival.		RAIN DAY & DATE(S) (50% added fee)		None	
EVENT START TIME (i.e. set-up start time)	Square Hop: 5:00pm Old Port Festival: 6am	EVENT END TIME (i.e. when event cleanup is complete)	Square Hop: 8pm Old Port Festival: 7pm	ACTUAL START & END TIME OF EVENT		Square Hop: 6 – 8pm Old Port Festival: 11am – 5pm	

EVENT NAME	EXPECTED ATTENDANCE
Summer Kick Off Weekend featuring the 43 rd Annual Old Port Festival	40,000+

DESCRIPTION OF EVENT:

Summer Kick-Off Weekend June 9th 2017 – June 11, 2017

Friday, June 9th kicks-off with the 1st Annual "Square Hop" featuring the Peaks Island Ukelele Ensemble, Circus Maine, Maine Marimba Ensemble and Port Fringe. Each act will be in a select location: Longfellow Square, Congress Square Park, Monument Square and Post Office Park from 6pm-8pm. The Summer Window Display contest will also kick off on Friday night.

Saturday, June 10th is Shop For A Cause Summer Edition, a merchant-focused fundraiser. This year's recipient is The Locker Project, which raises money to help food insecure children and their families.

Sunday, June 11th: The Old Port Festival offers musical and visual entertainment, children's activities, as well as food and drink. Market Street and Federal Street will house a local Arts & Crafters area. Kid's Rides positioned on Federal Street. Children's Area – Post Office Park. Evo Rock & Fitness (climbing wall) - Federal St and bungee trampoline on Market Street.

5 main musical stages will be positioned on City streets.

In addition to the music stages in the Old Port, the patio at One City Center will also host (Townsquare Media) concerts that day. Organizers will reserve Monument Square, One City Center sidewalks, and Monument Way for anticipated attendance at these concerts. These areas are to be included in the Festival Zone. Organizers will work with City Officials to facilitate safe crossing of spectators across at Temple Street.

Organizer is renting a number of porta-restrooms.

In order for the festival to take place, a large portion of the Old Port District will be closed to traffic including: Exchange Street, from Congress to Fore Street; Market Street, from Congress to Commercial Street; Federal Street, from Temple to Pearl Street; Middle Street, from Temple to Pearl; Fore Street, from Union to Pearl; all of Wharf, Dana, Moulton, Milk and Silver Streets; Newbury Street, from Market to Pearl; and Union Street, from Spring to Fore Street. The festival will also include the sidewalks of both sides of Commercial Street.

The festival includes a parade which starts at 11am at the intersection of Federal and Exchange (the Post Office), then proceeds down Exchange Street, takes a left onto Fore Street, then right onto Silver Street where the parade disbands. The streets along the parade route will have been closed to traffic starting at 6am. (Some additional "No Parking" signs are needed for Commercial Street area for the parade participants).

Police Officers are provided by the City. Additional security personnel are hired by Portland Downtown.

Additional City staff will also assist: Public Works staff, Fire Department, Inspections.

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

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN? <i>Parking at area lots and garages and on-street.</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)		X	
* Will you be setting up tables and/or chairs ? How many tables: vendors only chairs:	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: Vendors and Crafters booths, stages for music, children's amusement rides, rock wall, bungee trampoline	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.: See vendor apps 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.	X		

	List items you wish to sell: art, craft, etc (See vendor apps)			
*	Are you setting up a PA (sound) system ? Yes – 6 live music stages Are you planning on having Amplified Music ? Yes Band? Yes DJ? Boom Box? If so, your event may require a concert license from BL Office (874-8557).	X		
*	Will your event require electricity ? Electricity is available at some of the parks & squares	X		
	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 (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		
*	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.) Porta-restrooms may be rented from any of the local companies. Units currently on site are through Associated.	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 to rent many units.

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	CTG	DATE	3/25/17
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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, 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	CTG	DATE	3/25/17
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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
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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. 12 hours for OPF	\$ Included in SSA agreement with City of Portland	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	\$ N/A
Deposit: \$50 per key	\$	Other (Porta-Restroom User Fee: \$25, etc.)	\$
Impact/Street Closure Fee (variable based on impact): \$100-\$500	\$		

FOR OFFICE USE ONLY									
DATE REC'D APPLICATION	3-27-2017	DATE REC'D INSURANCE	NEED	PERMIT FEE AMT REC'D	\$ N/A	SECURITY DEPOSIT	\$ N/A		
PAYMENT TYPE									
VISA	\$	MC	\$	CK #	CK AMOUNT	\$	CASH AMT	\$	

*Order 287-16/17
Tab 11 4-24-17*

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 SATURDAY, JULY 29, 2017
THE 15TH ANNUAL GREATER PORTLAND
FESTIVAL OF NATIONS**

ORDERED, that Saturday, July 29, 2017 is hereby declared to be the 15th Annual Greater Portland Festival of Nations, sponsored by the Mugadi Foundation; and

BE IT FURTHER ORDERED, that the 15th Annual Greater Portland Festival of Nations area shall include the Bandstand and Farmers Market Road inside Deering Oaks Park, the Ravine Water Play Area and park roadways including Tennis Court Road and Jenny Lane; and

BE IT FURTHER ORDERED, that main road into Deering Oaks Park will be closed to traffic from 10:00 a.m. to 10:00 p.m. on July 29, 2017; and

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

BE IT FURTHER ORDERED, that the 15th Annual Greater Portland Festival of Nations 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 the Mugadi Foundation 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 Mugadi Foundation 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 Mugadi Foundation 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. The following fees and expenses shall be waived by the City and in-kind contributions shall be made by the City to the Festival:

Public Assembly Facilities Division permit fees for use of grounds, banner fees, "No Parking" sign fees, barricade delivery; Public Works Department trash barrels and removal of trash; Business Licensing licensing fees; and

4. No Police, Parking Control, or Emergency Medical Services assistance should be necessary unless the Police Department deems coverage is necessary due to attendance, traffic concerns, etc., in which case, those fees would need to be paid by the Mugadi Foundation;
5. 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 Office shall be adhered to;
6. The Mugadi Foundation shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the 15th Annual Greater Portland Festival of Nations; 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 29, 2017
RE: **Council Agenda Item – Festival of Nations**

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

Order declaring Saturday, July 29, 2017, as "The 15th Annual Greater Portland Festival of Nations" - a festival of music, crafts, and cuisine from around the world, to be held at Deering Oaks Park, 11am – 7pm.

This will be the 15th annual Festival of Nations held at Deering Oaks Park. The festival, organized by Women In Need Industries and Mugadi Foundation, showcases Maine's ethnic diversity. The festival features music, food, cultural exhibits, children's activities, and folk art from America and many nations around the world. 2,500+ people are expected to attend the day's events. Admission is FREE. Refreshments, crafts, artwork, and other items will be for sale. The Festival is held rain or shine.

This festival will again be held on Saturday. Farmers Market is held in Deering Oaks Park then, and (for just the date of the festival) will be moving their setup to Bowling Green Lane, so that setup for the Festival of Nations can take place at the Bandstand and along Farmers Market Rd. The Friends of Deering Oaks Park has reviewed and endorsed the festival (and Farmers Market have voted to move that day to Bowling Green).

In order to safely hold the festival and to assist in setup, the main roadway into Deering Oaks Park needs to be closed to traffic at approximately 10am, July 29, 2017 (opens back up again at 10pm). This park roadway would also need to be posted "No Parking."

The Festival Zone for this event includes: Deering Oaks Park - to include the Bandstand and grass areas surrounding the bandstand, the Ravine Water Play area, the Bowling Green grass area, and park roadways: Tennis Court Rd., Jenny Lane, and Farmers Market Rd.

The Festival area (north side of the pond) will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of the organizer and Mugadi Foundation 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 shall be towed at owner's expense.

(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 organizers of The Festival of Nations for the use of the above-described area for said festival, subject to the following conditions:

- In-kind services/waiver of fees from the City of Portland include:
Public Assembly Facilities Division: permit fees for use of grounds, banner fees, "No Parking" sign fees, barricade delivery;
Public Works: trash barrels and removal of trash;
Business Licensing: All related licensing fees;
No Police, Parking Control, or EMS assistance should be necessary unless the Police Department deems coverage is necessary due to attendance, traffic concerns, etc. In that case, those fees would need to be paid by organizer;
- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division shall be adhered to, and organizers shall leave on file security deposits for use of the park;
- Festival of Nations/Women In Need Industries/Mugadi Foundation 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 **"Festival of Nations"** activities, and the City will be endorsed on the festival organizer's insurance policy;
- Festival of Nations/Women In Need Industries/Mugadi Foundation 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 of Nations; and
- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival.

The City Manager is also authorized to waive any fees, and 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, PAFD Event Coordinator

*Order 208-16/17
Tab 12 4-24-17*

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 SEPTEMBER 28 AND 29, 2017
PORTLAND OVATIONS' BANDALOOP FESTIVAL**

ORDERED, that September 28 and 29, 2017 is hereby declared to be the Portland Oventions' BANDALOOP Festival, sponsored by Portland Oventions; and

BE IT FURTHER ORDERED, that on September 28, 2017 the Portland Oventions' BANDALOOP Festival area shall be Congress Square Park and sidewalks on High and Congress streets and also Congress Street from High Street to Forest Avenue, High Street between Spring Street and Deering Street and Free Street from Congress to Oak streets; and

BE IT FURTHER ORDERED, that on September 29, 2017 the Portland Oventions' BANDALOOP Festival area shall be Monument Square, One City Center sidewalks, Monument Way and adjacent sidewalks, Federal Street Extension from Congress to Temple streets, Free Street from Center to Temple Streets, Cross Street from Free to Sprig Streets and adjacent sidewalks and plaza areas as well as the sidewalks on Congress Street next to the Portland Public Library and on Preble Street to the intersection with Elm Street; and

BE IT FURTHER ORDERED, that Congress Street (both lanes between Forest Ave. and High Street) and Free Street (High Street to Oak Street), 11am – 1pm; for Friday, shall be closed to traffic from 11:00 a.m. to 1:00 p.m. on September 28, 2017 and

BE IT FURTHER ORDERED, that Federal Street Extension (Congress Street to Temple Street) and Free Street (Center Street to Cross Street) shall be closed to traffic from 11:00 a.m. to 1:00 p.m. on September 29, 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 Oventions' BANDALOOP 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 Portland Ovations 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. Portland Ovations 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. Portland Ovations 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;
4. Portland Ovations 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 equipment installations and other items specified in that permit shall be adhered to;
5. Portland Ovations 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 Ovations' BANDALOOP 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 Portland Ovations has agreed shall participate;
7. Portland Ovations shall be responsible for reimbursing the Police Department and Parking Control Office for services, the Public Works Department for services, the Public Assembly Facilities Division for staff fees; and
8. Portland Ovations shall be solely responsible for trash cleanup at the festival and shall be required to leave a Park Security Deposit on file at the Public Assembly Facilities Division office; 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.



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 29, 2017
RE: **Council Agenda Item – Portland Ovations' BANDALOO**

I am requesting that the following order be placed on the next City Council agenda:
Order declaring Portland Ovations' presentation of BANDALOO to be held on
Portland Streets and Squares, Thursday and Friday, September 28 & 29, 2017.
There are no Rain Dates.

This is a brand new event/festival to Portland. Portland Ovations is bringing BANDALOO to the city and is asking City Council for permission to use city property for public viewing of this dance troupe. BANDALOO is a U.S. based, internationally touring pioneer in vertical dance performance. By using the sides of buildings, museums, bridges, skyscrapers, and even the sides of cliffs in China, BANDALOO (via rigging and tethered ropes) turns the dance floor on its side. BANDALOO will be in residence in Portland from September 23 – 30, 2017, and is slated to perform outside for the public two of those days. These performances are FREE to the public (no admission charge).

The actual dance performances will be held outside, on the sides of The Westin Hotel (Thurs., Sept. 28, 2017) and One City Center (Friday, Sept. 29, 2017), and last only 15 minutes; (there may be 2 performances scheduled at each of those locations, respectively). City sidewalks, squares/parks, and streets will be viewing areas for the public performances. There will be days leading up to the performances where BANDALOO members are rehearsing outside (rehearsals begin Tues., Sept. 26). Portland Ovations has already secured partnership agreements with both sites and Friends of Congress Square Park.

As part of the event, Portland Ovations may invite Food Carts into the Festival Zones. There is also an audio component of the performance, where music will be played through a PA system (Congress Square Park on Sept. 28 and One City Center sidewalks on Sept. 29). Audio will also be needed during the rehearsal time. Organizers will work with the city to ensure this is done responsibly. Attendance at each of the public performances is estimated at 1000-2000+ people.

Festival Zones for these events include:

Thursday, Sept. 28 - Congress Square Park and abutting sidewalks, including High Street sidewalks and Congress Street sidewalks (vicinity of WCSH-TV, Portland Museum of Art, State Theatre Building); and neighboring streets: Congress Street (High to Forest Ave.), High Street (Spring to Deering), Free Street (Congress to Oak) and their sidewalks.

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

Friday, Sept. 29 – All of Monument Square, One City Center sidewalk areas, Monument Way, and abutting sidewalk areas; Federal Street Ext. (Congress to Temple), Free Street (Center to Temple), Cross Street (Free to Spring), and their sidewalk and plaza areas, as well as the sidewalk area of Congress Street (beside the Public Library: Preble Street to Elm Street).

In order for this festival to be held and to ensure public safety (due to expected attendance spilling out into the neighboring streets), a portion of Portland Streets need to be closed to traffic: for Thursday, Sept. 28 - Congress Street (both lanes between Forest Ave. and High Street) and Free Street (High Street to Oak Street), 11am – 1pm; for Friday, Sept. 29 – Federal Street Ext. (Congress Street to Temple Street) and Free Street (Center Street to Cross Street), local traffic only: 4 – 6pm.

For Thursday, Sept. 28's street closure, city staff would be positioned at Oak Street to facilitate cars exiting and entering the Maine Health Parking Lot on Free Street. For the Friday, Sept. 29's street closure, city staff would be positioned at Cross Street and Free Street to assist with the entering and exiting of vehicles to and from the Monument Square Parking Garage.

These closed streets would also need to be posted "No Parking" for the times above.

The Festival areas above 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 Portland Oventions, 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 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 Portland Oventions for the use of the above-described area for said Festival, subject to the following conditions:

- **Portland Oventions 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 streets and parks/squares, and the Business Licensing Office for licenses;**
- Portland Oventions 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;

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival;
- Portland Ovations / Event 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 equipment installations, and other items specified in a permit issued from PAFD Office, shall be adhered to; and
- Portland Ovations 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 **BANDALOOP** 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.

Please see attached backup document "Portland Ovations' Letter of Request"

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



Tuesday, March 28, 2017

Portland City Council
389 Congress Street
Portland, ME 04101

Dear City Councilors:

Portland Ovation officially requests the use of city property so that we may open our 2017-18 season with the thrilling vertical dance company BANDALOO in two outdoor performances on the facades of the Westin Portland Harborview Hotel and One City Center. These performances will be **FREE and open to the public**. Through these transformative events, thousands will experience a truly unique, nationally renowned company in open and accessible settings while Portland's Arts District is animated through high-profile arts experiences.

A pioneer in vertical dance performance, BANDALOO seamlessly weaves dynamic physicality, intricate choreography and the art of climbing to turn the dance floor on its side. BANDALOO's indoor/outdoor work has been presented in theaters and museums, on skyscrapers, bridges, billboards and historical sites, in atriums and convention halls, in nature on cliffs, and on screen. Performances have taken the company to urban, natural and historic sites across the US, Mexico, Korea, India, Brazil, Italy, Portugal and many other countries, reaching public audiences in the tens of thousands. BANDALOO honors community and the human spirit by bringing dance to new audiences, activating public spaces, and re-imagining what dance can be.

BANDALOO will be in residence from September 23 – 30, 2017. BANDALOO's week in Portland will culminate in performances on the facades of both the Westin Portland Harborview and One City Center (Thursday midday, 9/28, and Friday evening, 9/29, respectively). We have already secured agreements with our site partners.

With an 86-year history, Ovation – a Maine non-profit – is a dynamic live arts presenter that continues to evolve. Committed to excellence and diversity of programming while promoting the enjoyment of the performing arts and enhancing the understanding of our world's artistic traditions, Ovation curates annually a 30+ performance season of masterful and innovative artists in music, dance and theater. Complementary to mainstage programming is our community-based arts education and outreach program, Ovation Offstage (O2). With more than 100 activities annually, O2 integrates the performing arts into everyday community, school and family lives by creating resonating moments when artists and audiences connect.

We are grateful to the ongoing partnership with the City of Portland to make possible our programs. Thank you for your consideration.

Sincerely,

Aimée M. Petrin
Executive & Artistic Director

Order 209-16/17
Tab 13 4-24-17

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Eighteen Twenty Wines dba Eighteen Twenty Wines. Application for a Winery License
with Outdoor Dining on Private Property at 219 Anderson Street.**

March 27, 2017

Dear Mayor Strimling and Portland City Council member,

We, Amanda O'Brien and Pete Dubuc, from eighteen twenty wines would like to apply for a liquor license so we can serve wine at our location at 219 Anderson Street in Portland. We are making wine made solely with rhubarb grown by Maine farmers. We will have limited tasting room hours on Friday and Saturday in the early evening and Sunday afternoon.

Thank you so much for your consideration.

Amanda O'Brien

A handwritten signature in black ink, appearing to read 'Amanda O'Brien', with a long horizontal flourish extending to the right.

Portland, Maine



Yes. Life's good here.

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

Application for Brewery, Winery and Distillery Alcohol Service License

License expiration date concurrent with that of State of Maine Dept. of Liquor Licensing & Enforcement License.

Business Information	
Business Name (d/b/a):	eighteen twenty wines Phone: 207 749 7160
Location Address:	219 Anderson St. Cntr 1 Portland ME 04101 Zip:
If new, what was formerly at this location:	
Mailing Address:	PO Box 11296 Portland ME 04104 Zip:
Contact Person:	Amanda O'Brien Phone: 207 749 7160
Contact Person Email:	amanda@eightentwintywines.com
Manager of Establishment:	Amanda O'Brien Date of Birth: 5/22/79 Phone: 207 749 7160
Owner of Premises (Landlord):	
Address of Premises Owner:	Zip:

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

Name of Owner(s)	Date of Birth	Residence Address
Amanda O'Brien	5/22/79	12 Upper A St Peaks Island 04108
Pete Dubuc	12/21/75	45 Robert Mills Rd So. Portland 04106

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

Corporate Name		Corporate Mailing Address	
eighteen twenty wines		PO Box 11296 Portland ME 04104 Zip:	
Contact Person:	Amanda O'Brien	Phone:	207 749 7160
Principal Officers	Title	Date of Birth	Residence Address
Amanda O'Brien	co-owner	5/22/79	12 Upper A St Peaks Island ME 04108
Pete Dubuc	co-owner	12/21/75	45 Robert Mills Rd. So Portland 04106

About Your Establishment

Type of Establishment:	Brewery <u>Winery</u> Distillery
Hours & days of operation:	Th 4-8p Fri 4-8p Sa 12-8p Su 12-6p

QUESTIONS	Y/N
Will food be made, served, and/or sold on the premise by this establishment?	Y/N
If yes, please submit a City of Portland Food Service Establishment license application.	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	Y/N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	Y/N
Will you permit dancing on the premises?	Y/N
Will you permit dancing after 1:00 a.m.?	Y/N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	Y/N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	Y/N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	4/22
Does the issuance of this license directly or indirectly benefit any City employee(s)?	Y/N
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	Y/N
If Yes, please list business name(s) and location(s):	
Is any principal officer under the age of 21?	Y/N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	Y/N
If Yes, please explain:	

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

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

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

Signature [Signature] Title CC-Owner Date 3/23/17

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



Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Check all that apply: ☒ New Application for Outdoor Dining or ☐ Renewal Application for Outdoor Dining ☒ Application for dining on Private Property ☐ Outdoor Dining in a Public Park ☐ If Renewal, are there changes to previous permit? ☐ Outdoor Dining in a Historic District ☐ Yes ☒ No ☐ Petition for Exception for Special Circumstances ☒ Liquor License required? City Clerk signature for liquor license approval: _____ OR Pending Council Date: _____		
Location Name & Address: <u>Eighteen Twenty Wines 219 Anderson St.</u> Owner Name: <u>Amanda O'Brien</u> Owner Phone #: <u>207 749 7160</u>	Chart _____ Block _____ Lot _____ Total Square Footage of Proposed Outdoor Dining Area: ¹ <u>323</u>	
Applicant *must* be owner or lessee Name: <u>Amanda O'Brien</u> Address: <u>12 Upper A St.</u> City, State & Zip: <u>Peaks Island ME 04108</u> E-Mail: <u>amada@eighteentwentywines.com</u>	Fee: \$80 (Public-Annual) \$125 (Private 1X) Total Sq. Ft.: _____ Sq. Ft. Fee: (sq ft x \$2) \$ _____ (sq ft x \$6 for public parks) Total Fees: \$ _____ (Permit not issued until all fees are paid)	
Current use: <u>production wine</u> Business name: <u>eighteen twenty wines</u> Seating area dimensions: <u>8.5' x 38'</u> How many chairs? <u>12</u> How many tables? <u>8</u> ☒ Yes Alcohol is served. ☐ No Alcohol being served.		
Who should we contact: <u>Amanda O'Brien</u> Phone: <u>749-7160</u> Address: <u>12 Upper A St Peaks Isl</u> E Mail: <u>amanda@eighteentwentywines.com</u>		

Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit. New applications and renewals are reviewed on an annual basis and should be submitted no later than June 1st.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at www.portlandmaine.gov, stop by the Building Inspections office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: [Signature]

Date: 3/27/17

¹ In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signed and acknowledged:



Date:

3/27/17

Printed name

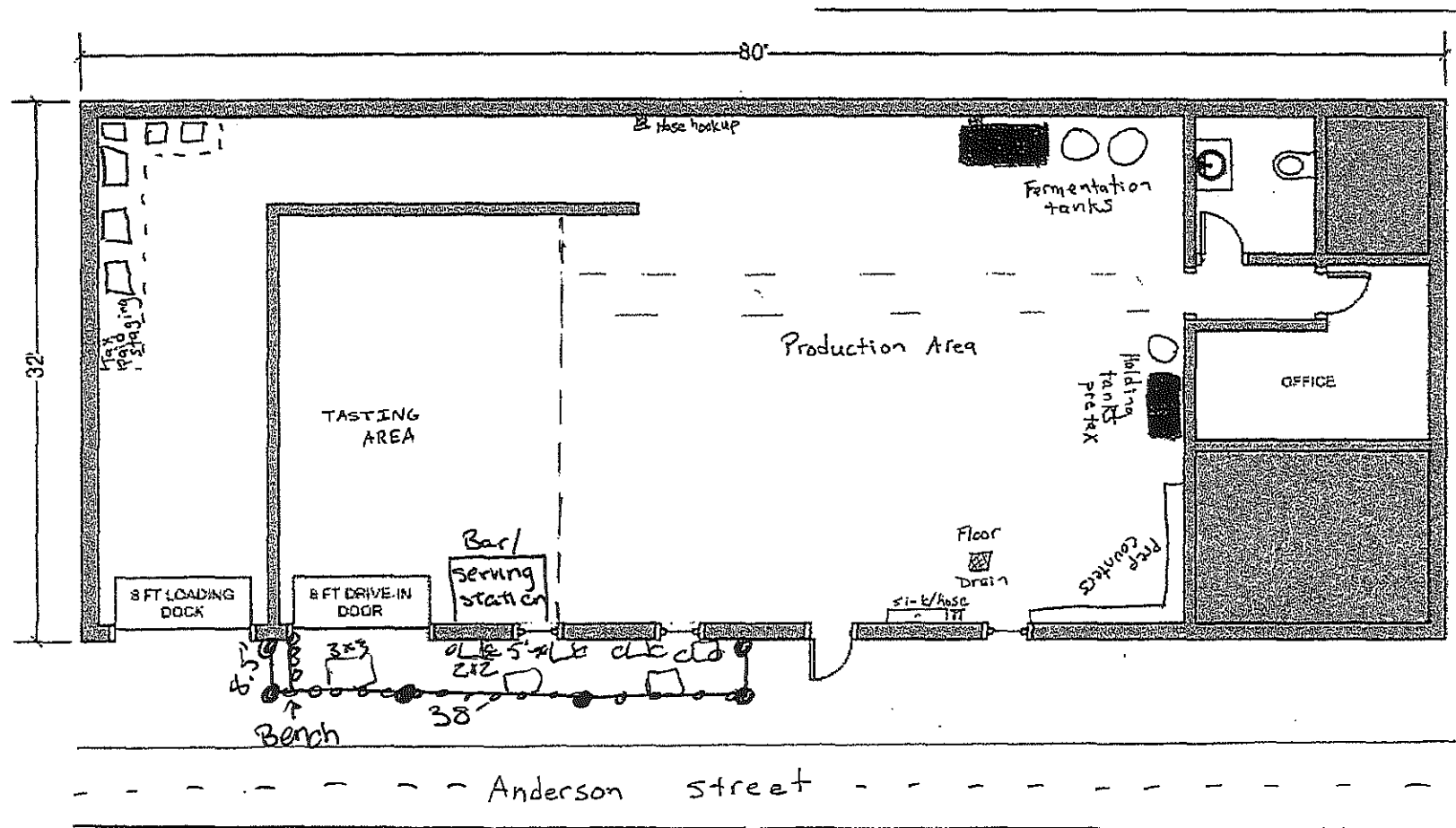
Amanda O'Brien

Establishment

eighteen twenty wines

Location

219 Anderson St. Unit #1
Portland ME 04101



Barrier: chain + weighted stands

219 Anderson St Unit 1
eighteen twenty, LLC

3 tanks of 285 gal capacity each
2 for fermentation
Marked ETF-001
ETF-002

1 holding tank
Marked ETH-101

Eighteen Twenty Wines



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

MELISSA CAIAZZO
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99D183188

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2017-03-27) :

Inquiries Name(s) AMANDA OBRIEN (1979-05-22)

NO MATCH WAS FOUND FOR YOUR REQUEST.



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

MELISSA CAIAZZO
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99D183186

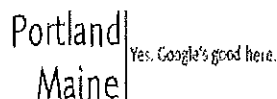
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2017-03-27) :

Inquiries Name(s) PETE DUBUC (1975-12-21)

NO MATCH WAS FOUND FOR YOUR REQUEST.



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Eighteen Twenty Wines

Kevin Cashman <kevindc@portlandmaine.gov>

Tue, Mar 28, 2017 at 4:47 PM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

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

PD does not object.

Kevin C.

On Mon, Mar 27, 2017 at 11:49 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

Please see the attached application for Eighteen Twenty Wines, 219 Anderson Street Unit 1. They are apply for a Winery with outdoor Dining. This will go before council on 4/24.

Owner is Eighteen Twenty Wines

Amanda OBrien 5/22/1979

Pet Dubuc 12/21/1975

Contact is

Amanda OBrien

207-749-7160

amanda@eighteentwentywines.com

Tom/Eric- This is a Dept of Ag license

Information has been update in UI for approvals. Thanks Jessica

Jessica B. Hanscombe

Business License Specialist

389 Congress Street Room 307

Portland, Maine 04101

207-874-8783

jhanscombe@portlandmaine.gov

--
Lt. Kevin Cashman
Portland Police Department
Patrol Division
109 Middle St
Portland, Maine 04101
(O) 207-756-8294
kevindc@portlandmaine.gov
Hours - Saturday thru Tuesday (4pm-2am)

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department
Michael A. Russell, MS, Director

March 27, 2017

Eighteen Twenty Wines
Amanda O'Brien
PO Box 11296
Portland ME 04101

Re: Eighteen Twenty Wines dba Eighteen Twenty Wines. Application for a Winery License with Outdoor Dining on Private Property at 219 Anderson Street.

Dear Amanda O'Brien,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday April 24, 2017 at 5:30 p.m.**, for the review of your application for a Winery License with Outdoor Dining on Private Property at 219 Anderson Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,

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

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

A Public Hearing will be held on April 24th at 5:30 P.M., in City Council Chambers, 389 Congress St., Eighteen Twenty Wines dba Eighteen Twenty Wines. Application for a Winery License with Outdoor Dining on Private Property at 219 Anderson Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

*Order 210-16/17
Tab 14 4-24-17*

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 RECEIVING AND REFERRING TO THE FINANCE COMMITTEE
THE PORTLAND BOARD OF PUBLIC EDUCATION'S
FISCAL YEAR 2018 BUDGET ESTIMATE
AND SETTING A PUBLIC HEARING THEREON**

ORDERED, that the Budget Estimate of the Portland Board of Public Education for Fiscal Year 2018 is hereby received and referred to the Finance Committee for review; and

BE IT FURTHER ORDERED, that the Public Hearing on the Fiscal Year 2018 School Budget will be on May 1, 2017 in the City Council Chambers, 389 Congress Street, at 6:00 p.m.

Resolve 6-16/17
Tab 15 4-24-17

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)

**RESOLUTION RECOGNIZING MAY 20, 2017 TO MAY 26, 2017 AS
NATIONAL SAFE BOATING WEEK**

WHEREAS, the City of Portland is surrounded by water and offers its residents and visitors an abundance of opportunities to be on and in the water for recreation, work and travel; and

WHEREAS, life jackets can determine the difference between life and death in many boating safety accidents, and still, each year, on average, 700 people die in boating-related accidents in which eight out of every 10 victims were not wearing a life jacket; and

WHEREAS, in an effort to reduce the number of boating accident deaths and injuries, the National Safe Boating Council (NSBC), in partnership with the U.S. Coast Guard and the National Association of State Boating Law Administrators (NASBLA), will launch the annual North American Safe Boating Campaign during National Safe Boating Week, May 20-26, 2017; and

WHEREAS, the North American Safe Boating Campaign is committed to stressing the importance of wearing life jackets as an essential part of any time spent on the water; and

WHEREAS, the Campaign is designed to reach more than 70 million boaters around North America and communicate this year's life-saving message: **Boat Smart. Boat Safe. Wear It;** and

WHEREAS, the West End Neighborhood Association, through its Swim for Life initiative, has secured a Grassroots Awareness grant from the National Safe Boating Council to provide life jackets and training materials for educational purposes;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Portland does hereby proclaim May 20-26, 2017, to be National Safe Boating Week in Portland, Maine, with a kick-off Wear Your Life Jacket to Work Day on Friday, May, 19, 2017 and Ready, Set, Wear It! Life Jacket World Record Day gathering at noon in the Robert B. Ganley City Hall Plaza at 9:00 a.m. on Saturday, May 20, 2017.

Order 192-16/17
~~Tab 26 4-5-17~~
Tab 16 4-24-17

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 THE COLLECTIVE BARGAINING AGREEMENT WITH
COMMUNICATIONS EMPLOYEE ASSOCIATION**

ORDERED, that the attached Collective Bargaining Agreement with the Communications
Employee Association for July 1, 2016 through June 30, 2018 is hereby approved.

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Mayor Ethan Strimling and Members of the City Council
FROM: Thomas A. Caiazzo, Labor Relations Manager *TAC*
DATE: March 16, 2017
RE: Tentative Agreement with:
Communications Employee Association - 1st Reading

Staff has reached a tentative agreement with the Communications Employee Association on a successor two (2) year contract. The prior collective bargaining agreement expired June 30, 2016.

The Communications Employee Association, which is comprised of 36 Telecommunicators, Fire Alarm Specialist, Radio Systems Specialist and Telecommunications Supervisors, has reached a tentative agreement with the City. The Administration is requesting a first reading on April 5, 2017. The tentative agreement is within the guidance received by the City Council on August 1, 2016.

The City and the Communications Unit have reached a tentative agreement on a two (2) year contract with a 2.0% general wage increase for Fiscal Year (FY) 2017 retroactive to July 3, 2016 and a 2.0% general wage increase effective July 5, 2017. All other economic agreements will be implemented upon approval by Council. The duration of the contract and the COLA recommendations are consistent with the bargaining strategy previously discussed with the Council.

Other economic items tentatively agreed to are:

- Instead of being provided with clothing, employees will be reimbursed up to \$300.00 per fiscal year for the purchase of pants, belts and footwear.
- Employees may cash in accrued compensatory time for cash in blocks of eight hours.
- Eliminated the first step in the Telecommunications Supervisor pay scale to provide a greater incentive to be promoted.

The union has further agreed to accept the Direct Deposit system proposed by the City in consideration of the above economic agreements.

The union has voted to approve this Agreement, and once approved by Council the Agreement will govern the rights of the parties from July 1, 2016 through June 30, 2018.

All other provisions of the collective bargaining agreement remain the same until a successor agreement is reached through collective bargaining. The total direct cost for the two (2) year agreement is approximately \$93,000.

Cc: Jon P. Jennings – City Manager
Danielle West-Chuhta – Corporate Counsel
Anne Torregrossa – Associate Corporate Counsel
Michael Sauschuck – Portland Police Chief
Vernon Malloch – Assistant Police Chief
David Jackson – Fire Chief
Andrew Dziegielewski – Emergency Communications Director
Gina Tapp – Human Resources Director
Brendan O'Connell – Finance Director
Carlene Kessler – Employment Services Manager
Jennifer Lodge – Budget Analyst
Lori Schools – Payroll Manager

*Order 211-16/17
Feb 17 4-24-17*

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 AMENDED AND RESTATED LEASE
WITH BAY FERRIES LIMITED
RE: OCEAN GATEWAY FACILITY**

ORDERED, that the attached amended and restated lease with Bay Ferries Limited for Portland to Yarmouth, Nova Scotia ferry service from the Ocean Gateway facility is hereby approved, substantially in the form attached hereto; and

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



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

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

FROM: Greg Mitchell, Economic Development Director

DATE: April 5, 2017

SUBJECT: Order Authorizing an Amended and Restated Lease Agreement Between the City of Portland and Bay Ferries Limited

SPONSOR: Economic Development Committee (EDC)
Councilor Brenerman/Chair
Meeting held on April 4, 2017, vote was 3-0 for Approval

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading and Final Action: April 24, 2017

Can action be taken at a later date: ____ Yes ____ X No (If no why not?) The Ferry Season starts in May; therefore, this authorization should take place at the April 24, 2017 Council meeting.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

Minor amendments to the City Council approved Lease Agreement between the City and Bay Ferries are needed to support the 2017 second season for operating the CAT from Ocean Gateway.

II. AGENDA DESCRIPTION

In 2016, Bay Ferries returned to the Port of Portland operating the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The City Council approved a lease with Bay Ferries Limited on May 2, 2016. The Lease was for a two-year term with a single one-year renewal option. Minor amendments to the approved Lease are needed to support the 2017 ferry season, including extending the 2017 season two weeks, use of the ground level space of the Terminal Building, and adjusted rental for use of that ground level space for an additional \$1,400 per month to a total of \$16,629 during the season.

III. BACKGROUND AND LEASE OVERVIEW

In 2016, Bay Ferries returned to the Port of Portland operating the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The City Council approved a lease with Bay Ferries Limited on May 2, 2016. The Lease was for a two-year term with a single one-year renewal option. Minor amendments to the approved Lease are needed to support the 2017 ferry season.

Highlights of the Lease Amendments include:

Ferry Service Dates and Operating Season. The 2017 season is extended by two weeks and operates from four to five days a week during the shoulder times of the season (May/June and Sept./Oct.) and six to seven days a week during the peak time of the season (July/August). See attached 2017 ferry season schedule. The modification of the ferry season schedule to four to five days a week during the shoulder time of the season better supports increasing cruise ship activity at Ocean Gateway.

Terminal Building Use.

The use of the ground level space for the Terminal Building located at the end of Ocean Gateway is needed to process passengers through US Customs. See attached map of Ocean Gateway.

Rent and Fees.

The space rent for use of the Terminal Building increases the cost by \$1,400 per month to a total of \$16,629.60 during the season.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

City Council vote to approve the Amended and Restated Lease Agreement between the City of Portland and Bay Ferries Limited.

V. FINANCIAL IMPACT

In 2016, the Lease with Bay Ferries generated over \$265,000 from space rent, parking, passenger/vehicle fees, and berthing fees. It is expected that this season will generate higher revenues based upon greater number of passengers.

VI. STAFF ANALYSIS

Staff has been working with Bay Ferries for this draft Amended and Restated Lease Agreement to resolve logistical issues that were learned during the 2016 Ferry Season.

VII. RECOMMENDATION

The EDC voted unanimously (3-0) to forward this to the City Council with recommendation that it approve the Amended and Restate Lease Agreement in substantially the form as presented.

VIII. LIST ATTACHMENTS

- Bay Ferries 2017 Schedule
- Map of Ocean Gateway
- Clean Version of Draft Amended and Restated Lease Agreement between the City of Portland and Bay Ferries.
- Redlined Version of Draft Amended and Restated Lease Agreement between the City of Portland and Bay Ferries.

EXHIBIT D

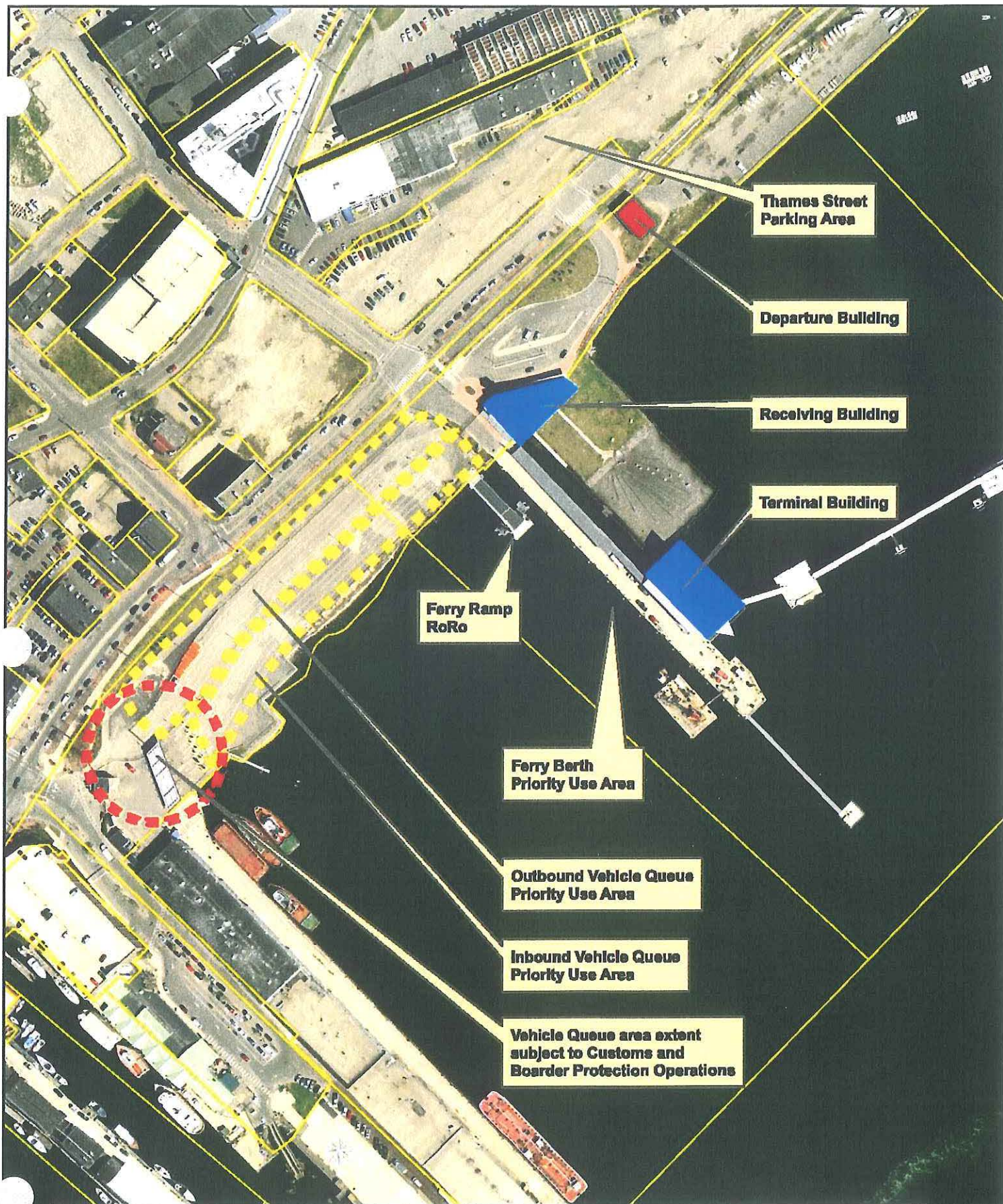
2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 SERVICE DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 SERVICE DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30



250 125 0 250 Feet



Ocean Gateway Site and Facilities
Bay Ferries, Limited
Lease Exhibit A

Ap12016

5 of 60

AMENDED AND
RESTATED LEASE
AGREEMENT BETWEEN
CITY OF PORTLAND AND
BAY FERRIES
LIMITED RE:
OCEAN
GATEWAY

THIS AMENDED AND RESTATED LEASE AGREEMENT dated this 26th ____ day of May, 2017 is by and between the City of Portland, Maine, Maine municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101 (the "Landlord"), and Bay Ferries Limited, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada, C1A 7L3 (the "Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated June 1, 2016 (the "Original Lease") for certain space at the Landlord's property known as Ocean Gateway where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel"); and

WHEREAS, Landlord and Tenant desire to make substantial amendments to the terms and conditions of the Original Lease and wish to enter into an amended and restated lease agreement to address those amendments; and

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby mutually agree that the Original Lease be amended and restated as of the Effective Date (as defined in Section 2 below).

1. Premises: As-Is Condition; Permitted Uses.

Landlord does hereby lease, demise and let unto Tenant, to have and to hold on the terms herein, subject to the reservations and conditions below, the premises identified herein and shown on Exhibit A, attached hereto and incorporated herein. Tenant agrees to accept the premises in "as-is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose.

- a. **Spaces for exclusive use at certain times.** The following spaces are available for the Exclusive use of Tenant for the hours stated during the Operating Season (as defined below):

- i. **Queuing Areas.** The sole areas to be used for marshalling inbound and outbound vehicles and processing of passengers by U.S. Customs and Border Protection ("CBP") are the areas labeled "Outbound Queuing Area" and "Inbound Queuing Area" on Exhibit A (collectively the "Queuing Areas"), as may be

modified to meet CBP requirements. The Outbound Queuing Area is to be used for vehicles and passengers preparing to depart from Portland. The Inbound Queuing Area is to be used for vehicles and passengers arriving in Portland. Said Queuing Areas are to be used by Tenant on a non-exclusive but priority basis during the Operating Season to accommodate its sailing schedule, as outlined below. During the Operating Season, the Inbound Queuing area will only be available to the Tenant for its exclusive use, between the hours of 1:15 P.M. and 3:15 P.M., only on the Service Dates listed on Exhibit D attached hereto (the "Service Dates"), and the Outbound Queuing area will be available to the Tenant for its exclusive use between the hours of 12:00 P.M. (or earlier, if permitted by the City of Portland's Director of Facilities Management or his/her designee (the "Director") and 3:00 P.M. only on the Service Dates. The Queuing Areas may be reduced temporarily by mutual agreement of the Director and the Tenant. Tenant may place in the Queuing area any trailers or other facilities or improvements required by CPB with the prior approval of the Landlord, which may not be unreasonably withheld, and subject to any applicable permits, licenses or approvals required federal, state, and municipal laws, rules, and regulations. No tractor trailer trucks, or other trucks or vehicles with trailers exceeding a total of fifty (50) feet in length, shall be allowed to transit on the Ferry Service or be present in the Queuing Areas.

ii. **Berthing Area.** During the Operating Season, the Berthing Area depicted on Exhibit A will be available to the Tenant for its exclusive use between the hours of 1:30 P.M. and 3:00 P.M., only on the Service Dates. In the event Tenant desires unscheduled berthing, Tenant shall request such berthing with as much advance notice as possible. Landlord shall grant such requests if berthing is available. When off-schedule berthing is not available, the Landlord shall use reasonable efforts to assign a secondary berth to Tenant. Tenant shall be solely responsible for the cost of moving its vessel to off-schedule secondary berthing, including but not limited to any security costs, and Landlord shall have no responsibility for such moving, security or related costs. During the Operating Season, as that term is defined below, Tenant's use of the Berthing Area shall at all times include the exclusive use of the "roll-on, roll-off ramp facilities at the OG Terminal (the "Ramp") (as depicted on Exhibit A) for vehicle and passenger loading and unloading. During the "Wind Up and Wind Down" Seasons, as those terms are defined below, if Tenant desires unscheduled use of the Ramp, Tenant shall request such use with as much advance notice as possible. It is understood that Tenant may requiresome, although not exclusive, daytime and nighttime use of the ramp in the Wind Up Season for training and preparation purposes and Landlord and Tenant agree to work cooperatively to schedule such usage, if available, and to also enable Landlord's continued generation of berthage revenue from other parties. Tenant's use of the Ramp is at Tenant's sole risk. Unless otherwise agreed to by Landlord, Tenant shall have no right to use the Berthing Area at any time during the Off Season, as that term is defined below. It is further understood between the parties as follows:

- (a) On those days during the Operating Season when there is no cruise ship berthed at the Portland Ocean Terminal, and otherwise no operating restrictions within the Port, Tenant shall be free to berth earlier than 1:30 P.M.; and

(b) On those days within the Operating Season when there is a cruise ship berthed at the Portland Ocean Terminal, the Vessel may be secured at the berthing area prior to 1:30 P.M. provided passengers and vehicles are not released prior to 1:30 P.M. and provided such does not otherwise impede port operations. The parties intend there to be close collaboration and communication at all times so as to facilitate the most efficient operations for all parties.

iii. **Departure Building.** Tenant will have the exclusive use of the Departure Building (depicted on Exhibit A) for the term of this Lease for ticketing, processing of passengers, passenger waiting area, restrooms, and related uses.

iv. **Terminal Building:** The Tenant shall have the right to access the inbound Customs processing facility in the Terminal Building depicted on Exhibit A for processing inbound pedestrian passengers, who shall be moved by the Tenant from the Vessel to the Terminal Building by means acceptable to CBP and the Landlord. Such processing shall be limited to the hours of 1:30 p.m. and 3:00 p.m. on the Service Dates.

- b. **Exterior Common Areas.** The following spaces are available for the non-exclusive use of Tenant during the Operating, Wind Up, and Wind Down Seasons: The walkways, driveways and roadways at the Ocean Gateway may be used by Tenant on a non-exclusive basis, in common with others. However, during hours that another vessel (such as a cruise ship) or scheduled event is using the Ocean Gateway Terminal, the Tenant and its passengers will only use the area for dropping off of customers and passenger ticketing, and Tenant will co-operate with Landlord to adequately place personnel for incoming customers and passengers to be aware of this use restriction. No outboard queuing is allowed in the Receiving Building parking lot or any area other than the Outbound Queuing Area.
- c. **Parking.** Landlord will assign a maximum of 10 parking spaces to Tenant for employee parking in the City-owned Thames Street parking lot as generally depicted on Exhibit A (the "Parking Area") during the Operating, Wind Up and Wind Down Seasons of each year of the term of this Lease or any renewal term. No overnight parking will be allowed. Landlord reserves the right at any time during the term of this Lease to assign different parking spaces to Tenant. Landlord will not provide any customer parking. Employee vehicles parked in the Receiving Building Lot (as depicted on Exhibit A) are subject to ticketing if parked beyond posted limits.
- d. **Landlord's Right to Relocate Premises.** The Queuing Areas, Berthing Area, the Ramp, the Departure Building, the Parking Area, and the Exterior Common Areas may be collectively referred to herein as the "Premises". Except for the Departure Building, Landlord reserves the right to change particular locations of the Premises, subject to the condition that such re-location(s) will not unreasonably burden the operations of Tenant. The intent of this reserved right to re-locate is to allow Landlord to continue the ongoing development and enhanced utilization of its limited waterfront real estate in coordination with other parties using or desiring to use nearby locations.

- e. **Use of Premises for Ferry Service.** During the term of this Lease, Tenant is permitted to use the Premises for the sole purpose of conducting an international Ferry Service between Portland, Maine and Yarmouth, Nova Scotia via the Vessel. Tenant agrees to provide four (4) to seven (7) days of service per week during the Operating Season, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Should sailings be fewer than seven (7) days per week during the Operating Season, monthly berthage payment shall not be reduced. Sailings shall be only on Service Dates with arrivals at 1:30 p.m. and departures before 3:00 p.m. Should Tenant wish to reduce its schedule of service, Tenant will provide as much notice as reasonably practicable and will provide best efforts to give notice at least fifteen (60) days in advance. Tenant acknowledges that no trade or occupation shall be conducted on or from the Premises or use made thereof that would be unlawful, improper, or offensive, or contrary to any law or any municipal by-law or ordinance.

There shall be no additional charge to the Tenant for overnight berthing in the Berthing Area during the Wind Up and Wind Down seasons, provided, however, that the Berthing Area will not be available overnight on Fridays during those periods.

- f. **Service Dates.** Tenant may only use the Berthing Area, the Terminal Building, and the Queuing Area on the Service Dates.
- g. **Landlord's Right to Relocate.** This Lease Agreement is non-exclusive, and nothing herein shall prevent or prohibit the Landlord from leasing other available space at either the Ocean Gateway or any other facility owned or operated by Landlord, to another Tenant for any purposes Landlord deems suitable, including but not limited to the operation of a similar ferry service. In no event, however, is the Landlord permitted to impair in any way the operations by Tenant. Tenant's use of the Queuing area and all other areas to be used by passengers is subject to any reduction in size or configuration or availability as may be required, at any time, by any security agencies having jurisdiction with respect to such areas.

2. Term: Seasons.

- a. **Term.** Except as provided below, the Term of this Lease shall be from June 1, 2016 (the "Effective Date") through October 15, 2017. Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, Landlord, in its sole discretion, may renew this Lease for up to one (1) additional year upon terms mutually agreeable to the parties. If Landlord desires to renew this Lease, Landlord shall so notify Tenant on or before September 15, 2017.
- b. **Operating Season; Wind Up and Wind Down Seasons; Off-Season.** Tenant's Operating Season shall be May 31, 2017 to October 15, 2017 (the "Operating Season"). The term "Wind Up Season" shall mean May 26, 2017

to May 30, 2017. The term "Wind Down Season" shall mean no later than October 16, 2017. In the event that Landlord agrees to renew this lease as set forth above, the term "Off Season" shall mean the period between the end of the 2017 Wind Down Season and commencement of the 2018 Wind Up Season.

3. **Rent; Fees; Security Deposit.**

Tenant shall pay all rent and fees, when due, as provided below and on Exhibit B, attached hereto and incorporated herein.

4. **Payment; Statements.**

- a. On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the per-passenger and per-vehicle fees on Exhibit B that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.
- b. Fees due during the Operating Season in paragraph a. above shall begin as of the first day of the month of said Operating Season. Tenant shall be responsible for payment of personal property taxes which may be payable on their trade fixtures and equipment, and for payment of any federal, state or local fees or taxes which may apply to their operations hereunder.
- c. **Late payment:** Tenant shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. In the event that any such payment is not made within thirty (30) days of the invoice due date, a penalty of one percent (1%) per month 12% per annum) shall be assessed and paid on all such amounts outstanding.
- d. **Address:** All payments hereunder shall be written to the City of Portland and sent to the attention of: Public Assembly Facilities, Accounting Office, Portland Exposition Building, 239 Park Avenue, Portland, Maine 04102 or such other place as the Director may designate in writing from time to time.

Any invoices shall be sent to Tenant at the following address: Bay Ferries Limited, 94 Water Street, PO Box 634, Charlottetown, Prince Edward Island, Canada, C1A 7L3, Attn: Danny Bartlett, Vice President, Finance and Administration, or such other person or address as Tenant may designate in writing from time to time.

- e. **Tenant Statements:** Tenant shall submit its official manifest or other official documentation (or electronic equivalent) showing the number of passengers and vehicles transported by Tenant both to and from the City of Portland each month when it submits its per passenger and per vehicle fees under Exhibit B. No amount shall be payable to the City of Portland in respect of passengers or vehicles transported by the Tenant on a complimentary basis.

- f. Landlord reserves the right to conduct an audit of Tenant's traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to Landlord of more than Five Percent (5%) in any year, Tenant shall pay to Landlord, in addition to the amount owed and any applicable late charges, the reasonable cost to Landlord of its audit, including legal, accounting, and consulting fees unless the underpayment shall have been the result of a bona fide mistake or miscalculation.

5. Condition of Premises: Improvements to Premises.

- a. "As is." Tenant has had the full opportunity to inspect the Premises prior to execution of this Lease and takes all such space, specifically including the Ramp, "as is," except as specifically provided herein. Should Tenant's Vessel require modifications to, improvements or replacement of the Ramp, such modifications or replacement shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld. Should Tenant require modification or improvements to the Queuing Areas, such modifications or improvements shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such improvements or modifications, including but not limited to approval of the Director, which shall not be unreasonably withheld.
- b. In the event Tenant wishes to make any improvements to any portion of the Premises, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense, provided, however, that upon submission by Tenant and approval by Landlord of documented expenses for improvements to the Departure Building, Tenant shall be entitled to a credit against rent in the amount of twenty-four thousand dollars (\$25,000.00) for improvements to the Departure Building. Such credit shall be provided in two \$12,500.00 increments against rent due in June and July 2016.
- c. Notwithstanding the foregoing, Landlord agrees that Tenant may install, at Tenant's expense, only at particular locations approved in advance by the Director, its security camera system in order to monitor the docking basin, vehicle inspection or processing booth and waiting areas for security and operational issues; subject to the condition, however, that Tenant will share access with the Landlord to the 'live feed' from such cameras, as well as any recordings from such cameras if and when requested.

6. Obligations of Landlord: Maintenance, Utilities.

Except as otherwise provided herein, the Landlord shall provide for the 'landside' facilities only, at its expense, the following:

- a. Except as otherwise provided in this Lease, Tenant acknowledges and agrees that this Lease is a 'net lease', for the Landlord, and that the Landlord shall not be responsible for any costs, charges, expenses or the like whatsoever arising from or related to the leased Premises or rights, or the business carried on or related to said Premises or rights, and Tenant shall pay all costs, charges, expenses or the like of every nature and kind whatsoever relating to the leased premises or rights, including any passenger or vehicle ramps, unless specifically agreed to in advance in writing by Landlord.
- b. Landlord will provide heat and sewer services to the Departure Building. In addition, Landlord will provide water (including potable water) to the Vessel, at the Rates in Exhibit B.
- c. Landlord shall ensure that the roof, exterior walls, and structure of the Departure Building are secure, water-tight, and allow the Departure Building to be occupied as offices and a public sales facility. Landlord shall also maintain and repair the marine infrastructure (i.e., the passenger bridge, security fencing, and fendering, in the same condition as they are in at the commencement of the term of this Lease or as they may be put in during the term of this Agreement, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of Tenant or the employees, contractors, agents or invitees of Tenant, in which case such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.
- d. Maintenance and reasonable cleaning of the Exterior Common Areas, Queuing Area, and Parking Areas available for use by Tenant, its employees and invitees, including snow and ice removal.
- e. After Tenant reconfigures and repaints the travel lanes in the Queuing Areas as set forth below, Landlord may, in its discretion, repaint the lines for the travel lanes, but it has no obligation to do so.
- f. Access to washroom facilities in the Ocean Gateway on an escorted basis (if permitted by CBP) for outbound customers waiting in the Outbound Queuing Areas.

7. **Obligations of Tenant.**

Tenant covenants that it shall, at its expense:

- a. Provide four (4) to seven (7) days of service per week during the Operating Season in accordance with the schedule set forth in Exhibit D, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Any suspension of operation of the vessel in excess of ten (10) consecutive days during the Operating Season, for reasons other than major mechanical failure of the Vessel, shall, at Landlord's option, be deemed to be a default and termination of this Lease. During

any period of suspension, Tenant shall continue to be liable for any rent or utility payments.

- b. Keep Landlord informed of any unavoidable changes to sailing times sufficiently in advance so that Landlord can accommodate its berthing needs, if possible; however, Landlord does not guarantee that any revised sailing times can be accommodated. But for such notice, Landlord may presume the Vessel will arrive at approximately 1:30 P.M. and depart between 2:30 P.M. and 3:00 P.M. on the Service Dates during the Operating Season;
- c. Pay when due, all Rent, Fees and other charges or assessments hereunder;
- d. Pay all costs associated with the ferry operation (except as otherwise stipulated herein), including but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including but not limited to fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage. Tenant shall be responsible for the repair, maintenance and cost of its own Vessel and fueling system subject to all applicable federal, state and local regulations.
- e. Be directly and solely responsible for all expenses for electricity, water, sewer, natural gas, heating oil, HVAC, telephone, internet and any other utility or communications services. The rent does not include any utility expenses. Landlord shall install a submeter as needed for electrical service, for which Tenant shall pay Landlord monthly.
- f. Utilize full service stevedores licensed by the City for line handling, loading and unloading luggage and baggage;
- g. Pay all expenses for all installation and periodic charges associated with communications systems, including but not limited to phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the Tenant;
- h. Maintain the Premises in such repair as on the commencement of this Agreement, except only for reasonable wear and tear and damage caused by fire or other unavoidable casualty not the fault of Tenant, its employees, contractors, agents or invitees. Tenant shall not injure or deface the Premises or any other property nor permit anyone else to do so. Tenant agrees to report to Landlord promptly, but in any case within 24 hours of when it knew or reasonably should have known of any substantial damage to the Premises or the Ocean Gateway facilities that poses any potential health or safety issue, including but not limited to any water damage or intrusion;
- i. Be solely responsible for all repairs, maintenance, modifications, and replacement of the Ramp, which shall only be undertaken pursuant to a stamped drawing by an appropriately qualified professional engineer. In no event is Tenant responsible for damage of any kind attributable to the non-exclusive use of premises by others in

privity with Landlord;

- j. Properly contain and dispose of all trash and garbage from its operations, including but not limited to all vessel trash and garbage, in containers suitable for pickup by Tenant or Tenant's contractor. Landlord shall provide regular trash pickup for the Exterior Common Areas only;
- k. Maintain in full force and effect the insurance coverage required below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Tenant shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Premises at Tenant's own risk;
- l. Notify the Landlord in advance of any proposed alterations to the Premises, including but not limited to posting of signage by Tenant. All such alterations are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld;
- m. Pay and discharge punctually all generally applicable taxes and governmental assessments on any of Tenant's activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Premises leased hereunder and chargeable to Tenant, but Tenant shall be responsible for payment of any personal property taxes which may be assessed. Tenant reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;
- n. Permit Landlord at reasonable times to inspect the Premises and to permit Landlord to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to said Premises or any part thereof, and during such operations to take into and through said Premises or any part of the Premises all materials required, Landlord agreeing, however, that it will carry out such work in a manner which will cause Tenant minimum inconvenience;
- o. Not permit any employee, agent, contractor or invitee of Tenant to violate any covenant or obligation of Tenant hereunder nor create a nuisance at the Premises or any City owned property;
- p. Keep the Premises equipped with all safety appliances required by law or any public authority to the extent such results from the exclusive use made by the Tenant of the Premises;
- q. Provide all security personnel, and any CPB facilities, utility connections and utilities services for the same, together with any required traffic control, at Tenant's cost and expense, as may be required by, or for compliance with, CPB or the United States Coast Guard operations, and such additional security personnel as may be deemed reasonably necessary by Tenant. It is the mutual intent of the parties that all such requirements be identified prior to the entry into this Lease. All such required facilities and improvements shall be property of Landlord at the end of the lease term;

- r. Should any maintenance or repair of the Premises, the Ocean Gateway terminal building and pier, or the systems serving those facilities require repair or replacement as a result of the negligence or willful act of the Tenant or the Tenant's invitees, agents or contractors, Tenant shall be responsible for the timely repair or replacement of same. Any damage caused to such facilities including but not limited to waiting areas, hallways, stairwells, and restrooms, caused by any of Tenant's employees, contractors, agents or invitees, may be repaired by Landlord, in its sole discretion, and the cost of such repair shall be billed to Tenant at Landlord's cost, and shall be paid by Tenant as additional rent with the next due Rent payment; or, alternatively, taken from any security deposit being held by the Landlord, in which case the Tenant shall replenish that security deposit within ten (10) days of being informed in writing that this is necessary.
- s. After reconfiguring the travel lanes in the Queuing Areas, Tenant shall, at its expense, paint or repaint the lines for the travel lanes to accommodate the Ferry Service.

8. Certain Rights Reserved to the Landlord.

The Landlord reserves the following rights:

- a. To retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if Landlord deems it advisable. No lock shall be changed by Tenant without the prior written consent of Landlord. Landlord shall have the right to access the utility rooms through Tenant's exclusive use space as reasonably necessary;
- b. On reasonable prior notice to Tenant, to exhibit the Premises to prospective Tenants or users of the Ocean Gateway facilities and to others having a legitimate interest at any time during the term;
- c. To adopt reasonable rules and regulations relating to the Premises and the Ocean Gateway facilities from time to time during the Term; provided, however, such rules and regulations shall not materially interfere with Tenant's permitted use of the Premises. Tenant agrees to comply with reasonable rules and regulations from and after the fifteenth (15th) day after Tenant's receipt thereof, unless earlier required by law;
- d. To remove from the Premises, at Tenant's expense, any improvements, alterations, additions, signs, awnings, or the like, not consented to in writing by the Director; and
- e. Landlord reserves the right, in its sole discretion, to berth vessels of any type at and otherwise make use of and allow events at the Ocean Gateway facilities, subject to Tenant's rights under this Lease.

9. Signage.

Tenant shall have the right to have signage on the Premises, including but not limited to outdoor signage, which signage shall be approved by the Director and shall be at Tenant's sole cost. It is the intent of the parties to prominently promote Tenant's Ferry Service. Tenant may also display flags referencing, as applicable, Tenant, the Vessel, the Tenant's Ferry Service, and the Province of Nova Scotia. Installation of such signage and flags may be done by the Landlord, or by the Tenant by a contractor acceptable to the Landlord, at Tenant's expense. All signage and flags shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to Landlord's approval which shall not be unreasonably withheld, Tenant may, at its expense, place murals and/or photographs and/or graphics on interior and exterior walls of the Departure Building for promotion of the Ferry Service.

Subject to applicable local and state governmental laws and codes, Landlord and Tenant shall cooperate to ensure prominent directional signage within the City of Portland to direct customers to the Ferry Service and to request the State of Maine to provide appropriate signage on its interstate highway system. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

10. Compliance with Laws.

Tenant agrees to comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively, the "Laws") with respect to Tenant's use or occupancy of the Premises, including without limitation, all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental and health matter during the Term in connection with its use and occupancy of the Premises. Tenant shall not be responsible for any compliance attributable to the obligations of Landlord hereunder nor to any event, condition, act, or omission which occurred prior to the execution date or after the expiration date of this Lease Agreement, unless caused by the error or omission of Tenant, its officers, agents, employees, contractors or invitees.

11. Security Rules.

- a. Tenant shall comply with all safety and security requirements in its operations hereunder. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Water Access Security/Safety Restrictions attached hereto as Exhibit C and incorporated herein, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement. The Landlord agrees to provide Tenant with copies of the relevant portions of Landlord's Plan to permit Tenant to comply with its terms.
- b. Tenant shall comply with the lawful directions of the City's Facility Security Officer's directions and commands, with respect to its operations at the OG

Terminal and berthing area. Tenant shall designate a particular person, who must be readily available, as its Security Contact Person, for the purposes of emergency and other communications to, from and with the City's Facility Security Officer.

- c. Tenant shall, to the extent required by law or any agency with jurisdiction, prepare and file its own Facility Security Plan, which shall then become an amendment to Landlord's Facility Security Plan, for Tenant's operations and its use of Landlord's Facilities, and provide a copy of such Plan and amendment to the Landlord.
- d. Transportation Workers Identification Credential Requirement: All persons requiring unescorted access to the secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, and 106 of 33 CFR (Code of Federal Regulations) must, to the extent required by law and applicable authorities, possess a TWIC (Transportation Workers Identification Credential) before such access will be granted. A TWIC must be obtained via the procedures established by TSA (Transportation Security Administration) in 49 CFR part 1572.
- e. In addition, Tenant employees working at the OG Facilities shall have Landlord- approved identification badges, including BIW identity badges, displayed at all times when at the OG Facilities, whether within the Premises or the common use space.
- f. In the event that Tenant fails to provide adequate security, Tenant shall pay all reasonable costs and expenses for additional security, associated with the Tenant's use of the facilities, in accordance with the rates set forth in Article 4 Rent and Fees.
- g. In addition, Tenant shall pay all reasonable security costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the OG Facilities at its own cost and expense.

12. Indemnification.

- a. **General.** To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees, from and against any and all liability, claims, damages, penalties, losses, expenses, including costs of investigation and attorneys' fees, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including but not limited to Landlord's employees or property) and arising, in whole or in part, out of Tenant's use, activities at or on, or occupancy of the OG Facilities, except that such obligation of indemnification shall not include indemnification for claims to the extent such

claim is caused by (i) the acts or omissions of Landlord, its officers, agents, employees or contractors, (ii) the acts or omissions of third parties (including but not limited to other users of the Premises), or (iii) a breach by Landlord of its obligations under this Lease. Tenant shall include Tenant, its officers, agents, employees, contractors, subcontractors and/or invitees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

- b. **Covenant against Liens:** Tenant shall not cause nor permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien, or provide other security acceptable to Landlord, in the event Tenant contests such lien.
- c. As used in this Lease, "Environmental Condition" shall mean any material adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), or the Resource Conservation and Recovery Act ("RCRA"), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, "Environmental Laws"). "Hazardous Materials" shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" in CERCLA; "toxic substances" TSCA; "hazardous wastes" in RCRA; or radon, asbestos and petroleum products.

Tenant shall, at all times during the term, comply with all environmental laws applicable to the Premises and Tenant's use and occupancy thereof. Except to the extent caused by Landlord or any other tenant at the Premises or attributable in whole or in part to a preexisting environmental condition, Tenant will defend, indemnify and save harmless Landlord and its directors, officers, shareholders,

employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by Tenant during the Term of this Lease, which indemnity, in the case of an Environmental Condition caused by Tenant shall include costs incurred by Landlord to remediate such Environmental Condition to clean-up or remediation standards consistent with Tenant's use of the Premises specified in this Lease. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section Tenant will, at Tenant's expense, by counsel reasonably approved by Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

- d. **Survival.** The Terms of this section shall expressly survive the expiration or termination of this Lease.

13. Insurance.

- a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D./ Death	\$5,000,000
(ii) Vehicle Liability, including owned, hired, or non-owned	B.I./P.D./ Death	\$2,000,000
(iii) Workers' Compensation, Including U.S. Longshoremen and Harbor Workers' Coverage, as Applicable	B.I./Death	Statutory
(iv) Protection & Indemnity Insurance Including Federal Maritime and Jones Act Coverage		\$5,000,000
(v) Pollution coverage/Sea to Sea/ Land to Sea/Land to Land		\$5,000,000
(vi) Employers Liability B.I./P.D. including Us. Longshoremen & Harbor Workers, as applicable		\$1,000,000

- b. **Landlord protected.** The Landlord shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against Landlord. To the extent that Tenant has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against Landlord.
- c. **Notice to Landlord.** All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to Landlord-owned or Landlord-leased property and Landlord personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers,

agents, employees, invitees, and/or contractors.

- d. **Certificates.** Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Lease Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.
- e. **Tenant Property Insurance.** Tenant shall procure and maintain, at its option and election, such all risks fire and casualty insurance covering its property on the Premises as it deems necessary.
- f. Landlord reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

14. **Assignment/Subletting.**

- a. **By Tenant.** Tenant shall not sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's discretion; except, however, Tenant may, if required by written agreement written agreement between Tenant and the Province of Nova Scotia, assign this Agreement and the rights granted hereunder to the Province of Nova Scotia in the event the Tenant is itself unable to continue operating the Service, in which case the Province of Nova Scotia will assume all of the obligations of Tenants herein, as well as the rights of Tenant herein. No such assignment or subletting shall relieve Tenant of any obligations hereunder and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefor in the same manner as Tenant.
- b. **By Landlord.** Landlord reserves the right to assign this Lease to a quasi-municipal or State entity, provided, however, that in such event such entity shall agree to assume all of the terms and obligations of the Landlord under this Lease. Landlord shall not assign this Lease to a private party without the prior written approval of Tenant, which may be granted or withheld in Tenant's discretion.

15. **Casualty Damage.**

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant; provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease

by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.

- b. Landlord and Tenant each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. Landlord and Tenant shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

16. Default.

- a. Tenant shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, Landlord shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of this Lease. Further, upon any termination of this Lease, Tenant shall remain liable to Landlord for all rent and fees accrued and unpaid up to the date of such termination. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, incurred by Landlord on account of Tenant's failure to comply with any of the terms of this lease, holding-over, and/or as a result of Tenant's default under this Lease.
- b. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of the termination of this Lease.

17. Return of Premises; Holding Over.

- a. At the expiration or earlier termination of this Lease, Tenant shall promptly ensure that all vessels with which it is in any way affiliated are removed from the Premises and all of Landlord's berthing areas, and will also promptly quit and surrender the Premises to Landlord broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the Premises. Tenant shall, if, and only if, so requested by Landlord, remove all trade fixtures, equipment and other personal

property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its sole expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by Tenant within thirty (30) days after expiration or termination of this Lease shall, at Landlord's option, be deemed to have been conveyed to Landlord in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without obligation to account therefor, or, at Landlord's option, Landlord can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by Tenant.

- b. If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Premises or any part thereof after the termination of the Lease or any renewal thereof, without Landlord's consent, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or, at Landlord's option, shall be deemed to be a month-to-month Tenant of the Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the rent payable during the month prior to such termination. This section shall not be construed as giving Tenant any right to hold over after the expiration of the Term or to limit Landlord's rights to obtain possession of the Premises upon termination by any lawful means available to Landlord if Landlord does not elect to treat the continued possession by Tenant or any party claiming through or under Tenant as a month-to-month tenancy.
- c. Landlord lawfully may upon termination of this Lease Agreement, enter into and upon the said Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, by any lawful means, and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

18. Quiet Enjoyment.

So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through the Landlord.

19. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant: Mark MacDonald
Bay Ferries Limited
Suite A201
5855 Spring Garden Road
Halifax, Nova Scotia
Canada B3H 4S2

With a copy to: Danny Bartlett
Bay Ferries Limited
94 Water Street
PO Box 634
Charlottetown, Prince Edward Island
Canada C1A 7L3

To Landlord: Jon P. Jennings, City Manager
City of Portland
389 Congress Street
Portland, Maine 04101

With a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

20. Amendment: Authority.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

Each party warrants that this Lease Agreement has been signed by a representative duly authorized to bind that party to this Lease Agreement.

21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Tenant warrants to Landlord that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. Tenant shall provide such information upon request to Landlord.

22. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and the party prevented from

performance has given written notice thereof to the other party.

23. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

24. Maritime Rights Preserved

Nothing in this Lease is intended by Landlord to waive any rights or claims it may have against *The Cat*, or any other vessel utilized by Tenant in performing the Ferry Service, either in rem or in personam, arising under the maritime law of the United States, including, without limitation, rights under The Maritime Lien Act, 46 USC 31341 *et. seq.*, The Suits in Admiralty Act, 46 USC 30901 and 30903 *et seq.*, and/or The Public Vessels Act, 46 USC 781 *et. seq.*

25. Brokers.

Landlord and **Tenant** each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

26. Special Right of Termination

In the event of termination or discontinuance of the Ferry Service, or any other material adverse event impacting the Ferry Service, Tenant shall have the right to terminate this Lease without penalty upon providing six (6) months' notice in writing to Landlord. Tenant's obligations applicable to termination of the Lease as set forth herein shall continue to apply.

27. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Original Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:

BAY FERRIES LIMITED

By: _____

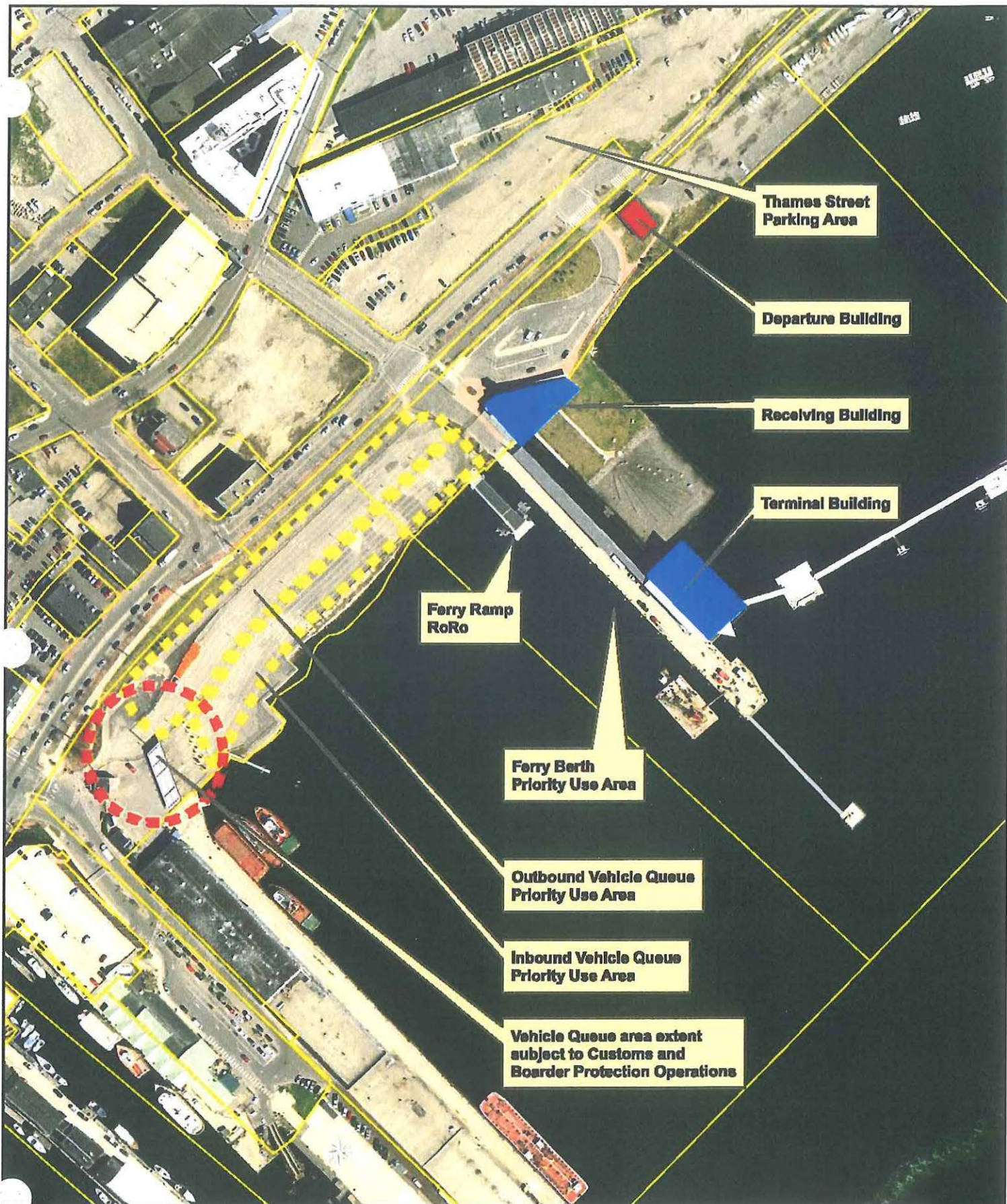
Mark MacDonald
Its Chairman and CEO

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

EXHIBIT A
DIAGRAM OF PREMISES



250 125 0 250 Feet



Ocean Gateway Site and Facilities
Bay Ferries, Limited
Lease Exhibit A

Apr 2016

28 of 60

**Exhibit B Schedule
of Rent and Fees**

Monthly Rent

May 31, 2017 – September 30, 2017

- Tenant shall make monthly rental payments for the Premises in advance on the 1st day of each month for the period from May 31, 2017 – September 30, 2017 in the amount of **\$16,629.60**; October 1, 2017 – October 15, 2017 monthly rent will be at **\$8,314.80**.

October 1, 2016 – May 30, 2017 and October 16, 2017 – May 30, 2018 (if renewed)

- Tenant shall make monthly rental payments for the Departure Building in advance on the 1st day of each month for the period from October 1, 2016 – May 30, 2017, and October 16, 2017 – May 30, 2018 (if renewed) in the amount of **\$4,000.00**.
- If Tenant requires parking or berthing during this period, it shall be provided, if available, at the rates set forth below.

Passenger and Vehicle Fees

On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the following per-passenger and per-vehicle fees that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

• Passenger (the first 60,000 per Operating Season)	\$ 2.00
• Passenger (over 60,000)	\$ 3.50
• Bicycle	\$ 0.50
• Motorcycle	\$ 1.00
• Passenger Vehicle (the first 60,000 per Operating Season)	\$ 3.00
• Passenger Vehicle (over 60,000)	\$ 5.00
• Passenger Vehicle with Camper/Utility Trailer	\$ 5.00
• Recreational Vehicles/Motor Homes	\$ 5.00
▪ Straight Trucks	\$10.00
• Tour Busses/Motor Coaches	\$20.00

Other Fees

• Fuel License, per season	\$100.00
• Daily Parking per space, per month	\$75.00
• Fresh Water, per metric ton	\$ 4.00
• Security Badges, each	\$ 2.50
• Security Badges, replacement, each	\$25.00
• Berthing (other than the exclusive use of the Berthing Area as allowed in section 1(a)(ii))	\$1.00/ft/day
▪ Electrical Service – sub-meter monthly actual usage charges apply.	

Exhibit C

Waterfront Access Security/Safety Restrictions

All visitors must check in with the Facility Security Officer ("FSO") or designee upon arrival. All visitors must provide photo identification or a Transportation Workers Identification Credential ("TWIC") card prior to accessing the facility. Vessel must provide an expected visitor list to on site security. All those not on the list will be denied access or Non TWIC'd personal must be escorted by a TWIC'd person. A single TWIC'd person can provide access for up to 5 Non TWIC'd personal, or otherwise directed by the FSO.

Crew must check in with on site security and provide photo identification.

Vessel must provide a crew and/or passenger manifest to the FSO or on site security.

A form of communication between vessel and on site security must be determined upon arrival.

A declaration of security must be signed upon arrival if deemed necessary by the FSO.

All deliveries, packages, crates, etc., must be accompanied by a manifest per US Federal Standards. All items including personal vehicles are subject to random search. All delivery drivers must provide photo identification upon arrival. A list of vendors will need to be provided prior to accepting deliveries.

All passenger buses are subject to a search prior to entering the facility.

No explosive devices, weapons, or open fires will be allowed within the facility at any time.

All fuel transfers must be done in accordance within DEP, EPA, OSHA, Coast Guard regulations. This applies to any quantity of gasoline, diesel, oil etc.

All employees working in or around the facility must meet all OSHA regulations.

"Hot Work" permits are required for work on the pier or vessel. These permits are issued through the Port Director or FSO. Permit costs apply. (\$125.00 each)

At no time will vehicles be left overnight within the facility without prior authorization from the Port Director or FSO.

Emergency vehicles must have a clear pathway at all times to service the entire pier. No objects or vehicles are to be left unattended at any time. Objects and vehicles must be able to be removed immediately upon notice of emergency personnel needing access to the pier.

Vessels must use "Bits and Bollards" only for vessel tie up. No lines are to be laid around steel piles.

No work is to be performed on the vessel's hull without prior authorization by the Port Director or FSO.

No dumping of gray water while alongside of the berth.

All small vessels performing maintenance, security, etc. for a berthed vessel must have prior authorization to do so from the Port Director or FSO.

All gates are to remain locked or staffed by facility trained security personal.

EXHIBIT D

2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 SERVICE DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 SERVICE DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30

**AMENDED AND
RESTATED LEASE
AGREEMENT BETWEEN
CITY OF PORTLAND AND
BAY FERRIES
LIMITED RE:
OCEAN
GATEWAY**

THIS **AMENDED AND RESTATED** LEASE AGREEMENT dated this 26th— day of May~~May~~, 2016~~7~~ is by and between the City of Portland, Maine, Maine municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101 (the "Landlord"), and Bay Ferries Limited, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada, C1A 7L3 (the "Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated June 1, 2016 (the "Original Lease") for certain space at the Landlord's property known as Ocean Gateway where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel"); and

~~WHEREAS, Landlord is the owner of certain real property known as the Ocean Gateway, which includes, among other things, the Departure Building at 14 Ocean Gateway Pier, and related berthing, queuing and parking areas located in Portland, Maine; and~~

~~WHEREAS, Tenant intends to operate an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel"); and~~

WHEREAS, Landlord and Tenant desire to make substantial amendments to the terms and conditions of the Original Lease and wish to enter into an amended and restated lease agreement to address those amendments for certain premises at the Ocean Gateway in order for Tenant to operate the Ferry Service, from the original Lease Agreement executed June 1, 2016; and

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby mutually agree that the Original Lease be amended and restated as of the Effective Date (as defined in Section 2 below) follows:

1. Premises: As-Is Condition; Permitted Uses.

Landlord does hereby lease, demise and let unto Tenant, to have and to hold on the terms herein, subject to the reservations and conditions below, the premises identified herein and shown on Exhibit A, attached hereto and incorporated herein. Tenant agrees to accept the premises in "as-is" condition without representation or warranty by

Landlord as to its condition or fitness for a particular purpose.

- a. **Spaces for exclusive use at certain times.** The following spaces are available for the Exclusive use of Tenant for the hours stated during the Operating Season (as defined below):

i. **Queuing Areas.** The sole areas to be used for marshalling inbound and outbound vehicles and processing of passengers by U.S. Customs and Border Protection ("CBP") are the areas labeled "Outbound Queuing Area" and "Inbound Queuing Area" on Exhibit A (collectively the "Queuing Areas"), as may be modified to meet CBP requirements. The Outbound Queuing Area is to be used for vehicles and passengers preparing to depart from Portland. The Inbound Queuing Area is to be used for vehicles and passengers arriving in Portland. Said Queuing Areas are to be used by Tenant on a non-exclusive but priority basis during the Operating Season to accommodate its sailing schedule, as outlined below. During the Operating Season, the Inbound Queuing area will only be available to the Tenant for its exclusive use, between the hours of 1:15 P.M. and 3:15 P.M., **daily only on the Service Dates listed on Exhibit D attached hereto (the "Service Dates")**, and the Outbound Queuing area will be available to the Tenant for its exclusive use between the hours of 12:00 P.M. (or earlier, if permitted by the City of Portland's Director of Facilities Management or his/her designee (the "Director") and 3:00 P.M. **daily only on the Service Dates**. The Queuing Areas may be reduced temporarily by mutual agreement of the Director and the Tenant. Tenant may place in the Queuing area any trailers or other facilities or improvements required by CPB with the prior approval of the Landlord, which may not be unreasonably withheld, and subject to any applicable permits, licenses or approvals required federal, state, and municipal laws, rules, and regulations. No- tractor trailer trucks, or other trucks or vehicles with trailers exceeding a total of fifty (50) feet in length, shall be allowed to transit on the Ferry Service or be present in the Queuing Areas.

ii. **Berthing Area.** During the Operating Season, the Berthing Area depicted on Exhibit A will be available to the Tenant for its exclusive use between the hours of 1:30 P.M. and 3:00 P.M., **daily only on the Service Dates**. In the event Tenant desires unscheduled berthing, Tenant shall request such berthing with as much advance notice as possible. Landlord shall grant such requests if berthing is available. When off-schedule berthing is not available, the Landlord shall use reasonable efforts to assign a secondary berth to Tenant. Tenant shall be solely responsible for the cost of moving its vessel to off- schedule secondary berthing, including but not limited to any security costs, and Landlord shall have no responsibility for such moving, security or related costs. During the Operating Season, as that term is defined below, Tenant's use of the Berthing Area shall at all times include the exclusive use of the "roll-on, roll-off ramp facilities at the OG Terminal (the "Ramp") (as depicted on Exhibit A) for vehicle and passenger loading and unloading. During the "Wind Up and Wind Down" Seasons, as those terms are defined below, if Tenant desires unscheduled use of the Ramp, Tenant shall request such use with as much advance notice as possible. It is understood that Tenant may require **substantial some**, although not exclusive, daytime and nighttime use of the ramp in the Wind Up Season for training and preparation purposes and Landlord and Tenant agree to work cooperatively to schedule such usage, if available, and to also enable Landlord's continued generation of berthage

revenue from other parties. Tenant's use of the Ramp is at Tenant's sole risk. Unless otherwise agreed to by Landlord, Tenant shall have no right to use the Berthing Area at any time during the Off Season, as that term is defined below. It is further understood between the parties as follows:

(a) On those days during the Operating Season when there is no cruise ship berthed at the Portland Ocean Terminal, and otherwise no operating restrictions within the Port, Tenant shall be free to berth earlier than 1:~~30~~⁴⁵ P.M.; and

(b) On those days within the Operating Season when there is a cruise ship berthed at the Portland Ocean Terminal, the Vessel may be secured at the berthing area prior to 1:30 P.M. provided passengers and vehicles are not released prior to 1:30 P.M. and provided such does not otherwise impede port operations.

The parties intend there to be close collaboration and communication at all times so as to facilitate the most efficient operations for all parties.

iii. **Departure Building.** Tenant will have the exclusive use of the Departure Building (depicted on Exhibit A) for the term of this Lease for ticketing, processing of passengers, passenger waiting area, restrooms, and related uses.

iv. **Terminal Building:** The Tenant shall have the right to access the inbound Customs processing facility in the Terminal Building depicted on Exhibit A for processing inbound pedestrian passengers, who shall be moved by the Tenant from the Vessel to the Terminal Building as depicted on Exhibit A by means acceptable to CBP and the Landlord. Such processing shall be limited to the hours of 1:30 p.m. and 3:00 p.m. on the Service Dates.

b. **Exterior Common Areas.** The following spaces are available for the non-exclusive use of Tenant during the Operating, Wind Up, and Wind Down Seasons: The walkways, driveways and roadways at the Ocean Gateway may be used by **Tenant** on a non-exclusive basis, in common with others. However, during hours that another vessel (such as a cruise ship) or scheduled event is using the Ocean Gateway Terminal, the **Tenant** and its passengers will only use the area for dropping off of customers and passenger ticketing, and **Tenant** will co-operate with **Landlord** to adequately place personnel for incoming customers and passengers to be aware of this use restriction. No outboard queuing is allowed in the Receiving Building parking lot or any area other than the Outbound Queuing Area.

c. **Parking.** Landlord will assign a maximum of 10 parking spaces to Tenant for employee parking in the City-owned Thames Street parking lot as generally depicted on Exhibit A (the "Parking Area") during the Operating, Wind Up and Wind Down Seasons of each year of the term of this Lease or any renewal term. No overnight parking will be allowed. Landlord reserves the right at any time during the term of this Lease to assign different parking spaces to Tenant. Landlord will not provide any customer parking. Employee vehicles parked in the Receiving Building Lot (as depicted on Exhibit A) are subject to ticketing if parked beyond

posted limits.

- d. **Landlord's Right to Relocate Premises.** The Queuing Areas, Berthing Area, the Ramp, the Departure Building, the Parking Area, and the Exterior Common Areas may be collectively referred to herein as the "Premises". Except for the Departure Building, Landlord reserves the right to change particular locations of the Premises, subject to the condition that such re-location(s) will not unreasonably burden the operations of Tenant. The intent of this reserved right to re-locate is to allow Landlord to continue the ongoing development and enhanced utilization of its limited waterfront real estate in coordination with other parties using or desiring to use nearby locations.
- e. **Use of Premises for Ferry Service.** During the term of this Lease, Tenant is permitted to use the Premises for the sole purpose of conducting an international Ferry Service between Portland, Maine and Yarmouth, Nova Scotia via the Vessel. Tenant agrees to provide ~~seven (7) days of service per week~~ four (4) to seven (7) days of service per week during the Operating Season, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Should sailings be fewer than seven (7) days per week during the Operating Season, monthly berthage payment shall not be reduced. Sailings shall be ~~only on Service Dates—daily~~ with arrivals at 1:30 p.m. and departures before 3:00 p.m. Should Tenant wish to reduce its schedule of service, Tenant will provide as much notice as reasonably practicable and will provide best efforts to give notice at least fifteen (60) days in advance. Tenant acknowledges that no trade or occupation shall be conducted on or from the Premises or use made thereof that would be unlawful, improper, or offensive, or contrary to any law or any municipal by-law or ordinance.

There shall be no additional charge to the Tenant for overnight berthing in the Berthing Area during the Wind Up and Wind Down seasons, provided, however, that the Berthing Area will not be available overnight on Fridays during those periods.

- f. **Blackout Service Dates.** ~~Notwithstanding anything to the contrary above, Tenant shall not use the Berthing Area or the Queuing Area on any of the following "Blackout Dates" without the prior written consent of Landlord: For the 2016 Season—August 28, September 11, 12, 21, 23, 24, 25, 26, and 30, 2016. Landlord reserves the right to designate additional Blackout Dates for the 2017 Operating Season, prior to—March 1, 2017. In the event Landlord fails to notify Tenant of the 2017 Blackout Dates by March 1, 2017, Tenant shall notify Landlord of its failure to do so, and Landlord shall have ten (10) days from its receipt of such notice to provide Tenant with its list of 2017 Blackout Dates. The berthing rent shall be abated for each Blackout Date. It is the intent of the parties to work cooperatively to lessen or eliminate Blackout Dates where that can be reasonably accomplished without harm to the overall business interests of the Landlord, the determination of which shall be made by the Landlord, in its discretion. Tenant may only use the Berthing Area, the Terminal Building, and the Queuing Area on the Service Dates.~~

- g. **Landlord's Right to Relocate.** This Lease Agreement is non-exclusive, and nothing herein shall prevent or prohibit the Landlord from leasing other available space at either the Ocean Gateway or any other facility owned or operated by Landlord, to another Tenant for any purposes Landlord deems suitable, including but not limited to the operation of a similar ferry service. In no event, however, is the Landlord permitted to impair in any way the operations by Tenant. Tenant's use of the Queuing area and all other areas to be used by passengers is subject to any reduction in size or configuration or availability as may be required, at any time, by any security agencies having jurisdiction with respect to such areas.

2. Term: Seasons.

- a. **Term.** Except as provided below, the Term of this Lease shall be from June 1, 2016 (the "Effective Date") through October ~~15, 2017~~~~3, 2017~~. Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, Landlord, in its sole discretion, may renew this Lease for up to one (1) additional year upon terms mutually agreeable to the parties. If Landlord desires to renew this Lease, Landlord shall so notify Tenant on or before September 15, 2017.
- b. **Operating Season; Wind Up and Wind Down Seasons; Off-Season.** Tenant's Operating Season shall be ~~May 31, 2017 to October 15, 2017~~~~June 1 to September 30, annually~~ (the "Operating Season"). The term "Wind Up Season" shall mean ~~May 26, 2017 to May 30, 2017~~~~the fourteen (14) day period prior to scheduled commencement of operations for the Operating Season.~~ The term "Wind Down Season" shall mean ~~no later than October 16, 2017.~~ ~~In the event that Landlord agrees to renew this lease as set forth above, the three (3) day period following scheduled termination of operations for the Operating Season.~~ The term "Off Season" shall mean the period between ~~the end of the 2016 Wind Down Season and commencement of the 2017 Wind Up Season~~~~the end of the 2017 Wind Down Season and commencement of the 2018 Wind Up Season.~~

3. Rent; Fees; Security Deposit.

Tenant shall pay all rent and fees, when due, as provided below and on Exhibit B, attached hereto and incorporated herein.

4. Payment; Statements.

- a. On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the per-passenger and per-vehicle fees on Exhibit B that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.
- b. Fees due during the Operating Season in paragraph a. above shall begin as of the first day of the month of said Operating Season. Tenant shall be responsible for payment of personal property taxes which may be payable on their trade

fixtures and equipment, and for payment of any federal, state or local fees or taxes which may apply to their operations hereunder.

- c. **Late payment:** Tenant shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. In the event that any such payment is not made within thirty (30) days of the invoice due date, a penalty of one percent (1%) per month 12% per annum) shall be assessed and paid on all such amounts outstanding.
- d. **Address:** All payments hereunder shall be written to the City of Portland and sent to the attention of: Public Assembly Facilities, Accounting Office, Portland Exposition Building, 239 Park Avenue, Portland, Maine 04102 or such other place as the Director may designate in writing from time to time.

Any invoices shall be sent to Tenant at the following address: Bay Ferries Limited, 94 Water Street, PO Box 634, Charlottetown, Prince Edward Island, Canada, C1A 7L3, Attn: Danny Bartlett, Vice President, Finance and Administration, or such other person or address as Tenant may designate in writing from time to time.

- e. **Tenant Statements:** Tenant shall submit its official manifest or other official documentation (or electronic equivalent) showing the number of passengers and vehicles transported by Tenant both to and from the City of Portland each month when it submits its per passenger and per vehicle fees under Exhibit B. No amount shall be payable to the City of Portland in respect of passengers or vehicles transported by the Tenant on a complimentary basis.
 - f. Landlord reserves the right to conduct an audit of Tenant's traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to Landlord of more than Five Percent (5%) in any year, Tenant shall pay to Landlord, in addition to the amount owed and any applicable late charges, the reasonable cost to Landlord of its audit, including legal, accounting, and consulting fees unless the underpayment shall have been the result of a bona fide mistake or miscalculation.
5. **Condition of Premises: Improvements to Premises.**

- a. "As is." Tenant has had the full opportunity to inspect the Premises prior to execution of this Lease and takes all such space, specifically including the Ramp, "as is," except as specifically provided herein. Should Tenant's Vessel require modifications to, improvements or replacement of the Ramp, such modifications or replacement shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld. Should Tenant require modification or improvements to the Queuing Areas, such modifications or improvements shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such improvements or modifications, including but not limited to approval of the Director, which shall

not be unreasonably withheld.

- b. In the event Tenant wishes to make any improvements to any portion of the Premises, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense, provided, however, that upon submission by Tenant and approval by Landlord of documented expenses for improvements to the Departure Building, Tenant shall be entitled to a credit against rent in the amount of twenty-four thousand dollars (\$25,000.00) for improvements to the Departure Building. Such credit shall be provided in two \$12,500.00 increments against rent due in June and July 2016.
- c. Notwithstanding the foregoing, Landlord agrees that Tenant may install, at Tenant's expense, only at particular locations approved in advance by the Director, its security camera system in order to monitor the docking basin, vehicle inspection or processing booth and waiting areas for security and operational issues; subject to the condition, however, that Tenant will share access with the Landlord to the 'live feed' from such cameras, as well as any recordings from such cameras if and when requested.

6. Obligations of Landlord: Maintenance, Utilities.

Except as otherwise provided herein, the Landlord shall provide for the 'landside' facilities only, at its expense, the following:

- a. Except as otherwise provided in this Lease, Tenant acknowledges and agrees that this Lease is a 'net lease', for the Landlord, and that the Landlord shall not be responsible for any costs, charges, expenses or the like whatsoever arising from or related to the leased Premises or rights, or the business carried on or related to said Premises or rights, and Tenant shall pay all costs, charges, expenses or the like of every nature and kind whatsoever relating to the leased premises or rights, including any passenger or vehicle ramps, unless specifically agreed to in advance in writing by Landlord.
- b. Landlord will provide heat and sewer services to the Departure Building. In addition, Landlord will provide water (including potable water) to the Vessel, at the Rates in Exhibit B.
- c. Landlord shall ensure that the roof, exterior walls, and structure of the Departure Building are secure, water-tight, and allow the Departure Building to be occupied as offices and a public sales facility. Landlord shall also maintain and repair the marine infrastructure (i.e., the passenger bridge, security fencing, and fendering, in the same condition as they are in at the commencement of the term of this Lease or as they may be put in during the term of this Agreement, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of Tenant or the employees, contractors, agents or invitees of Tenant, in which case

such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.

- d. Maintenance and reasonable cleaning of the Exterior Common Areas, Queuing Area, and Parking Areas available for use by Tenant, its employees and invitees, including snow and ice removal.
- e. After Tenant reconfigures and repaints the travel lanes in the Queuing Areas as set forth below, Landlord may, in its discretion, repaint the lines for the travel lanes, but it has no obligation to do so.
- f. Access to washroom facilities in the Ocean Gateway on an escorted basis (if permitted by CBP) for outbound customers waiting in the Outbound Queuing Areas.

7. Obligations of Tenant.

Tenant covenants that it shall, at its expense:

- a. Provide four (4) to seven (7) days of service per week during the Operating Season in accordance with the schedule set forth in Exhibit D, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Any suspension of operation of the vessel in excess of ten (10) consecutive days during the Operating Season, for reasons other than major mechanical failure of the Vessel, shall, at Landlord's option, be deemed to be a default and termination of this Lease. During any period of suspension, Tenant shall continue to be liable for any rent or utility payments.
- b. Keep Landlord informed of any unavoidable changes to sailing times sufficiently in advance so that Landlord can accommodate its berthing needs, if possible; however, Landlord does not guarantee that any revised sailing times can be accommodated. But for such notice, Landlord may presume the Vessel will arrive at approximately 1:30 P.M. ~~except~~ and depart between 2:30 P.M. and 3:00 P.M. on the Service Dates daily during the Operating Season, ~~except on Blackout Days~~;
- c. Pay when due, all Rent, Fees and other charges or assessments hereunder;
- d. Pay all costs associated with the ferry operation (except as otherwise stipulated herein), including but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including but not limited to fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage. Tenant shall be responsible for the repair, maintenance and cost of its own Vessel and fueling system subject to all applicable federal, state and local regulations.
- e. Be directly and solely responsible for all expenses for electricity, water, sewer, natural gas, heating oil, HVAC, telephone, internet and any other utility or communications services. The rent does not include any utility expenses. Landlord

shall install a submeter as needed for electrical service, for which Tenant shall pay Landlord monthly.

- f. Utilize full service stevedores licensed by the City for line handling, loading and unloading luggage and baggage;
- g. Pay all expenses for all installation and periodic charges associated with communications systems, including but not limited to phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the Tenant;
- h. Maintain the Premises in such repair as on the commencement of this Agreement, except only for reasonable wear and tear and damage caused by fire or other unavoidable casualty not the fault of Tenant, its employees, contractors, agents or invitees. Tenant shall not injure or deface the Premises or any other property nor permit anyone else to do so. Tenant agrees to report to Landlord promptly, but in any case within 24 hours of when it knew or reasonably should have known of any substantial damage to the Premises or the Ocean Gateway facilities that poses any potential health or safety issue, including but not limited to any water damage or intrusion;
- i. Be solely responsible for all repairs, maintenance, modifications, and replacement of the Ramp, which shall only be undertaken pursuant to a stamped drawing by an appropriately qualified professional engineer. In no event is Tenant responsible for damage of any kind attributable to the non-exclusive use of premises by others in privity with Landlord;
- j. Properly contain and dispose of all trash and garbage from its operations, including but not limited to all vessel trash and garbage, in containers suitable for pickup by Tenant or Tenant's contractor. Landlord shall provide regular trash pickup for the Exterior Common Areas only;
- k. Maintain in full force and effect the insurance coverage required below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Tenant shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Premises at Tenant's own risk;
- l. Notify the Landlord in advance of any proposed alterations to the Premises, including but not limited to posting of signage by Tenant. All such alterations are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld;
- m. Pay and discharge punctually all generally applicable taxes and governmental assessments on any of Tenant's activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Premises leased hereunder and chargeable to Tenant, but Tenant shall be responsible for payment

of any personal property taxes which may be assessed. Tenant reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;

- n. Permit Landlord at reasonable times to inspect the Premises and to permit Landlord to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to said Premises or any part thereof, and during such operations to take into and through said Premises or any part of the Premises all materials required, Landlord agreeing, however, that it will carry out such work in a manner which will cause Tenant minimum inconvenience;
- o. Not permit any employee, agent, contractor or invitee of Tenant to violate any covenant or obligation of Tenant hereunder nor create a nuisance at the Premises or any City owned property;
- p. Keep the Premises equipped with all safety appliances required by law or any public authority to the extent such results from the exclusive use made by the Tenant of the Premises;
- q. Provide all security personnel, and any CPB facilities, utility connections and utilities services for the same, together with any required traffic control, at Tenant's cost and expense, as may be required by, or for compliance with, CPB or the United States Coast Guard operations, and such additional security personnel as may be deemed reasonably necessary by Tenant. It is the mutual intent of the parties that all such requirements be identified prior to the entry into this Lease. All such required facilities and improvements shall be property of Landlord at the end of the lease term;
- r. Should any maintenance or repair of the Premises, the Ocean Gateway terminal building and pier, or the systems serving those facilities require repair or replacement as a result of the negligence or willful act of the Tenant or the Tenant's invitees, agents or contractors, Tenant shall be responsible for the timely repair or replacement of same. Any damage caused to such facilities including but not limited to waiting areas, hallways, stairwells, and restrooms, caused by any of Tenant's employees, contractors, agents or invitees, may be repaired by Landlord, in its sole discretion, and the cost of such repair shall be billed to Tenant at Landlord's cost, and shall be paid by Tenant as additional rent with the next due Rent payment; or, alternatively, taken from any security deposit being held by the Landlord, in which case the Tenant shall replenish that security deposit within ten (10) days of being informed in writing that this is necessary.
- s. After reconfiguring the travel lanes in the Queuing Areas, Tenant shall, at its expense, paint or repaint the lines for the travel lanes to accommodate the Ferry Service.

8. Certain Rights Reserved to the Landlord.

The Landlord reserves the following rights:

- a. To retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if Landlord deems it advisable. No lock shall be changed by Tenant without the prior written consent of Landlord. Landlord shall have the right to access the utility rooms through Tenant's exclusive use space as reasonably necessary;
- b. On reasonable prior notice to Tenant, to exhibit the Premises to prospective Tenants or users of the Ocean Gateway facilities and to others having a legitimate interest at any time during the term;
- c. To adopt reasonable rules and regulations relating to the Premises and the Ocean Gateway facilities from time to time during the Term; provided, however, such rules and regulations shall not materially interfere with Tenant's permitted use of the Premises. Tenant agrees to comply with reasonable rules and regulations from and after the fifteenth (15th) day after Tenant's receipt thereof, unless earlier required by law;
- d. To remove from the Premises, at Tenant's expense, any improvements, alterations, additions, signs, awnings, or the like, not consented to in writing by the Director; and
- e. Landlord reserves the right, in its sole discretion, to berth vessels of any type at and otherwise make use of and allow events at the Ocean Gateway facilities, subject to Tenant's rights under this Lease.

9. Signage.

Tenant shall have the right to have signage on the Premises, including but not limited to outdoor signage, which signage shall be approved by the Director and shall be at Tenant's sole cost. It is the intent of the parties to prominently promote Tenant's Ferry Service. Tenant may also display flags referencing, as applicable, Tenant, the Vessel, the Tenant's Ferry Service, and the Province of Nova Scotia. Installation of such signage and flags may be done by the Landlord, or by the Tenant by a contractor acceptable to the Landlord, at Tenant's expense. All signage and flags shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to Landlord's approval which shall not be unreasonably withheld, Tenant may, at its expense, place murals and/or photographs and/or graphics on interior and exterior walls of the Departure Building for promotion of the Ferry Service.

Subject to applicable local and state governmental laws and codes, Landlord and Tenant shall cooperate to ensure prominent directional signage within the City of Portland to direct customers to the Ferry Service and to request the State of Maine to provide appropriate signage on its interstate highway system. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

10. Compliance with Laws.

Tenant agrees to comply with all present and future laws, ordinances, orders, rules,

regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively, the "Laws") with respect to Tenant's use or occupancy of the Premises, including without limitation, all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental and health matter during the Term in connection with its use and occupancy of the Premises. Tenant shall not be responsible for any compliance attributable to the obligations of Landlord hereunder nor to any event, condition, act, or omission which occurred prior to the execution date or after the expiration date of this Lease Agreement, unless caused by the error or omission of Tenant, its officers, agents, employees, contractors or invitees.

11. Security Rules.

- a. Tenant shall comply with all safety and security requirements in its operations hereunder. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Water Access Security/Safety Restrictions attached hereto as Exhibit C and incorporated herein, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement. The Landlord agrees to provide Tenant with copies of the relevant portions of Landlord's Plan to permit Tenant to comply with its terms.
- b. Tenant shall comply with the lawful directions of the City's Facility Security Officer's directions and commands, with respect to its operations at the OG Terminal and berthing area. Tenant shall designate a particular person, who must be readily available, as its Security Contact Person, for the purposes of emergency and other communications to, from and with the City's Facility Security Officer.
- c. Tenant shall, to the extent required by law or any agency with jurisdiction, prepare and file its own Facility Security Plan, which shall then become an amendment to Landlord's Facility Security Plan, for Tenant's operations and its use of Landlord's Facilities, and provide a copy of such Plan and amendment to the Landlord.
- d. Transportation Workers Identification Credential Requirement: All persons requiring unescorted access to the secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, and 106 of 33 CFR (Code of Federal Regulations) must, to the extent required by law and applicable authorities, possess a TWIC (Transportation Workers Identification Credential) before such access will be granted. A TWIC must be obtained via the procedures established by TSA (Transportation Security Administration) in 49 CFR part 1572.
- e. In addition, Tenant employees working at the OG Facilities shall have Landlord- approved identification badges, including BIW identity badges, displayed at all times when at the OG Facilities, whether within the Premises or the common use space.

- f. In the event that Tenant fails to provide adequate security, Tenant shall pay all reasonable costs and expenses for additional security, associated with the Tenant's use of the facilities, in accordance with the rates set forth in Article 4 Rent and Fees.
- g. In addition, Tenant shall pay all reasonable security costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the OG Facilities at its own cost and expense.

12. Indemnification.

- a. **General.** To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees, from and against any and all liability, claims, damages, penalties, losses, expenses, including costs of investigation and attorneys' fees, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including but not limited to Landlord's employees or property) and arising, in whole or in part, out of Tenant's use, activities at or on, or occupancy of the OG Facilities, except that such obligation of indemnification shall not include indemnification for claims to the extent such claim is caused by (i) the acts or omissions of Landlord, its officers, agents, employees or contractors, (ii) the acts or omissions of third parties (including but not limited to other users of the Premises), or (iii) a breach by Landlord of its obligations under this Lease. Tenant shall include Tenant, its officers, agents, employees, contractors, subcontractors and/or invitees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

- b. **Covenant against Liens:** Tenant shall not cause nor permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien, or provide other security acceptable to Landlord, in the event Tenant contests such lien.

- c. As used in this Lease, "Environmental Condition" shall mean any material adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), or the Resource Conservation and Recovery Act ("RCRA"), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, "Environmental Laws"). "Hazardous Materials" shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" in CERCLA; "toxic substances" TSCA; "hazardous wastes" in RCRA; or radon, asbestos and petroleum products.

Tenant shall, at all times during the term, comply with all environmental laws applicable to the Premises and Tenant's use and occupancy thereof. Except to the extent caused by Landlord or any other tenant at the Premises or attributable in whole or in part to a preexisting environmental condition, Tenant will defend, indemnify and save harmless Landlord and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by Tenant during the Term of this Lease, which indemnity, in the case of an Environmental Condition caused by Tenant shall include costs incurred by Landlord to remediate such Environmental Condition to clean-up or remediation standards consistent with Tenant's use of the Premises specified in this Lease. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section Tenant will, at Tenant's expense, by counsel reasonably approved by Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

- d. **Survival.** The Terms of this section shall expressly survive the expiration or termination of this Lease.

13. **Insurance.**

- a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and

damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D./ Death	\$5,000,000
(ii) Vehicle Liability, including owned, hired, or non-owned	B.I./P.D./ Death	\$2,000,000
(iii) Workers' Compensation, Including U.S. Longshoremen and Harbor Workers' Coverage, as Applicable	B.I./Death	Statutory
(iv) Protection & Indemnity Insurance Including Federal Maritime and Jones Act Coverage		\$5,000,000
(v) Pollution coverage/Sea to Sea/ Land to Sea/Land to Land		\$5,000,000
(vi) Employers Liability B.I./P.D. including Us. Longshoremen & Harbor Workers, as applicable		\$1,000,000

- b. **Landlord protected.** The Landlord shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against Landlord. To the extent that Tenant has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against Landlord.
- c. Notice to Landlord. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to Landlord-owned or Landlord-leased property and Landlord personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers,

agents, employees, invitees, and/or contractors.

- d. **Certificates.** Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Lease Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.
- e. **Tenant Property Insurance.** Tenant shall procure and maintain, at its option and election, such all risks fire and casualty insurance covering its property on the Premises as it deems necessary.
- f. Landlord reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

14. **Assignment/Subletting.**

- a. **By Tenant.** Tenant shall not sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's discretion; except, however, Tenant may, if required by written agreement between Tenant and the Province of Nova Scotia, assign this Agreement and the rights granted hereunder to the Province of Nova Scotia in the event the Tenant is itself unable to continue operating the Service, in which case the Province of Nova Scotia will assume all of the obligations of Tenants herein, as well as the rights of Tenant herein. No such assignment or subletting shall relieve Tenant of any obligations hereunder and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefor in the same manner as Tenant.
- b. **By Landlord.** Landlord reserves the right to assign this Lease to a quasi-municipal or State entity, provided, however, that in such event such entity shall agree to assume all of the terms and obligations of the Landlord under this Lease. Landlord shall not assign this Lease to a private party without the prior written approval of Tenant, which may be granted or withheld in Tenant's discretion.

15. **Casualty Damage.**

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant; provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease

by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.

- b. Landlord and Tenant each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. Landlord and Tenant shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

16. Default.

- a. Tenant shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, Landlord shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of this Lease. Further, upon any termination of this Lease, Tenant shall remain liable to Landlord for all rent and fees accrued and unpaid up to the date of such termination. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, incurred by Landlord on account of Tenant's failure to comply with any of the terms of this lease, holding-over, and/or as a result of Tenant's default under this Lease.
- b. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of the termination of this Lease.

17. Return of Premises: Holding Over.

- a. At the expiration or earlier termination of this Lease, Tenant shall promptly ensure that all vessels with which it is in any way affiliated are removed from the Premises and all of Landlord's berthing areas, and will also promptly quit and surrender the Premises to Landlord broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the Premises. Tenant shall, if, and only if, so requested by Landlord, remove all trade fixtures, equipment and other personal

property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its sole expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by Tenant within thirty (30) days after expiration or termination of this Lease shall, at Landlord's option, be deemed to have been conveyed to Landlord in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without obligation to account therefor, or, at Landlord's option, Landlord can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by Tenant.

- b. If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Premises or any part thereof after the termination of the Lease or any renewal thereof, without Landlord's consent, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or, at Landlord's option, shall be deemed to be a month-to-month Tenant of the Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the rent payable during the month prior to such termination. This section shall not be construed as giving Tenant any right to hold over after the expiration of the Term or to limit Landlord's rights to obtain possession of the Premises upon termination by any lawful means available to Landlord if Landlord does not elect to treat the continued possession by Tenant or any party claiming through or under Tenant as a month-to-month tenancy.
- c. Landlord lawfully may upon termination of this Lease Agreement, enter into and upon the said Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, by any lawful means, and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

18. Quiet Enjoyment.

So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through the Landlord.

19. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant: Mark MacDonald
Bay Ferries Limited
Suite A201
5855 Spring Garden Road
Halifax, Nova Scotia
Canada B3H 4S2

With a copy to: Danny Bartlett
Bay Ferries Limited
94 Water Street
PO Box 634
Charlottetown, Prince Edward Island
Canada C1A 7L3

To Landlord: Jon P. Jennings, City
Manager
City of
Portland
389 Congress
Street
Portland, Maine
04101

With a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

20. Amendment; Authority.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

Each party warrants that this Lease Agreement has been signed by a representative duly authorized to bind that party to this Lease Agreement.

21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Tenant warrants to Landlord that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. Tenant shall provide such information upon request to Landlord.

22. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented

from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and the party prevented from performance has given written notice thereof to the other party.

23. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

24. Maritime Rights Preserved

Nothing in this Lease is intended by Landlord to waive any rights or claims it may have against *The Cat*, or any other vessel utilized by Tenant in performing the Ferry Service, either in rem or in personam, arising under the maritime law of the United States, including, without limitation, rights under The Maritime Lien Act, 46 USC 31341 *et. seq.*, The Suits in Admiralty Act, 46 USC 30901 and 30903 *et seq.*, and/or The Public Vessels Act, 46 USC 781 *et. seq.*

25. Brokers.

Landlord and **Tenant** each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

26. Special Right of Termination

In the event of termination or discontinuance of the Ferry Service, or any other material adverse event impacting the Ferry Service, Tenant shall have the right to terminate this Lease without penalty upon providing six (6) months' notice in writing to Landlord. Tenant's obligations applicable to termination of the Lease as set forth herein shall continue to apply.

27. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Original Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:

BAY FERRIES LIMITED

By: _____

Mark MacDonald
Its Chairman and CEO

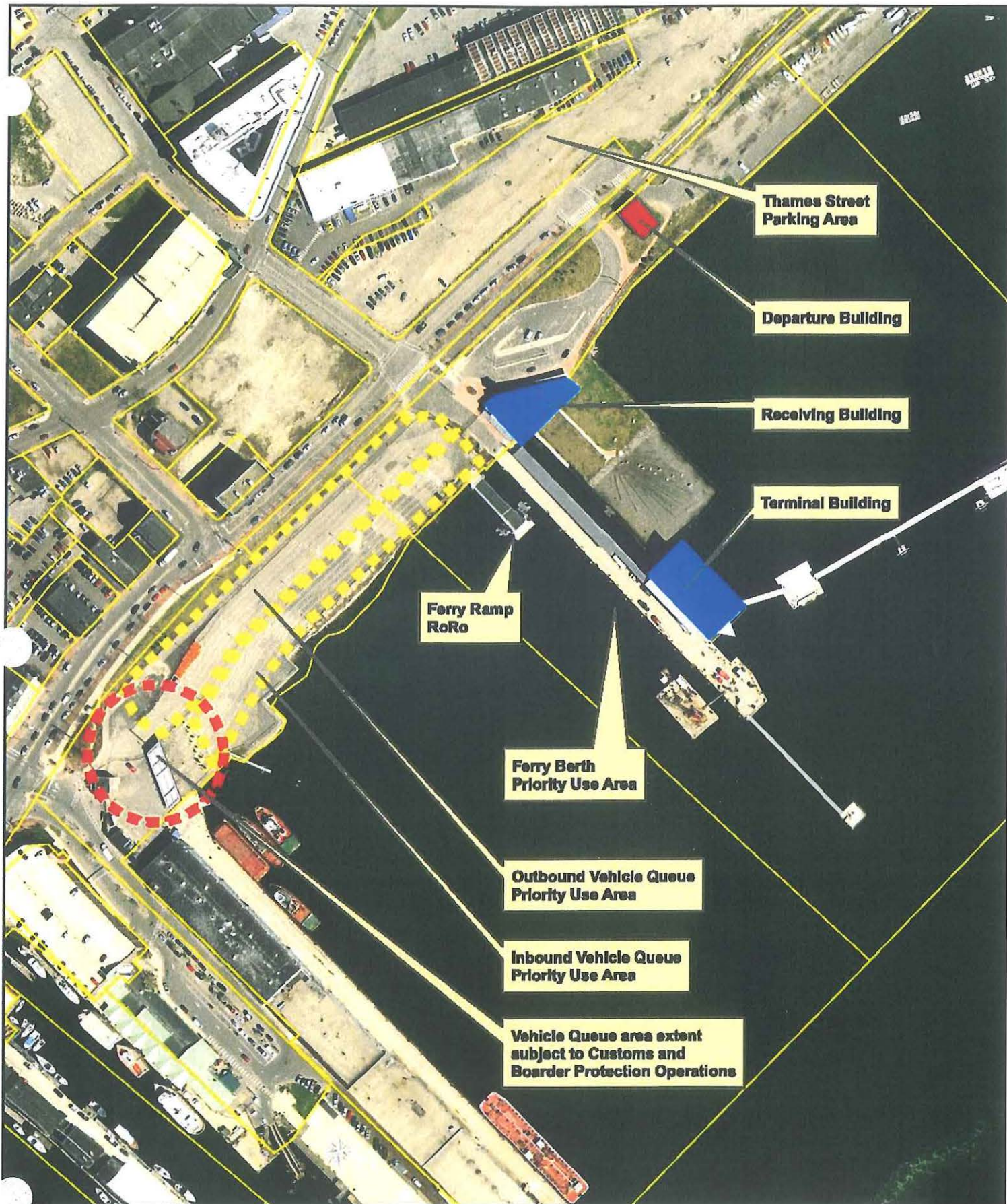
CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

EXHIBIT A

DIAGRAM OF PREMISES



250 125 0 250 Feet



Ocean Gateway Site and Facilities
Bay Ferries, Limited
Lease Exhibit A

Apr 2016

56 of 60

**Exhibit B Schedule
of Rent and Fees**

Monthly Rent

~~June 1 – September 30, 2016 and June 1, 2017 – September 30, 2017~~
May 31, 2017 – September 30, 2017

- Tenant shall make monthly rental payments for the Premises in advance on the 1st day of each month for the period from May 31, 2017 – September 30, 2017~~June 1 – September 30, 2016 and the period from June 1, 2017 – September 30, 2017~~ in the amount of \$16,629.60~~15,229.60~~; October 1, 2017 – October 15, 2017 monthly rent will be at \$8,314.80.

October 1, 2016 – May 30, 2017 and October 16, 2017 – May 30, 2018 (if renewed)
~~October 3, 2017~~

- Tenant shall make monthly rental payments for the Departure Building in advance on the 1st day of each month for the period from October 1, 2016 – May 30, 2017, and October 16, 2017 – May 30, 2018 (if renewed)~~October 15, 2017~~ in the amount of \$4,000.00.
- If Tenant requires parking or berthing during this period, it shall be provided, if available, at the rates set forth below.

Passenger and Vehicle Fees

On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the following per-passenger and per-vehicle fees that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

• Passenger (the first 60,000 per Operating Season)	\$ 2.00
• Passenger (over 60,000)	\$ 3.50
• Bicycle	\$ 0.50
• Motorcycle	\$ 1.00
• Passenger Vehicle (the first 60,000 per Operating Season)	\$ 3.00
• Passenger Vehicle (over 60,000)	\$ 5.00
• Passenger Vehicle with Camper/Utility Trailer	\$ 5.00
• Recreational Vehicles/Motor Homes	\$ 5.00
▪ Straight Trucks	\$10.00
• Tour Busses/Motor Coaches	\$20.00

Other Fees

• Fuel License, per season	\$100.00
• Daily Parking per space, per month	\$75.00
• Fresh Water, per metric ton	\$ 4.00
• Security Badges, each	\$ 2.50
• Security Badges, replacement, each	\$25.00
• Berthing (other than the exclusive use of the Berthing Area as allowed in section 1(a)(ii))	\$1.00/ft/day
▪ Electrical Service – sub-meter monthly actual usage charges apply.	

Exhibit C

Waterfront Access Security/Safety Restrictions

All visitors must check in with the Facility Security Officer ("FSO") or designee upon arrival. All visitors must provide photo identification or a Transportation Workers Identification Credential ("TWIC") card prior to accessing the facility. Vessel must provide an expected visitor list to on site security. All those not on the list will be denied access or Non TWIC'd personal must be escorted by a TWIC'd person. A single TWIC'd person can provide access for up to 5 Non TWIC'd personal, or otherwise directed by the FSO.

Crew must check in with on site security and provide photo identification.

Vessel must provide a crew and/or passenger manifest to the FSO or on site security.

A form of communication between vessel and on site security must be determined upon arrival.

A declaration of security must be signed upon arrival if deemed necessary by the FSO.

All deliveries, packages, crates, etc., must be accompanied by a manifest per US Federal Standards. All items including personal vehicles are subject to random search. All delivery drivers must provide photo identification upon arrival. A list of vendors will need to be provided prior to accepting deliveries.

All passenger buses are subject to a search prior to entering the facility.

No explosive devices, weapons, or open fires will be allowed within the facility at any time.

All fuel transfers must be done in accordance within DEP, EPA, OSHA, Coast Guard regulations. This applies to any quantity of gasoline, diesel, oil etc.

All employees working in or around the facility must meet all OSHA regulations.

"Hot Work" permits are required for work on the pier or vessel. These permits are issued through the Port Director or FSO. Permit costs apply. (\$125.00 each)

At no time will vehicles be left overnight within the facility without prior authorization from the Port Director or FSO.

Emergency vehicles must have a clear pathway at all times to service the entire pier. No objects or vehicles are to be left unattended at any time. Objects and vehicles must be able to be removed immediately upon notice of emergency personnel needing access to the pier.

Vessels must use "Bits and Bollards" only for vessel tie up. No lines are to be laid around steel piles.

No work is to be performed on the vessel's hull without prior authorization by the Port Director or FSO.

No dumping of gray water while alongside of the berth.

All small vessels performing maintenance, security, etc. for a berthed vessel must have prior authorization to do so from the Port Director or FSO.

All gates are to remain locked or staffed by facility trained security personal.

EXHIBIT D

2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 <u>SERVICE</u> DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 <u>SERVICE</u> DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30

*Order 212 -16/17
Tab 18 4-24-17*

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 PURCHASE AND SALE AGREEMENT WITH
AIM RIVERSIDE, LLC FOR SALE OF
CITY PROPERTY AT 636 RIVERSIDE STREET**

ORDERED, that the Purchase and Sale Agreement with AIM Riverside, LLC for 6.72 acres of city-owned land at 636 Riverside Street, is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Purchase and Sale Agreement and whatever other documents are necessary to effect the intent and purpose of the Purchase & Sale Agreement.



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM
City Council Agenda Item

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

FROM: Greg Mitchell, Economic Development Director

DATE: April 5, 2017

SUBJECT: Order Authorizing Purchase and Sale Agreement between the City and AIM Riverside II, LLC for approximately 7 acres of City Land on Riverside Street

SPONSOR: Economic Development Committee (EDC)
Councilor Brenerman/Chair
Meeting held on April 4, 2017, vote was 3-0 for Approval

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading and Final Action: April 24, 2017

Can action be taken at a later date: ____ Yes ____ X No (If no why not?) With the May meetings being taken up by FY2018 City budget process, it is being requested that this item be taken up at the April 24, 2017, Council meeting for the due diligence period to begin.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

Under the direction of the EDC, a draft Purchase and Sale Agreement has been negotiated with AIM Riverside II, LLC to sell a seven-acre City-owned property adjacent to Lucas Tree located at 636 Riverside Street.

II. AGENDA DESCRIPTION

Under the direction of the EDC, a draft Purchase and Sale Agreement has been negotiated with AIM Riverside II, LLC to sell a seven-acre City-owned property adjacent to Lucas Tree located at 636 Riverside Street in the amount of \$604,800.

Staff has been marketing the availability of this City-owned industrial property, for several years, through the local commercial broker network. A number of interested parties have looked at this property for various types of development projects. This proposed development plan, which includes multi-industrial tenant type development, with over 75,000 square feet, optimizes the site in terms of the amount of square footage, and provides much needed industrial tenant flexible space options to generate the highest overall development value and associated job creation to the City.

III. BACKGROUND

Under the direction of the EDC, a draft Purchase and Sale Agreement has been negotiated with AIM Riverside II, LLC to sell a seven-acre City-owned property adjacent to Lucas Tree located at 636 Riverside Street in the amount of \$604,800.

Staff has been marketing the availability of this City-owned industrial property, for several years, through the local commercial broker network. A number of interested parties have looked at this property for various types of development projects. This proposed development plan, which includes multi-industrial tenant type development, with over 75,000 square feet, optimizes the site in terms of the amount of square footage, and provides much needed industrial tenant flexible space options to generate the highest overall development value and associated job creation to the City.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Sale of City properties to stimulate development, job creation, and increase the commercial tax revenue base.

V. FINANCIAL IMPACT

Highlights of the business terms related to this transaction include:

Property Sale Price: \$90,000 per acre, including 6.72 acres (excluding acreage associated with the cell tower easement, steep slopes/wetlands, and future conservation easement), at a sale price of \$604,800.

Sale Price Off-set to reimburse the Buyer for the documented costs to relocate electric and communication service to the City cell tower up to \$6,500.

Broker Fee: City payment of one-half the broker fee in the amount of two (2) percent of the property sale price payable at closing.

Environmental Indemnifications: Buyer to provide environmental indemnifications to the City.

Subdivision Amendment: City agrees to apply for and secure City approvals to subdivide this property to create this parcel. The property survey is done. City Economic Development staff will file for the Subdivision Amendment at time of Project Site Plan Approval.

City Right to Repurchase the Property: If AIM Riverside II, LLC, its successors, assigns, or transferees, fails to commence construction of the project on the property within 12 months after the closing and construct 50,000 square feet of building within seven (7) years after closing, the City shall have the right, but not the obligation, to repurchase the premises at the purchase price. This

provision will survive closing, and the City's deed to AIM Riverside shall include a reference to the City's option to repurchase the premises.

VI. STAFF ANALYSIS

Staff's position is that the proposed development plan which includes multi-industrial tenant type development, with over 75,000 square feet, optimizes the site in terms of the amount of square footage, and provides much needed industrial tenant flexible space options to generate the highest overall development value and associated job creation to the City. See attached Draft Purchase and Sale Agreement Exhibit A for the proposed site development plan. The Buyer is Don St. Jean who is a longstanding Portland developer, property owner, and manager of other industrial properties in Portland.

The site proposed for sale has limited street frontage which creates challenges for truck access to the site, combined with an adjacent conservation easement. The site sale price of \$90,000 per acre is in line with market value for vacant industrial property. Additionally, the Buyer has agreed, and is required in the Purchase and Sale Agreement, to work with the City to establish an easement to allow placement of a new City public safety communications tower, including vehicle access to the cell tower for annual maintenance. Also, the City has a right to repurchase this property in the case of non-performance. Lastly, the Buyer is willing to work with Portland Trails to establish public access to the trails managed by Portland Trails.

VII. RECOMMENDATION

The EDC voted unanimously (3-0) to forward this to the City Council with a recommendation to approve the Purchase and Sale Agreement in substantial form as presented.

VIII. LIST ATTACHMENTS

Draft Purchase and Sale Agreement between the City of Portland and AIM Riverside II, LLC.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this _____ day of _____, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and AIM Riverside II, LLC, or assigns, a Maine limited liability company having a mailing address of c/o Thomas Jewell, 477 Congress Street, Portland, ME 04101 (hereinafter referred to as "Buyer" or "AIM Riverside").

RECITALS

WHEREAS, the CITY is the owner of approximately 7.02 acres of land at 650 Riverside Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A (the "Site Plan") and incorporated herein, and more particularly described in Exhibit B attached hereto and incorporated herein (the "Premises"); and

WHEREAS, AIM Riverside desires to purchase the Premises, and the City desires to convey the Premises to AIM Riverside, subject to an easement benefitting the CITY, its tenants and licensees, for access to, utilities for, and maintenance of a City-owned communications tower (the "Tower") on the Premises (the "Tower Easement"); a public access easement to the City or Portland Trails to access adjacent City-owned property (the "Access Easement") that is subject to a March 26, 2010 Conservation Easement to Portland Trails, recorded in the Cumberland County Registry of Deeds, Book 27677, page 125 (the "Conservation Easement"); and a declaration of environmental covenants to be recorded (the "Declaration of Environmental Covenants") in accordance with an August 30, 2010 Commissioner's Certification of Completion Of Remedial Actions Under A Voluntary Response Action Plan recorded in the Cumberland County Registry of Deeds, book 28269, page 281 (the "Certificate of Completion").

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to AIM Riverside, and AIM Riverside agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
2. **CONSIDERATION.** The purchase price for the Premises shall be Six Hundred Five Thousand Seven Hundred Dollars (\$604,800) (the "Purchase Price"), subject to the following cost adjustments and conditions:
 - a. Buyer shall be responsible for all labor, materials and costs associated with the relocation of any and all utilities serving the Tower if Buyer determines that such utilities need to be relocated. In connection therewith, the City will reimburse the Buyer up to \$6,500 for documented costs for such relocation.
 - b. In addition to the Purchase Price, Buyer shall pay at closing two percent (2%) of the Purchase Price to NAI The Dunham Group, Inc.

- c. The City acknowledges receipt of AIM Riverside's deposit in the amount of Twenty Thousand Dollars (\$20,000.00) (the "Deposit") that the parties agree will be held in escrow as of the date of this Agreement; and
- d. The AIM Riverside shall pay the remainder of the Purchase Price to the City by wire transfer at closing.

3. TITLE AND DUE DILIGENCE.

- a. Due Diligence Period. AIM Riverside will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is three months after the date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations. City shall provide whatever information it, or its agents, have in this regard to AIM Riverside within 10 days of the effective date of this Agreement.
- b. Title and Survey Objections. AIM Riverside will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.
- d. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify AIM Riverside of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to AIM Riverside's reasonable satisfaction, AIM Riverside will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
- e. City shall convey the Premises to AIM Riverside at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good, marketable and insurable title, free and clear of all encumbrances except (i) the Tower Easement, Access Easement, and Declaration of Environmental Covenants, which shall be in form and substance satisfactory to the City; (ii) easements for utilities servicing the property, (ii) zoning ordinances, and (iii) real estate taxes not yet due and payable. Further, AIM Riverside acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and

personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that AIM Riverside and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

- a. During the Due Diligence Period, AIM Riverside and its employees, consultants, contractors and agents shall have the right, at AIM Riverside's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as AIM Riverside determines, it is sole discretion, to be required to determine the suitability of the Premises for AIM Riverside's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. AIM Riverside agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of AIM Riverside and its employees, consultants, contractors and agents on the Premises.
- c. AIM Riverside shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and AIM Riverside hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by AIM Riverside of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. AIM Riverside shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law.
- e. In the event that AIM Riverside does not purchase the Premises, AIM Riverside agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any physical damage caused to the Premises in

connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that AIM Riverside shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

- f. The parties hereto acknowledge and agree that it is a condition to AIM Riverside's obligations under this Agreement that the results of the Inspections be acceptable to AIM Riverside in its sole discretion. If the results of such due diligence are not acceptable to AIM Riverside in its sole discretion, and if AIM Riverside exercises its right to terminate this Agreement, then the City shall refund to AIM Riverside the Deposit, if previously paid, without interest, within thirty (30) days after receipt of AIM Riverside's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** AIM Riverside shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by AIM Riverside in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to AIM Riverside's financing or closing shall be paid for by AIM Riverside.
6. **DEFAULT AND REMEDIES.** In the event that AIM Riverside defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if AIM Riverside is not then in default hereunder, AIM Riverside shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.
7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, AIM Riverside may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
8. **PROPERTY SOLD "AS IS, WHERE IS."** AIM Riverside acknowledges that AIM Riverside has had an opportunity to inspect the Premises, and to hire professionals to

do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by AIM Riverside of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

9. **ENVIRONMENTAL INDEMNIFICATION.** AIM Riverside covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys’, consultants’, and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against AIM Riverside or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City’s release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon AIM Riverside’s successors, assigns, and transferees.
10. **CONDITIONS PRECEDENT TO CLOSING.** The City shall pursue an amendment to the Riverside Subdivision approved by the City of Portland Planning Board on September 21, 2010, recorded in the Cumberland County Registry of Deeds, Plan Book 210, Page 352, in order to obtain approval for the creation of the parcel which constitutes the Premises, including that the driveway access to the Premises will be from Riverside Street. If it is required, AIM Riverside shall be responsible for all costs of removing the existing curb cut and driveway which is encroaching on the property subject to the Conservation Easement. AIM Riverside shall diligently pursue site plan approval from the city of Portland Planning Board, and the issuance of a Building Permit. In the event the City or AIM Riverside are unable to obtain such approvals prior to the Closing Date, as defined below, then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement.
11. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at the offices of AIM Riverside’s counsel at a time agreeable to the parties on or before the day that is eight months after the date of this Agreement (the “Closing Date”). At the Closing:

- a. the City shall execute, acknowledge and deliver to AIM Riverside a municipal quitclaim deed conveying to AIM Riverside good and marketable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
- b. AIM Riverside shall deliver the balance of the Purchase Price to the City by wire transfer; and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

12. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY. AIM Riverside agrees to commence construction of the project generally depicted on the attached Plan (the "Project") within twelve (12) months after closing. If AIM Riverside, its successors, assigns, or transferees fails to commence construction of the Project on the Property within 12 months after the closing, and construct 40,000 square feet of building within seven (7) years after closing, the City shall have the right, but not the obligation, to repurchase the Premises at the lesser of (1) the Purchase Price plus all construction and approval expenses incurred by AIM Riverside, or successors, to that juncture, or (2) the fair market value of the Premises determined by an appraiser agreed upon by the parties. The provisions of this paragraph will survive closing, and the City's deed to AIM Riverside shall include a reference to the City's option to repurchase the Premises.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and AIM Riverside.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. TIME. The City and AIM Riverside each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto

hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

- 19. NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR AIM Riverside: AIM Riverside II, LLC
c/o AIM Properties
531 E. Chapman Avenue
Orange, CA 92866

With a copy to: Thomas Jewell, Esq.
477 Congress Street
Portland, ME 04101

- 20. SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

- 21. BROKERS.** City and AIM Riverside shall each pay NAI The Dunham Group at closing a brokerage commission equal to two percent (2%) of the Purchase Price at closing, for a total commission of four percent (4%) of the Purchase Price. The CITY and AIM Riverside each represent and warrant that they have not dealt with a real estate broker in connection with this transaction other than NAI The Dunham Group. AIM Riverside agrees to indemnify and hold harmless City from any claims made by any broker should AIM Riverside's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless AIM Riverside from any claims made by any broker should City's

representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

City OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

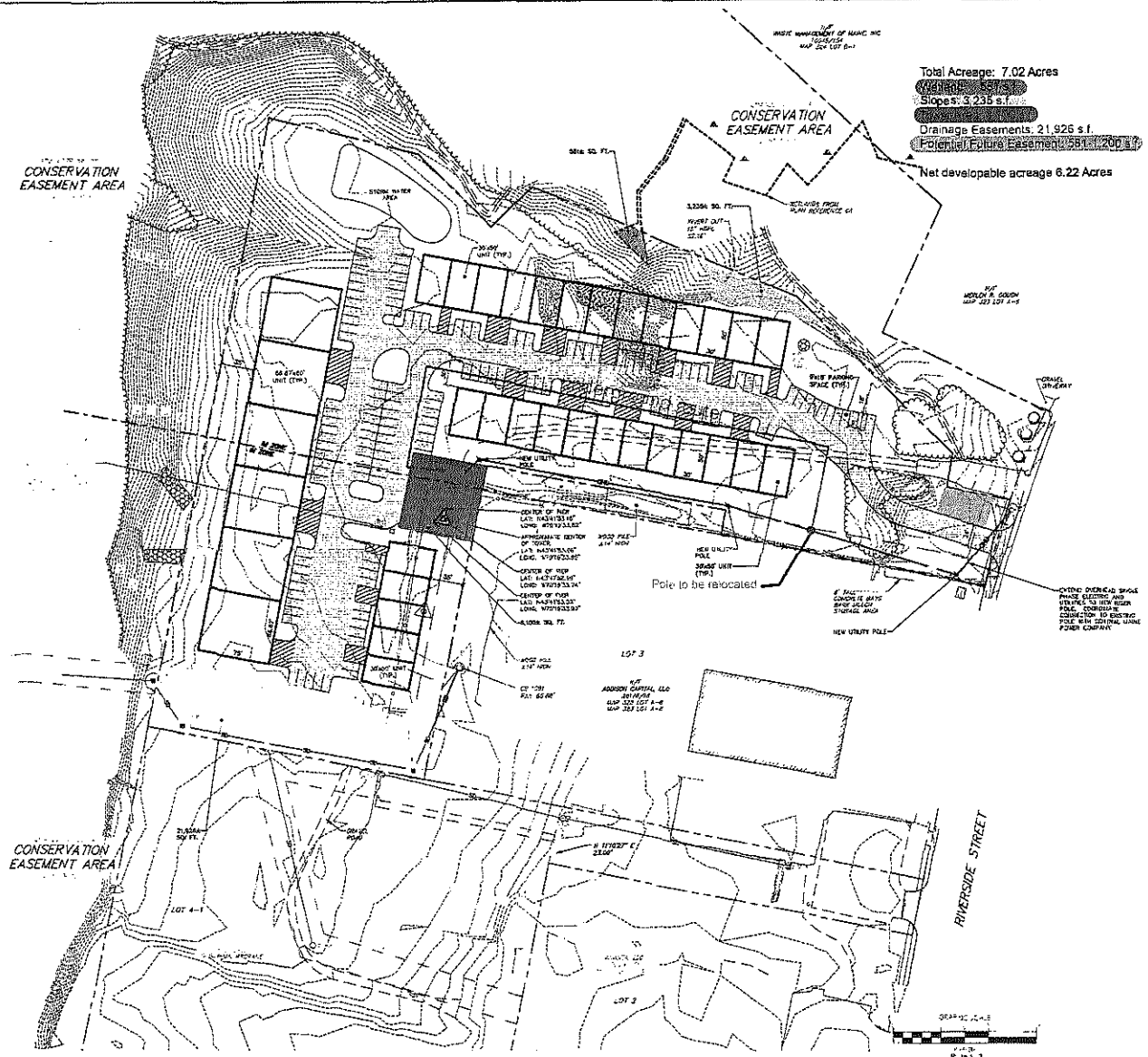
AIM RIVERSIDE II, LLC

WITNESS

Printed Name: _____
Its _____

Approved as to Form:

Corporation Counsel's Office



NOTES

Order 213-16/17
Tab 19 4-24-17

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 AND AUTHORIZING THE
LAND EXCHANGE AGREEMENT
BETWEEN CPB2 MANAGEMENT LLC, MAINE DEPARTMENT OF
TRANSPORTATION AND THE CITY OF PORTLAND
RE: 58 FORE STREET**

ORDERED, that the Land Exchange Agreement between CPB2 Management LLC, Maine Department of Transportation and the City of Portland is hereby approved and accepted 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.



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

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

FROM: Greg Mitchell, Economic Development Director

DATE: April 3, 2017

SUBJECT: Order Authorizing a Land Exchange Agreement between the Maine Department of Transportation (MDOT); CPB2; and the City of Portland

SPONSOR: Economic Development Committee, Councilor Brenerman/Chair Meeting held on March 29, 2017, vote was unanimous (3-0)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: April 24, 2017

Can action be taken at a later date: X-Yes

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

The Land Exchange Agreement involves the exchange of small portions of the existing rail/trail corridor including CPB2, Maine Department of Transportation, and the City of Portland property.

II. AGENDA DESCRIPTION

The exchange of lands involves CPB2, the State of Maine Department of Transportation (MDOT,) and the City of Portland. The CPB2 approved master plan shows a southerly shift in location of an existing MDOT rail right-of-way to accommodate the new private roadway extending from Thames Street onto the Portland Company complex. The shift in right-of-way encroaches onto the northerly corner of the City's "Amethyst Lot" resulting in a 2,537 sq ft transfer of land from the City of Portland to MDOT. CPB2 compensates the City for this loss with a grant of an equivalent area of land located along the water. Taken together with four other discrete "slivers" of property transfers

proposed along the MDOT right-of-way, the total land area owned by the City would remain consistent. Staff analysis concludes that the properties in this Land Exchange Agreement are of similar size and equal value so no funds will be transferred.

III. BACKGROUND

The exchange of lands involves CPB2, the State of Maine Department of Transportation (MDOT,) and the City of Portland. The CPB2 approved master plan shows a southerly shift in location of an existing MDOT rail right-of-way to accommodate the new private roadway extending from Thames Street onto the Portland Company complex. The shift in right-of-way encroaches onto the northerly corner of the City's "Amethyst Lot" resulting in a 2,537 sq ft transfer of land from the City of Portland to MDOT. CPB2 compensates the City for this loss with a grant of an equivalent area of land located along the water. Taken together with four other discrete "slivers" of property transfers proposed along the MDOT right-of-way, the total land area owned by the City would remain consistent.

As planned, the CPB2 master plan shows an extension of public and private roadway right-of-way from the current terminus of Thames Street onto the Portland Company property. The extended roadway, consistent with the current Thames Street ROW, is located northerly of and adjacent to the MDOT rail right-of-way as occupied by the Maine Narrow Gauge Railroad and the Eastern Promenade Trail.

The planned roadway transitions from a public right-of-way to private at the location of the recent transfer of property from the City to CPB2 at the northerly end of the so-called "Thames Street Lot." As the private right-of-way extends northeast to serve the redevelopment of the Portland Company, the CPB2 master plan shows the road curving to the south toward the Fore River. The southerly shift in the private roadway requires a corresponding shift of the MDOT ROW onto a thin triangle of City land at the Amethyst Lot (shown in pink on Attachment 1). The area of the encroachment is currently occupied by the Eastern Prom Trail is proposed to be transferred from the City to MDOT.

CPB2 proposes to compensate the City for this loss of land by extending the Amethyst Lot to the northeast by an equivalently sized (2,551 sf) trapezoid of Portland Company land located along and 5 feet northerly of the Fore River seawall. The 5-foot seawall setback keeps the seawall under CPB2 ownership. CPB2 would retain maintenance responsibilities for the seawall, as well as submerged lands rights extending into the Fore River. A significant portion of the compensating trapezoid is subject to a 30-foot wide Portland Water District sewer easement which extends easterly through the Amethyst Lot onto and along the Portland Company's water frontage.

The proposed shifts in the MDOT right-of-way also results in minor adjustments of property located to the west. These adjustments create slivers of land of a few hundred square feet apiece and result in no net loss to the City.

With the use of land (both from and to the City) anticipated staying in trail and/or open space, the parcels in play are considered equal in value. CPB2 has included Portland Trails in their planning through their master planning process.

Finally, the geometry of the new right-of-way alignment and the compensating trapezoid has been incorporated into planning for reuse of the Amethyst Lot. Final designs and use of these properties will require review and approval by the full City Council.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

City Council vote to approve the Land Exchange Agreement.

V. FINANCIAL IMPACT

As the properties in this Land Exchange Agreement are deemed to be of equal value, there is no financial impact to the City.

VI. STAFF ANALYSIS

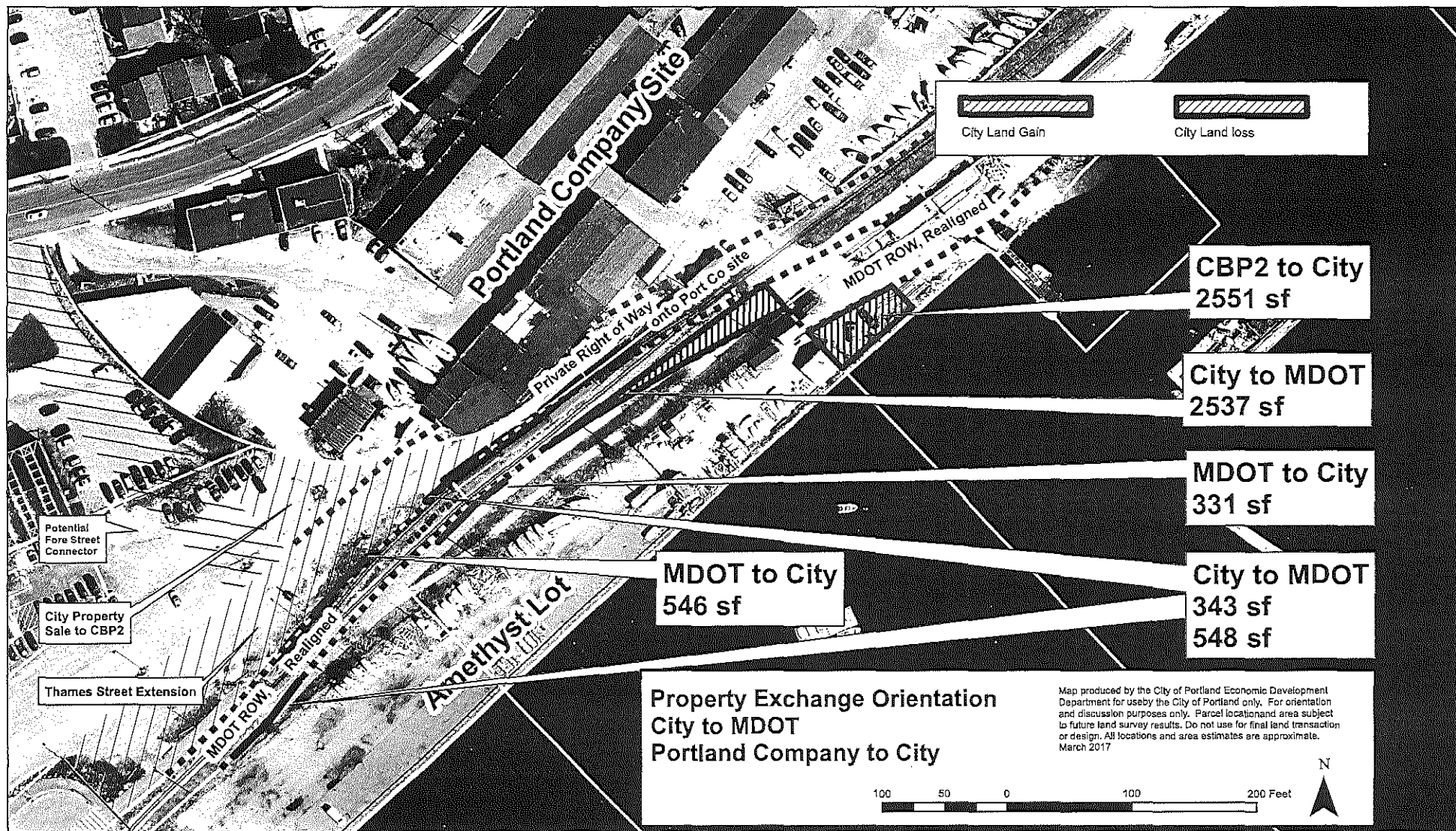
Staff analysis concludes that the properties in this Land Exchange Agreement are of similar size and equal value. In addition, this exchange of land is a component of the integrated project planning for this area of the Eastern waterfront. As such, this Land Exchange Agreement benefits all parties involved.

VII. RECOMMENDATION

The EDC voted unanimously (3-0) to recommend to the City Council approval of the Land Exchange Agreement in substantially in the form as attached.

VIII. LIST ATTACHMENTS

1. Orientation Graphic: An orientation graphic on an aerial photo showing the relative location of previous land negotiations between CPB2 and the City and the proposed property exchange under consideration. Given that five separate exchanges, in addition to previous land transfers negotiated with CPB2, this image is provided to place this transaction within the context of the Thames Street right-of-way extension and the ongoing Amethyst Lot planning process.
2. Exhibit to Land Exchange Agreement: 58 Fore Street, MDOT R.O.W. Figures 1 and 2. Woodard and Curran, on behalf of CPB2, has produced a graphic describing existing conditions and post transfer results as an Exhibit to the Land Exchange Agreement.
3. Land Exchange Agreement: A three party exchange agreement between CPB2, MDOT, and the City of Portland. This document was drafted by CPB2's attorneys and has been edited by MDOT and the City's Corporation Counsel.



City Land Gain

City Land loss

CBP2 to City
2551 sf

City to MDOT
2537 sf

MDOT to City
331 sf

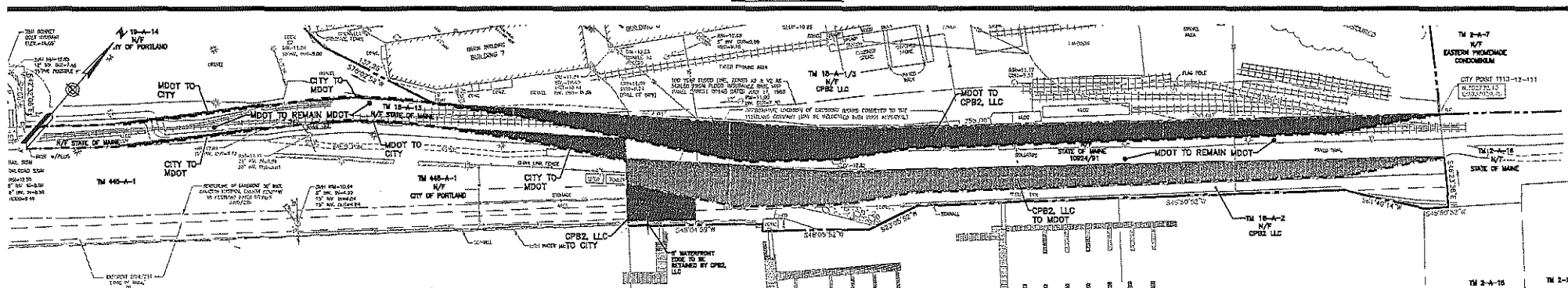
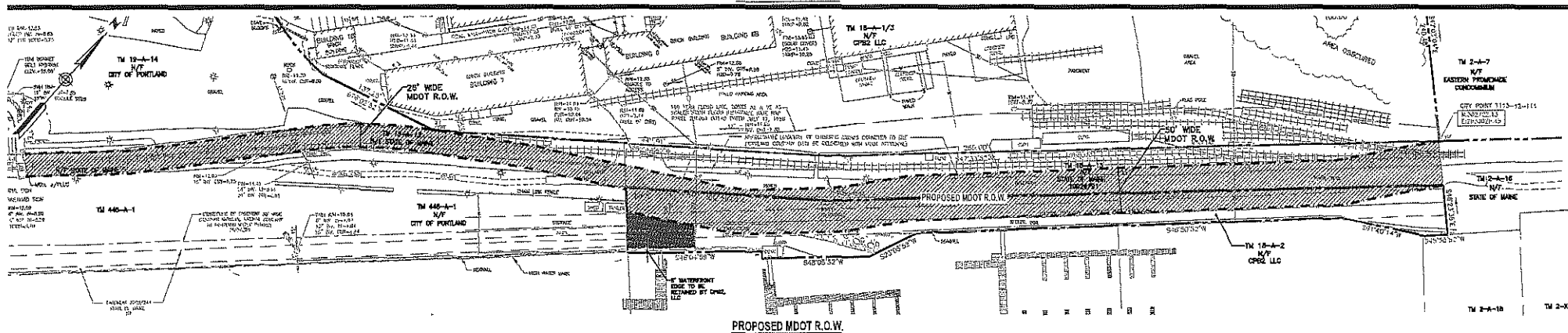
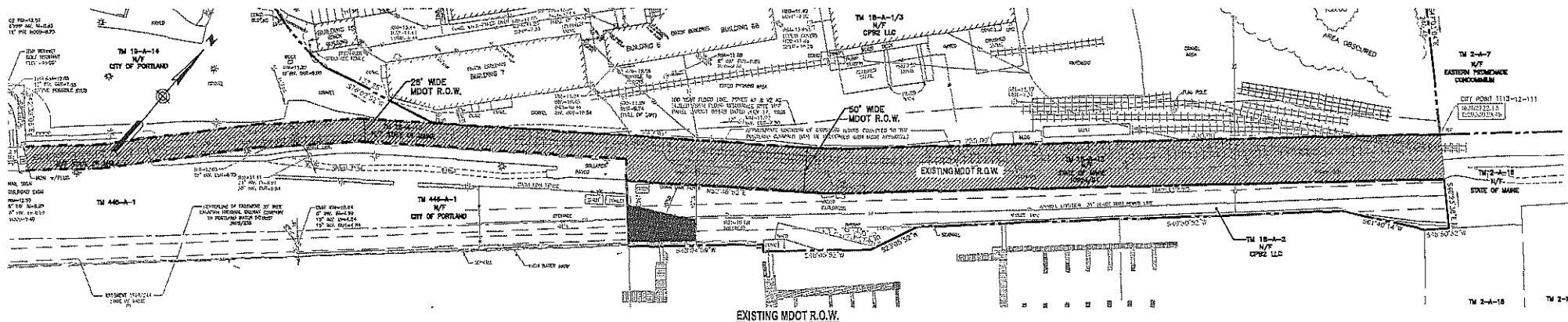
City to MDOT
343 sf
548 sf

MDOT to City
546 sf

Property Exchange Orientation
City to MDOT
Portland Company to City

Map produced by the City of Portland Economic Development Department for use by the City of Portland only. For orientation and discussion purposes only. Parcel location and area subject to future land survey results. Do not use for final land transaction or design. All locations and area estimates are approximate. March 2017





Scale: 1" = 50'

12/1/2016

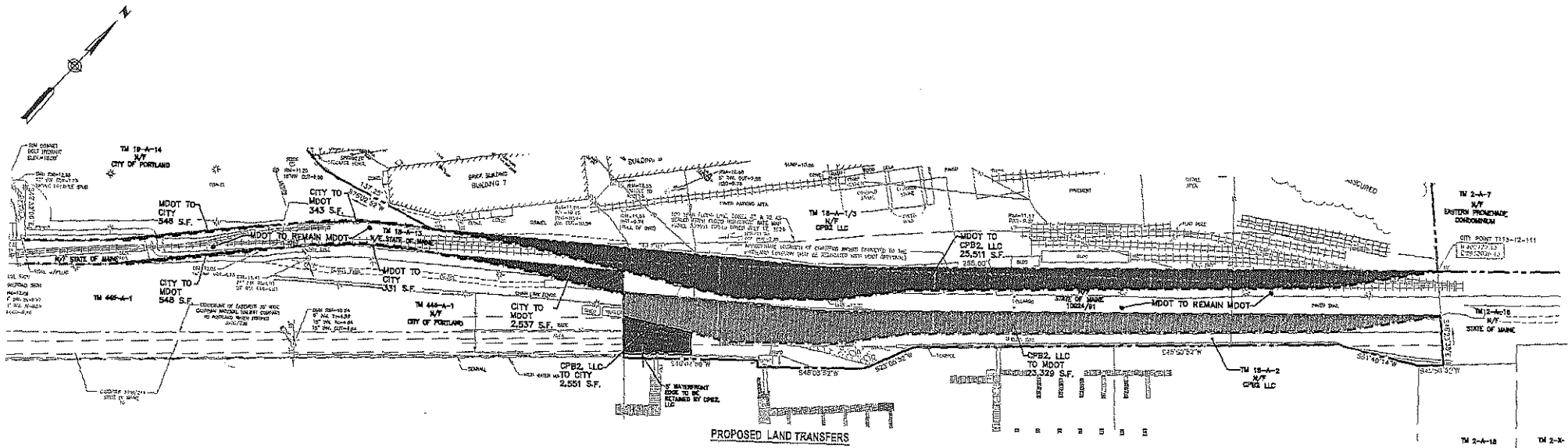
CPB2 LLC

PLAN REFERENCE

58 FORE STREET

MDOT R.O.W. FIGURE - 1

WOODWARD & CURRAN



CITY

EXISTING CITY LAND TRANSFERRED TO:		NEW CITY LAND TRANSFERRED FROM:	
MDOT	548 S.F.	MDOT	546 S.F.
	343 S.F.		331 S.F.
	2,537 S.F.		
CPB2	0 S.F.	CPB2	2,551 S.F.
	TOTAL: 3,428 S.F.		TOTAL: 3,428 S.F.

MDOT

EXISTING MDOT LAND TRANSFERRED TO:		NEW MDOT LAND TRANSFERRED FROM:	
CITY	546 S.F.	CITY	548 S.F.
	331 S.F.		343 S.F.
			2,537 S.F.
CPB2	25,511 S.F.	CPB2	23,328 S.F.
	TOTAL: 26,358 S.F.		TOTAL: 25,757 S.F.

CPB2

EXISTING CPB2 LAND TRANSFERRED TO:		NEW CPB2 LAND TRANSFERRED FROM:	
CITY	2,551 S.F.	CITY	0 S.F.
MDOT	23,328 S.F.	MDOT	25,511 S.F.
	TOTAL: 25,880 S.F.		TOTAL: 25,511 S.F.

Scale: 1" = 50'
1/10/2017

CPB2 LLC
EASTERN HANOVER COMPANY PORTLAND, MAINE



PLAN REFERENCE

SOURCES OF EXISTING DOCUMENTS PLAN ENTITLED "BOUNDARY & TOPOGRAPHIC SURVEY AT 58 FORE STREET, PORTLAND, ME" PREPARED BY OWEN HOSKELL, INC., FARMINGTON, ME. DATED AUGUST 16, 2016 (ON DATE 8/16/2016). HORIZONTAL DATUM: NAD83; VERTICAL DATUM: MEAD'S MEAN SEA LEVEL; WEST ZONE, US FOOT. REFERENCE: EASTING CITY OF PORTLAND DATUM.

**58 FORE STREET
MDOT R.O.W. FIGURE - 2**



EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (this "Agreement") made this _____ day of _____, 2017 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine (hereinafter referred to as "CITY"), CPB2 LLC, a Delaware limited liability company, having a mailing address of c/o CPB2 Management LLC, P.O. Box 7987, Portland, Maine 04112 (hereinafter referred to as "CPB2"), and STATE OF MAINE DEPARTMENT OF TRANSPORTATION, an agency of the State of Maine, having a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (hereinafter referred to as "DOT"). For the purposes of this Agreement, the CITY, CPB2 and DOT are sometimes hereinafter collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, CITY is the owner of that certain real property located along the eastern waterfront that is designated on the official tax map for the City of Portland as Block 448, Lot A-1 (the "CITY Property"); and

WHEREAS, CPB2 is the owner of that certain real property known as 58 Fore Street in the City of Portland, County of Cumberland and State of Maine, which is more particularly described in deeds dated July 19, 2013 and April 1, 2014 and recorded in the Cumberland County Registry of Deeds in Book 30879, Page 75 and Book 31425, Page 267 respectively (the "CPB2 Property"); and

WHEREAS, DOT is the owner of that certain right of way along the eastern waterfront that is designated on the official tax map for the City of Portland as Block 18, Lot A-13 (the "DOT Right of Way"); and

WHEREAS, in connection with the construction of the Thames Street extension and the development of the CPB2 Property, CITY and CPB2 have proposed the relocation of a portion of the DOT Right of Way in the manner shown on the Land Transfer Plan prepared by Woodard & Curran dated December 1, 2016 and revised January 10, 2017, a copy of which is attached hereto as Exhibit A (the "Plan"); and

WHEREAS, DOT has approved the relocation of the DOT Right of Way, as shown on the Plan; and

WHEREAS, in order to accomplish such relocation, the parties have agreed to certain property transfers, as identified herein; and

WHEREAS, the parties hereto desire to memorialize their agreements;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **EXCHANGE.** In accordance with the terms and conditions set forth in this Agreement, (i) CITY agrees to transfer to DOT the property designated on the Plan as "City to MDOT" (the "CITY/DOT Exchange Property") by municipal quitclaim deed, (ii) DOT agrees to transfer to CITY the property designated on the Plan as "DOT to City" (the "DOT/CITY Exchange Property") by deed of vacation, (iii) DOT agrees to transfer to CPB2 the property designated on the Plan as "DOT to CPB2" (the "DOT/CPB2 Exchange Property") by deed, of vacation (iv) CPB2 agrees to transfer to DOT the property designated on the Plan as "CPB2 to DOT" (the "CPB2/DOT Exchange Property") by quitclaim deed, and (v) CPB2 agrees to transfer to CITY the property designated on the Plan as "CPB2 to City" (the "CPB2/CITY Exchange Property") by quitclaim deed, together with an easement in a form satisfactory to the CITY and CPB2 allowing public access over the entire five foot strip of land separating the CPB2/CITY Exchange Property from the water (said properties being hereinafter collectively referred to as the "Exchange Properties" and individually referred to as an "Exchange Property").
2. **CONSIDERATION.** The parties agree that the properties being conveyed are of a comparable size and value and that there is no additional consideration being paid or received by any party in connection with the exchanges.
3. **SURVEY.** CPB2 shall, at its sole expense, cause an ALTA survey to be prepared that will more specifically describe, by metes and bounds, the Exchange Properties. CPB2 shall provide such survey and associated property descriptions to the CITY and to DOT on or before the expiration of the Due Diligence Period (as defined in Paragraph 4.a) for their review and approval.
4. **TITLE.**
 - a. **Due Diligence Period.** Each Party will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is one hundred eighty (180) days after the date of this Agreement (the "Due Diligence Period") to complete its title and survey examinations.
 - b. **Title and Survey Objections.** Each Party will have thirty (30) days from the expiration of the Due Diligence Period (the "Due Diligence Response Period") to deliver to the other Parties any written objections to title or survey matters (other than the permitted exceptions identified herein), including, but not limited to, those affecting marketability or use. Objections not made prior to the end of the Due Diligence Response Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the date of this Agreement may be made at any time prior to the closing.
 - c. **Option to Cure.** In the event of (i) an objection to the title or the survey pursuant to Paragraph 4.b or (ii) an objection to the results of the Inspection (as defined in Paragraph 5.a) pursuant to Paragraph 5.f, the Party who owns the property to which such objection relates (the "Notice Recipient") will have the option, but not the obligation, to cure the objection and will notify the

Party who gave the objection notice (the "Notice Sender") of its election within ten (10) business days after receipt of the objection. In the event that the Notice Recipient elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the Parties may agree, to cure the objection to the satisfaction of the Notice Sender. In the event that the Notice Recipient does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to the satisfaction of the Notice Sender, then the Notice Sender will have the option to (1) terminate this Agreement (after which the Parties will not have any further obligation or liability to the other Parties under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so). In the event the Notice Sender elects to cure such objection, but the Notice Sender is unable to cure such objection to its reasonable satisfaction within said 60-day period, then the Notice Sender will have the option to (1) terminate this Agreement (after which the Parties will not have any further obligation or liability to the other under this Agreement), or (2) waive the objection and close.

- d. CPB2 shall convey its property at the closing in fee simple by a quitclaim deed. The City shall convey its property at the closing in fee simple by municipal quitclaim deed. Title shall be free and clear of all encumbrances, except (i) easements for utilities servicing the property, (ii) zoning ordinances, and (iii) real estate taxes not yet due and payable.
- e. DOT shall convey its property at the closing as a full release of whatever property interest(s) DOT holds by a deed of vacation. Title shall be free and clear of all encumbrances, except (i) easements for utilities servicing the property, and (ii) zoning ordinances.

5. INSPECTIONS.

- a. During the Due Diligence Period and the Due Diligence Response Period, each Party and their respective employees, consultants, contractors and agents shall have the right, at such Party's expense (except as otherwise set forth herein), to enter on the Exchange Property being conveyed to them, at reasonable times, in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as such Party determines, in its sole discretion, to be required to determine the suitability of such Exchange Property for such Party's intended use (collectively, the "Inspections"). The Parties acknowledge that such Inspections may include the digging of test pits, which each Party hereby approves.
- b. To the extent permitted by law, the Party performing the Inspections agrees to defend, indemnify and hold harmless the Party on whose property the Inspections are being performed against any mechanics' liens that may

arise from the activities of said Party and its employees, consultants, contractors and agents on the property.

- c. Each Party shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and the Party performing the Inspections hereby releases the Party on whose property the Inspections are being performed from, and agrees to indemnify, defend, and hold said Party harmless, to the extent permitted by law, against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by said Party on account of any injury to person or damage to property arising out of the exercise by the other Party of its rights hereunder, except to the extent that such Damages result from the act or omission of the Party on whose property the Inspections are being performed. Nothing in this Agreement shall waive any defense, immunity or limitation of liability that may be available to CITY and/or DOT under the Maine Tort Claims Act (14 M.R.S. § 8101 et seq.) or any other privileges or immunities provided by law. Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.
- d. The Party (other than DOT and the CITY) performing the Inspections shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance and general commercial or public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage and also Workers' Compensation Insurance coverage to the extent required by law. DOT and the City are self-insured.
- e. In the event that the Party performing the Inspections does not acquire the property in question for any reason or for no reason, said Party agrees to either return the property in question as nearly as possible to its original condition after conducting the Inspections, or, at the option of the Party who owns the property in question, reimburse the Party owning the property for any physical damage caused to the property in question in connection with the Inspections; provided, however, the Parties hereby acknowledge and agree that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the property caused by such inspections, studies, tests, exams, and assessments, and that the Party performing such Inspections shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to each Party's obligations under this Agreement that the results of the Inspections be acceptable to the Party performing such Inspections in its sole discretion. If the results of such due diligence are not acceptable to the Party performing such Inspections in its sole discretion, then such Party

shall notify the Party who owns the property to which such results relate, and the provisions of Paragraph 4.c shall apply. If such Party ultimately exercises its right to terminate this Agreement, then the Parties shall not have any further obligations or liabilities under this Agreement to each other except as expressly set forth in this Agreement.

6. TAXES, PRORATIONS AND RECORDING FEES.

- a. CPB2 shall be liable for all real estate taxes attributable to the CPB2/DOT Exchange Property and the CPB2/CITY Exchange Property through the end of the fiscal year in which the closing occurs. CPB2 shall be liable for all real estate taxes attributable to the DOT/CPB2 Exchange Property beginning as of the start of the fiscal year following the closing and continuing thereafter. Because the DOT/CPB2 Exchange Property, the DOT/CITY Exchange Property, and the CITY/DOT Exchange Property are currently owned by entities that are exempt from real estate taxes, no taxes have been assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated for those properties at the closing.
- b. The DOT/CPB2 Exchange Property, the CPB2/DOT Exchange Property, and the CPB2/CITY Exchange Property are the only Exchange Properties subject to Maine real estate transfer tax at closing, and any transfer tax due shall be paid for by CPB2 in accordance with 36 M.R.S. § 4641-A. CITY and DOT are exempt from paying the transfer tax pursuant to 36 M.R.S. § 4641-C.
- c. The recording fees for the various deeds shall be paid for by CPB2.

7. DEFAULT AND REMEDIES. In the event that any Party defaults under this Agreement, any of the non-defaulting Parties shall have the right (i) to the extent permitted by law, to pursue specific performance or (ii) in lieu of specific performance, as its sole remedy to terminate this Agreement (after which the Parties will not have any further obligation or liability to the other under this Agreement).

8. RISK OF LOSS. The risk of loss or damage to any of the Exchange Properties by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the owner of the Exchange Property in question. The Exchange Properties are to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event any Party is not able to deliver their Exchange Property as stated, any of the other Parties may terminate this Agreement, and the Parties shall not have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

9. PROPERTY SOLD "AS IS, WHERE IS." Except as otherwise set forth in this Agreement, each Party acknowledges (i) that, by the end of the Due Diligence Response Period, it will have had an opportunity to inspect the Exchange Property it is receiving, or to hire professionals to do so; (ii) that such Exchange Property will be sold "as is, where is" and "with all faults;" and (iii) that the current owner of such

Exchange Property, and its agents, shall not be deemed to have made any representations or warranties with respect to such Exchange Property, including, without limitation, the accuracy of any statement relating to boundaries or acreage, or relating to any other matters contained in any description of such Exchange Property, or relating to the fitness of such Exchange Property for a particular purpose, or relating to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of such Exchange Property. Acceptance by a Party of the deed at closing to the Exchange Property it is receiving shall be deemed to be full performance and discharge by the Party conveying such Exchange Property of every agreement and obligation contained herein.

10. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of CPB2's counsel at a time agreeable to the Parties on or before the earlier of that date that is 30 days after the date that the CITY receives the last of the Thames Street Extension Approvals, as that term is defined below, or January 31, 2018, so long as the Due Diligence Response Period has expired. Provided, however, that if the CITY has not received the last of the Thames Street Extension Approvals by January 1, 2018, the closing date, may, upon the mutual agreement of the Parties, be extended to a later date agreed to by the Parties. At the closing:

- a. each Party shall execute, acknowledge and deliver the deed required under this Agreement to convey title to the Exchange Property in question, free and clear of all encumbrances other than those approved by the recipient of such Exchange Property in its sole discretion;
- b. each Party shall execute, acknowledge and deliver such affidavits and indemnifications, to the extent permitted by law, in form and substance reasonably satisfactory to the applicable Parties, regarding mechanics' liens, materialmen's' liens and parties in possession sufficient to eliminate any title insurance exceptions for these matters;
- c. each Party shall deliver to the others such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement; and
- d. DOT will grant to CPB2 an easement in accordance with the provisions of Paragraph 1(b) of an associated MOU, as such MOU is defined in Paragraph 11 below.

For the purposes of this Agreement, the term "Thames Street Extension Approvals" shall mean CITY'S receipt of all necessary permits and regulatory approvals to construct the Thames Street extension and related utilities and the appropriation by the Portland City Council of the funds necessary to do so.

11. CONTINGENCIES. DOT and CPB2 entered into a certain Memorandum of Understanding dated March 31, 2015 relating to the portion DOT Right of Way that

bisects the CPB2 Property, which memorandum contemplated the exchange of property between the parties thereto (the "MOU"). DOT and CPB2 acknowledge and agree that DOT's obligations under this Agreement are contingent upon (i) the submission to DOT of the geological tests of the soils required by Paragraph 3 of the MOU and, if applicable, the performance of the work described in Paragraphs 3.b of the MOU, (ii) the consent of the CITY to the relocation of the Trail Corridor (as defined in the MOU), as contemplated by Paragraph 7 of the MOU, and (iii) if applicable, CPB2 obtaining the consent of the Trust for the Preservation of Maine Industrial History and Technology (the "Narrow Gauge") to the relocation of the narrow gauge railroad track or to the terms of a lease agreement between the Narrow Gauge and CPB2 to replace the terms of the Narrow Gauge's existing lease with DOT, as contemplated by Paragraphs 4 and 7 of the MOU.

12. ENVIRONMENTAL ASSESSMENT.

As outlined in the MOU, if it is determined by CPB2 that a Phase I Environmental Site Assessment of the existing Rail Corridor, as such is defined in the MOU, is required in connection with the exchange contemplated herein, CPB2 agrees to obtain, at its sole cost and expense, such Phase I Assessment and to submit the resulting report to DOT for review.

- a. If, as a result of the findings of the Phase I Assessment, it is determined that a Phase II Environmental Site Assessment is required, CPB2 agrees to obtain, at its sole cost and expense, such Phase II Assessment and to submit the resulting report and all data and associated documentation to DOT for review.
- b. If it is determined that environmental remediation is required in connection with the existing Rail Corridor, the Parties acknowledge that DOT shall not be required to perform such remediation unless CPB2 agrees to pay for all associated costs or DOT is otherwise reimbursed for such costs.

13. RELATED WORK.

- a. If CPB2 elects to relocate the narrow gauge railroad track, as contemplated by Paragraph 4.a of the MOU, and if the Narrow Gauge has consented to such relocation, then CPB2 agrees to relocate the same at no expense to DOT or to the Narrow Gauge. DOT acknowledges that such work will be done in connection with the redevelopment of the portion of the DOT/CPB2 Exchange Property on which the narrow gauge railroad tracks currently exist and will likely occur after the closing.
- b. CPB2 agrees further to relocate the Trail Corridor (as defined in the MOU) at no expense to DOT or to CITY. DOT and CITY acknowledge that such work will be done in connection with the redevelopment of the marina or the redevelopment of the portion of the CPB2 Property that runs along the shoreline, and will likely occur after the closing. If the new location of the Trail Corridor, as shown on an approved site plan, is partly on the CPB2 Property, then CPB2 agrees to grant to

CITY an easement over such portion on substantially the same terms and conditions as set forth in the easement granted by DOT to CITY.

- c. In connection with the relocation of the narrow gauge railroad tracks and/or the relocation of the Trail Corridor, DOT agrees to grant to CPB2 a temporary, construction right over the relocated DOT Right of Way to the extent reasonably required to relocate the narrow gauge railroad tracks and/or the Trail Corridor. If requested by CPB2, CITY also agrees to grant to CPB2 a temporary, construction right in form and substance reasonably satisfactory to the CITY, over the relocated Trail Corridor to the extent reasonably required to relocate the narrow gauge railroad tracks and/or the Trail Corridor.
- d. DOT acknowledges that the relocation of the narrow gauge railroad tracks and/or the Trail Corridor may require site plan approval or other governmental approval, and DOT agrees to reasonably cooperate with CPB2 in connection with such approvals and to execute and deliver any documents reasonably requested by CPB2 or any governmental entity, department or agency in connection therewith, provided such documents are in form and substance reasonably satisfactory to DOT and do not require DOT to undertake any construction work in connection with such relocation or relocations.
- e. The provisions of this Paragraph 13 shall survive the closing.

14. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the Parties and supersedes any prior agreement or understanding, written or oral, between the Parties with respect to the acquisition or exchange of the Exchange Properties hereunder. This Agreement cannot be amended except by written instrument executed by the CITY, CPB2 and DOT.

15. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by a Party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

16. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

17. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, administrators, successors and assigns.

18. TIME IS OF THE ESSENCE. The CITY, CPB2 and DOT each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

19. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. The Parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising

from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

20. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE CITY: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR CPB2: CPB2 LLC
c/o CPB2 Management LLC
P.O. Box 7987
Portland, Maine 04112

With a copy to: Bernstein, Shur, Sawyer & Nelson, P.A.
Attention: Mary E. Costigan, Esq.
100 Middle Street, West Tower
Portland, Maine 04101

FOR DOT: STATE OF MAINE DEPARTMENT OF
TRANSPORTATION
Attention: Toni Kemmerle, Esq.
16 State House Station
Augusta, Maine 04333-0016

21. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

22. BROKERS. The CITY, CPB2 and DOT each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. CPB2 agrees to indemnify and hold harmless the CITY and DOT from any claims made by any broker should CPB2's representation in this paragraph be false. To the extent permitted by law,

the CITY and DOT agree to indemnify and hold harmless CPB2 from any claims made by any broker should the representation by the CITY or DOT in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive the closing.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

By: _____
Jon P. Jennings
Its: City Manager

CPB2 LLC

By: CPB2 Management LLC, Manager

WITNESS

By: _____
Name: _____
Its: _____

**MAINE DEPARTMENT OF
TRANSPORTATION**

WITNESS

By: _____
David Bernhardt
Its Commissioner

Approved as to Form:

Corporation Counsel's Office

*Order 214-16/17
Tab 20 4-24-17*

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 PLACING BALLOT QUESTION ON THE
JUNE 13, 2017 SCHOOL BUDGET REFERENDUM**

ORDERED, that the following question be placed upon the municipal ballot at the school budget referendum to be held on June 13, 2017:

In the event that the Portland Public Schools receives more state education subsidy than the amount included in its budget, shall the School Board be authorized to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the School Board, increase the allocation of finances in a reserve fund approved by the School Board, and/or decrease the local cost share expectation, as defined in 20-A M.R.S. Section 15671-A(1)(B), for local property taxpayers for funding public education as approved by the Portland Board of Public Education? (yes/no)



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Strimling and Members of the
Portland City Council

FROM: Katherine L. Jones, City Clerk

DATE: April 18, 2017

RE: School Budget Referendum

I have been asked by the Finance Director of the School Department to put a second question on the ballot that would allow the City Council to approve the use of additional school funds from the State, without going back out to referendum. If additional funds are received, the School Board would make a recommendation to the City Council. The question gives three options for the use of the additional funds:

1. Appropriate additional funds for school expenditures
2. Allocate funds to a reserve account
3. Reduce the property tax support required for school expenses

The question as proposed by the School Department, and consistent with State law is as follows:

In the event that the Portland Public Schools receives more state education subsidy than the amount included in its budget, shall the School Board be authorized to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the School Board, increase the allocation of finances in a reserve fund approved by the School Board, and/or decrease the local cost share expectation, as defined in Title 20-A, section 15671-A(1)(B), for local property taxpayers for funding public education as approved by the Portland Board of Public Education? (yes/no)

While the referendum ballots have been ordered and are in queue with the printer, the final proof has not been approved, and this additional language can still be added.

Order 215-16/17
Tab 21 4-24-17

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 ADOPTING THE CITY OF PORTLAND
COMPREHENSIVE PLAN**

ORDERED, that the City of Portland's Plan 2030, as described in the document attached hereto as Exhibit A, and as available on the City of Portland web site at the following web page, <http://www.portlandmaine.gov/1861/Draft-Comprehensive-Plan-Documents>, is hereby adopted as the City of Portland's Comprehensive Plan.

EXHIBIT A

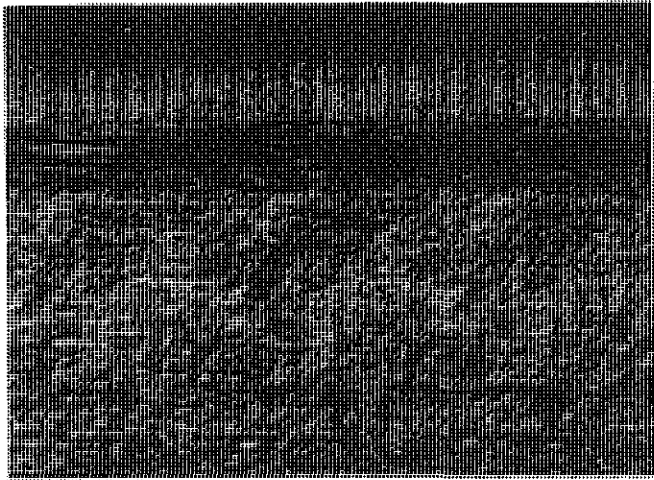
PORTLAND'S PLAN

v.2 (4-6-2017)

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Executive Summary



THIS IS PORTLAND'S PLAN, a comprehensive plan to guide decision making in our community for the next 10 years. Portland's Plan continues the City's long history of comprehensive and long-range planning. The last plan was implemented in 2002, updated in 2005, and regularly appended over the last decade. Much of that prior long range planning work is still valuable today, and this new plan stresses continuity with that work while identifying new trends and challenges for growth and change in the 21st century. This plan serves as a guide and resource in multiple ways: fundamentally, it articulates a vision of Portland's values today and for the future; it provides valuable information about the state of the City today; it establishes a to-do list for implementation; it identifies how other planning efforts, past and future, relate to each other; and it forms a framework for assist decision making. From the launch of the creation of this new plan, City staff sought diverse public input, and strove to ultimately create a succinct and accessible document for the entire community. People normally experience our City at the ground

level: walking down the street, outside a favorite restaurant, in a park, or at each intersection, sidewalk, or bus stop. The goal of Portland's Plan is to elevate the conversation to look at our entire City as an integrated whole from a bird's eye view, from the West End to Riverton and from Cliff Island to Stroudwater. The plan is a statement of community values and a framework to advance those values. The Plan is not intended to describe the planning initiatives of the coming years in granular detail – its role is not to create parks, specify sidewalk width, or dictate the design of new buildings, but to look at the community in its entirety and define a set of values, goals, and strategies for the next decade. More specific initiatives, whether studies, zoning, plans, or guidelines, will be the work of implementation of this plan.

The **Vision Statement** guides all the subsequent elements of the Plan. It defines the key concepts of who we are as a community and sets the standards by which future planning and policy efforts will be measured. The vision recognizes that the solutions to almost every issue we face today, from housing to infrastructure resiliency to economic development, must be examined through the vision's interconnected concepts. The vision statement should be viewed as a unified whole and its interlocking circles are intended to reinforce this notion that sustainability is not possible absent equality and authenticity requires connection, etc. Each of the elements of the vision require the other elements and together they define what Portland is today and what will shape our future. Accordingly, the values are mutually dependent and should be advanced in balance.

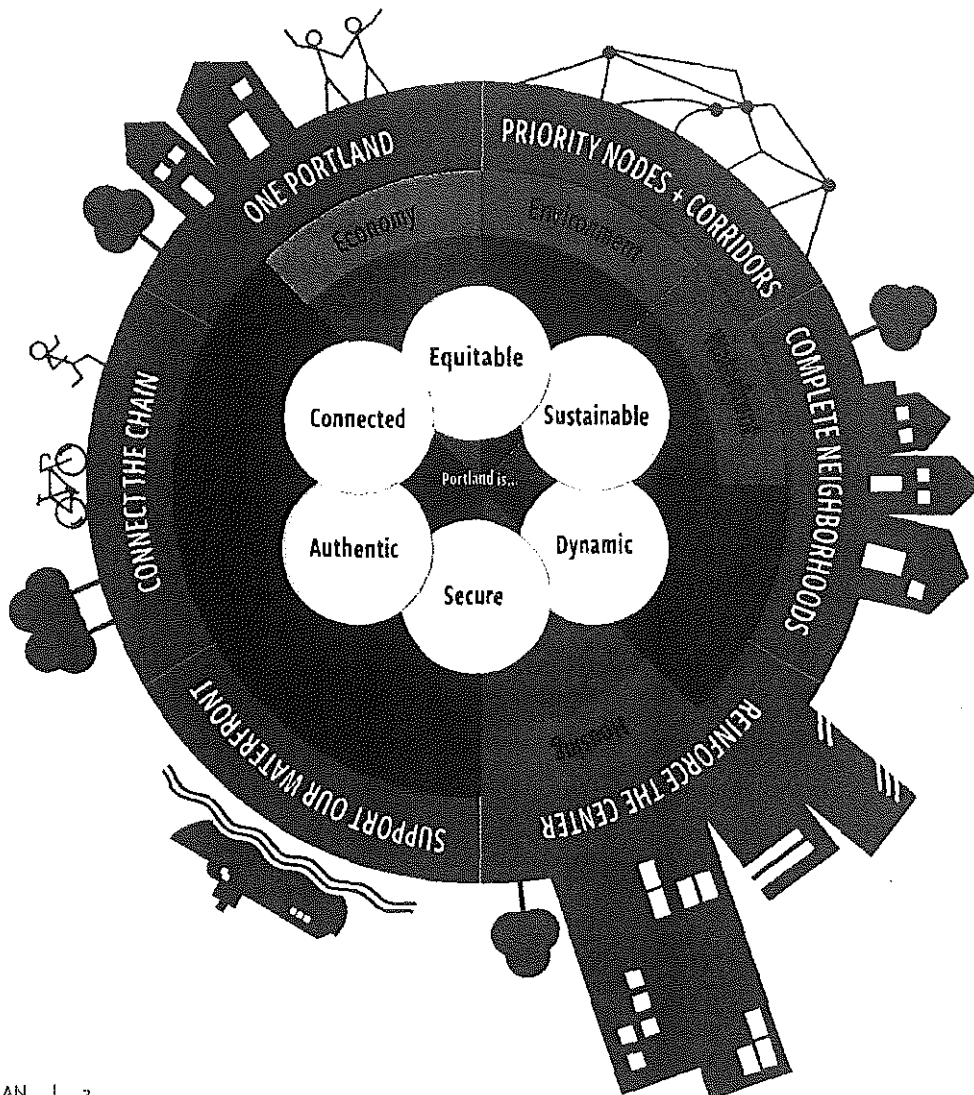
v.2 (4-6-2017)

The vision recognizes that solutions to almost every issue we face today, from housing to resilient infrastructure to economic development must be examined through the interconnected core values of the vision statement. It represents the input of over 3,000 different Portland residents and business owners distilled into the most fundamental

themes for the future of our community. The vision statement represents what Portland values most today and for its future.

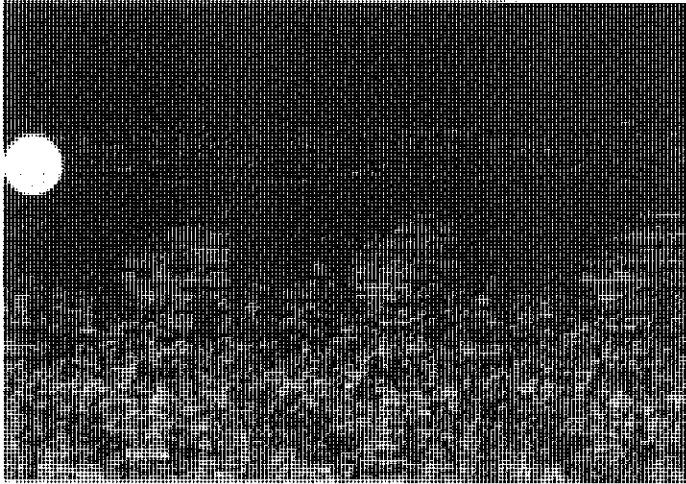
Portland's Plan looks at Portland as one community and establishes the vision as a starting point for future planning and policy work. In that way,

Plan Structure



EXECUTIVE SUMMARY

this document is a beginning, and seeks to reframe a community conversation about where we collectively want to go as we move into the 21st century. As further described in **Relationship to Other City Plans**, however, Portland's Plan also builds off decades of previous efforts to shape and plan our community. This plan is unabashedly informed by those efforts, and incorporates many of their key elements.



The **Policy Guides** translate the vision into concrete policy objectives relating to core subject areas such as housing, transportation, historic resources, waterfront, and the economy. The focus on interconnection at the core of the vision statement is present in the policy guides as well. The reader will find concepts restated and reinforced across subject areas. Our economy, housing, historic resources, transportation system, open space, environment, waterfront, and municipal facilities and services are all dependent on each other and inextricably linked. This interconnection is a foundational concept which shaped the

structure of this document. The goals and strategies articulated in these chapters will guide additional work over the next decade and should assist the City Council and City Manager in shaping annual work plans.

Future Land Use adopts a focused approach to growth in targeted areas across the City. The Future Land Use section is organized around five key principles:

- One Portland, spreading the benefits and challenges of sustainable growth fairly across the community;
- Complete Neighborhoods, improving livability while retaining the key characteristics that make neighborhoods unique
- Reinforce the Center, recognizing that downtown Portland remains a predominant locus of arts and culture, economic, and civic health;
- Connect the Chain, connecting and strengthening our open space and transportation networks;
- Support our Waterfront, identifying the waterfront as a resource central to the identity, economy, ecology, and recreational life of Portland.

Land use planning will guide new growth to downtown, key nodes and corridors. Areas outside of these identified nodes and corridors aren't immune from change now or in the future, but it's expected that they will largely maintain their predominant land use patterns. A successful Portland is a key component to the vibrancy of southern Maine and the entire state.

Regional Coordination discusses how we will strengthen regional collaboration and engage in

v.2 (4-6-2017)

EXECUTIVE SUMMARY

joint problem-solving to address shared issues, such as housing, water quality and transportation, and maximize our key strengths of quality of life, quality of place, and innovation.

Implementation establishes a framework for advancing the vision and goals of Portland's Plan over the course of the next decade. This document is intended to serve as a guide for the Council as it develops annual work plans, for the Planning Board as it updates the land use code, and for other City departments as they plan and prioritize their respective work. Throughout the plan there is a focus on data collection and analysis in decision making and more consistent use of SMART (specific, measurable, achievable, realistic and timely) principles in City government. Successful implementation of Portland's Plan will require a

commitment to ongoing and meaningful engagement by City staff, elected leaders, community groups, and residents. We hope to achieve a successful feedback loop where decisions are made and then measured for success in achieving the plan's vision. We will create a framework based on measurable objectives where our community will be able to adjust approaches and respond to changing concerns.

The Plan's **Appendices** contain a compendium of data support the Policy Guides. This information serves as a foundation for the Plan's goals and strategies and a resource on Portland

Finally, Portland's Plan conforms to the requirements of the State of Maine's Growth Management Act for comprehensive plans. As required by the Growth Management Act, Portland's Plan will serve as the basis for the City's zoning and land use regulations.

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: April 18, 2017

SUBJECT: Adoption of New Comprehensive Plan

SPONSOR: Elizabeth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading April 24, 2017 **Final Action** June 5, 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)

Elizabeth Boepple, Chair - 2 minute introduction

Stuart O'Brien, Planning Director - 3 minute overview of plan contents and process

I. ONE SENTENCE SUMMARY

The Planning Board is forwarding a recommendation to the City Council to adopt Portland's new comprehensive plan.

II. AGENDA DESCRIPTION

On April 13, 2017, the Planning Board voted unanimously to recommend adoption of Portland's new comprehensive plan to the City Council.

III. BACKGROUND

A comprehensive plan is a long-range planning document required under Maine's Growth Management Act, and serves to guide decision making in Portland for the next 12 years. It continues the City's long history of comprehensive and long range planning, and serves as a guide and resource in multiple ways: it provides valuable information about the state of the City today; it establishes a policy roadmap for implementation; it identifies how other planning efforts, past and future, relate to each other; it forms a reference point for decision making, and it articulates a vision for Portland's values today and for the future. It is also a requirement under Maine's Growth Management Act, and qualifies the City for certain state funding programs.

From the launch, in 2015, of the creation of this new plan the Planning Board and City staff sought diverse public input, and strove to ultimately create a succinct and accessible document out of that process, for the entire community.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This new plan will form the basis of implementation of many goals that further the Council's Common goals in Economic Development, Housing, Finance, Sustainability & Transportation, and Health & Human Services.

V. FINANCIAL IMPACT

A comprehensive plan found to be consistent with the state's requirements by the Dept. of Agriculture, Conservation & Forestry (Municipal Planning Assistance Program) qualifies the City for certain state funding programs. It sets forward recommendations on a range of topics, such as natural resources, preservation, the working waterfront, economic development, housing, open space, public facilities, and transportation, which have implications for Portland's economy, as well as for public and private investment. The Plan also outlines the City's values and overall desired outcomes in ways that provide helpful information to those wishing to build, start a business, or otherwise invest in Portland.

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

A letter, from Planning Board Chair Elizabeth Boepple, providing a summary of the process and the Planning Board's recommendation, is attached.

VII. RECOMMENDATION

On April 13, 2017, the Planning Board voted 6-0 (Mazer absent) to recommend adoption of the new comprehensive plan.

VIII. LIST ATTACHMENTS

1. Letter from Planning Board Chair Boepple to Council
2. A link to the current draft of the new comprehensive plan:
<http://www.portlandmaine.gov/1861/Draft-Comprehensive-Plan-Documents>

Prepared by: Christine Grimando, Senior Planner
Date: April 18, 2017



April 18, 2017

Mayor Strimling and Portland City Council:

It is my pleasure to transmit Portland's new comprehensive plan to the City Council. This Plan is the result of nearly two years of outreach, research, and drafting by City staff, with the assistance of many members of the public who gave generously of their time to provide input and feedback.

I would particularly like to thank Planning Board members Lisa Whited and Sean Dundon, who have taken the lead in working directly with staff in preparing, facilitating, and attending many public events. Their creativity and energy has provided a direct link between staff effort and the Planning Board every step of the way.

In developing this Plan, staff and Planning Board members:

- Reached over 2500 people;
- Held 6 community forums;
- Worked with students from 3 Portland public schools;
- Held over 25 stakeholder meetings;
- Conducted 7 Planning Board workshops; and
- Attended many community events such as Farmers' Markets, and First Friday to solicit input.

At each step of the way, input has been thoughtfully documented and the Plan has been updated to try to reflect the consensus of the community. While it would be impossible to get complete agreement on all issues, this Plan highlights places of common value in Portland and provides a roadmap for the City through the 2020's. The Planning Board held a public hearing on the Plan in March, extended the hearing to a final meeting in April, and voted unanimously to recommend its adoption by the City Council. I hope you agree.

Sincerely,

Elizabeth Boepple
Chair, Portland Planning Board

*Order 216 -16/17
Feb 22 4-24-17*

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 \$125,000 IN
URBAN DEVELOPMENT ACTION GRANT REVENUE
RE: SURFACE PARKING LOT BOUNDED BY FORE, COTTON, MIDDLE AND
CROSS STREETS**

ORDERED, that the amount of \$100,000 in Urban Development Action Grant Revenue from the sale of a surface parking lot bounded by Fore, Cotton, Middle and Cross streets is hereby appropriated for the expansion of treatment services for the addiction program at the Milestone Foundation; and

BE IT FURTHER ORDERED, that \$25,000 in Urban Development Action Grant Revenue, the remainder of the proceeds from the sale of a surface parking lot bounded by Fore, Cotton, Middle and Cross streets, be appropriated to fund a pilot panhandling program.

MEMORANDUM
City Council Agenda Item

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

FROM: Planning & Urban Development Department

DATE: April 10, 2017

SUBJECT: Order Appropriating \$125,000 of UDAG Revenues

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading April 24th Final Action May 1st

Can action be taken at a later date: ____ Yes ☒ No (If no why not?) Public notice of the meeting has been published

PRESENTATION: Planning Department staff will be available for questions

I. ONE SENTENCE SUMMARY

Allocation of \$125,000 from the proceeds of the sale of the Cotton Street lot to be used to address immediate, urgent needs within our community and adoption of a hybrid approach for the future use of the remaining sale proceeds.

II. AGENDA DESCRIPTION

At the April 5, 2017 City Council meeting, the council approved the sale of a City-owned parking lot on Cotton Street. The parcel was established as a parking lot many years ago through a federal program entitled Urban Development Action Grant (UDAG). The city received rental income from the parking lot which was utilized by the City as CDBG program income and was incorporated into the annual CDBG budget. Over the last five years the CDBG program received an average of \$119,426 annually. The proceeds from the sale of the lot can only be used for CDBG eligible activities. The use of the proceeds must be identified in the City's HUD Consolidated Plan and Annual Action Plan and a separate accounting of the funds must be maintained.

At their March 7, 2017 meeting, the Economic Development Committee voted 2-0-1 (Thibodeau abstained) to recommend to the City Council that \$100,000 of the sales proceed be used to fund an expansion at the Milestone Foundation, \$25,000 be used to be used to help fund a panhandling pilot program, and a *hybrid approach* be utilized for

future use of the remaining proceeds and for ensuring that CDBG program income funding levels are maintained.

The *hybrid approach* would utilize approximately \$120,000 in Downtown TIF funds for TIF-eligible projects such as staffing costs and public infrastructure improvements. Approximately \$20,000 per year from the remaining sale proceeds (\$1,050,000) would be used for social service program funding and other TIF-ineligible activities.

The Milestone Foundation improvements and the panhandling pilot program are described below:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

III. BACKGROUND

1. Milestone Foundation Facility Improvements. As part of the Greater Portland Addiction Collaborative, Milestone looks to enhance its services. The proposed allocation would help to provide funding for improvements that will expand the capacity of services for the Milestone Foundation detox program. The improvement plan will allow Milestone to add an electronic medical records system to improve the efficiency of their programs. In addition, the proposed allocation will allow a physical reconfiguration of the detox which will increase the efficiency and capacity of the program.
2. Portland Opportunity Crew. The Portland Opportunity Crew is a pilot program building on the successes several other cities have had (There's a Better Way - Albuquerque, Downtown Streets Team - San Jose, A Day for Change - Chicago, and others) offering the opportunity to earn money to clean up public areas and linking them with needed services, especially job training and support. Program participants will be paid minimum wage at the end of the shift. The program will be offered through a partnership between the Social Services Parks Divisions. A light breakfast, water and lunch will be prepared by the Barron Center. The Portland Opportunity

Crew will operate two days a week from April through November (approximately 36 weeks) in City parks and public spaces, picking up trash, and planting where needed. The City will partner with local landscaping companies to offer successful program participants an interview and possible employment. The City may also employ them.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Council Goals addressed: Health & Human Services: “3. *Continue to provide guidance and policy suggestions around substance use, particularly with regard to: a. the opioid crisis in Portland; b. treatment facilities, including the number of detox beds in city (possibly through increased support for Milestone Foundation).....*; 5. *Continue to seek regional solutions to homelessness, substance use disorder, etc.*”

V. FINANCIAL IMPACT

The appropriation of these funds will not impact to General Fund. The sale of the Cotton Street lot is expected to generate \$1,175,000 in net proceeds to the City of which \$125,000 will be allocated to the Milestone Foundation and the Portland Opportunity Crew programs. In future years, a portion of the sales proceeds and a portion of Downtown TIF revenue would be included in the CDBG allocation process. This *hybrid approach* would utilize approximately \$120,000 in Downtown TIF funds for TIF-eligible projects such as staffing costs and public infrastructure improvements. Approximately \$20,000 per year from the remaining sale proceeds (\$1,050,000) would be used for social service program funding and other TIF-ineligible activities.

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

As noted above, any revenue received from the sale of the Cotton Street lot must be used for CDBG eligible activities which include administrative costs, social service activities or development activities. The funding for the Milestone Foundation facility is an eligible CDBG development activity. The funding for the Portland Opportunity Crew is an eligible CDBG social service activity and will supplement a \$17,038 CDBG grant approved by this Council at its April 5th meeting. In order to include this additional funding in the FY 2107-2018 Annual Action Plan, the City published a notice of public hearings and 30-day public comment period in the Portland Press Herald. It is anticipated that the FY 2017-2018 Annual Action Plan will be submitted to HUD on May 15th.

VII. RECOMMENDATION

HCD Staff recommends approval of this request. The appropriation of these funds will allow the City to address urgent needs within our community.

VIII. LIST ATTACHMENTS

March 3, 2017 Memo from Jon Jennings to the Economic Development Committee
December 28, 2016 Memo from Jeff Levine and Mary Davis to the Economic
Development Committee

Prepared by: Mary Davis, HCD Division Director

Date: April 10, 2017

Bean/agendarequestmemo/rev 1/23/2017



Executive Department
Jon P. Jennings, City Manager

MEMORANDUM

TO: Chair and Members of the Economic Development Committee

FROM: Jon P. Jennings, City Manager

DATE: March 3, 2017

SUBJECT: Possible Uses for Cotton St. Lot Proceeds

As the Cotton Street lot was developed using Community Development Block Grants (CDBG) funds, the proceeds must be used in accordance with CDBG guidance on such funds. The sale is expected to yield about \$1.175 million to the City. The U.S. Department of Housing and Urban Development (HUD), which administers the CDBG program, defines the sale proceeds as "miscellaneous revenues" and thus may be used for any eligible CDBG activity.

The accompanying memo from Jeff Levine details HUD requirements, as well as the City Planning and Urban Development Department's use of annual revenue from the Cotton Street parking lot.

To this end, I suggest the following considerations for the sale proceeds:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given the rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the panhandling pilot set to begin this Spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

future use of the remaining proceeds and for ensuring that CDBG program income funding levels are maintained.

The *hybrid approach* would utilize approximately \$120,000 in Downtown TIF funds for TIF-eligible projects such as staffing costs and public infrastructure improvements. Approximately \$20,000 per year from the remaining sale proceeds (\$1,050,000) would be used for social service program funding and other TIF-ineligible activities.

The Milestone Foundation improvements and the panhandling pilot program are described below:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

III. BACKGROUND

1. Milestone Foundation Facility Improvements. As part of the Greater Portland Addiction Collaborative, Milestone looks to enhance its services. The proposed allocation would help to provide funding for improvements that will expand the capacity of services for the Milestone Foundation detox program. The improvement plan will allow Milestone to add an electronic medical records system to improve the efficiency of their programs. In addition, the proposed allocation will allow a physical reconfiguration of the detox which will increase the efficiency and capacity of the program.
2. Portland Opportunity Crew. The Portland Opportunity Crew is a pilot program building on the successes several other cities have had (There's a Better Way - Albuquerque, Downtown Streets Team - San Jose, A Day for Change - Chicago, and others) offering the opportunity to earn money to clean up public areas and linking them with needed services, especially job training and support. Program participants will be paid minimum wage at the end of the shift. The program will be offered through a partnership between the Social Services Parks Divisions. A light breakfast, water and lunch will be prepared by the Barron Center. The Portland Opportunity

Crew will operate two days a week from April through November (approximately 36 weeks) in City parks and public spaces, picking up trash, and planting where needed. The City will partner with local landscaping companies to offer successful program participants an interview and possible employment. The City may also employ them.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Council Goals addressed: Health & Human Services: “3. *Continue to provide guidance and policy suggestions around substance use, particularly with regard to: a. the opioid crisis in Portland; b. treatment facilities, including the number of detox beds in city (possibly through increased support for Milestone Foundation).....*; 5. *Continue to seek regional solutions to homelessness, substance use disorder, etc.*”

V. FINANCIAL IMPACT

The appropriation of these funds will not impact to General Fund. The sale of the Cotton Street lot is expected to generate \$1,175,000 in net proceeds to the City of which \$125,000 will be allocated to the Milestone Foundation and the Portland Opportunity Crew programs. In future years, a portion of the sales proceeds and a portion of Downtown TIF revenue would be included in the CDBG allocation process. This *hybrid approach* would utilize approximately \$120,000 in Downtown TIF funds for TIF-eligible projects such as staffing costs and public infrastructure improvements. Approximately \$20,000 per year from the remaining sale proceeds (\$1,050,000) would be used for social service program funding and other TIF-ineligible activities.

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

As noted above, any revenue received from the sale of the Cotton Street lot must be used for CDBG eligible activities which include administrative costs, social service activities or development activities. The funding for the Milestone Foundation facility is an eligible CDBG development activity. The funding for the Portland Opportunity Crew is an eligible CDBG social service activity and will supplement a \$17,038 CDBG grant approved by this Council at its April 5th meeting. In order to include this additional funding in the FY 2107-2018 Annual Action Plan, the City published a notice of public hearings and 30-day public comment period in the Portland Press Herald. It is anticipated that the FY 2017-2018 Annual Action Plan will be submitted to HUD on May 15th.

VII. RECOMMENDATION

HCD Staff recommends approval of this request. The appropriation of these funds will allow the City to address urgent needs within our community.

VIII. LIST ATTACHMENTS

March 3, 2017 Memo from Jon Jennings to the Economic Development Committee
December 28, 2016 Memo from Jeff Levine and Mary Davis to the Economic
Development Committee

Prepared by: Mary Davis, HCD Division Director

Date: April 10, 2017

Bean/agendarequestmemo/rev 1/23/2017



Executive Department
Jon P. Jennings, City Manager

MEMORANDUM

TO: Chair and Members of the Economic Development Committee

FROM: Jon P. Jennings, City Manager

DATE: March 3, 2017

SUBJECT: Possible Uses for Cotton St. Lot Proceeds

As the Cotton Street lot was developed using Community Development Block Grants (CDBG) funds, the proceeds must be used in accordance with CDBG guidance on such funds. The sale is expected to yield about \$1.175 million to the City. The U.S. Department of Housing and Urban Development (HUD), which administers the CDBG program, defines the sale proceeds as "miscellaneous revenues" and thus may be used for any eligible CDBG activity.

The accompanying memo from Jeff Levine details HUD requirements, as well as the City Planning and Urban Development Department's use of annual revenue from the Cotton Street parking lot.

To this end, I suggest the following considerations for the sale proceeds:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given the rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the panhandling pilot set to begin this Spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

To: Economic Development Committee

From: Jeff Levine, Planning & Urban Development Director
Mary Davis, Division Director, Housing and Community Development

Date: December 28, 2016

Re: Cotton Street Parking Lot – CDBG Program Income

The Cotton Street parking lot is a City-owned parcel established many years ago, through the urban renewal program. The rental income from the lot is received by the City as CDBG program income and is incorporated into the annual CDBG budget.

Revenue History

Since Fiscal Year 2007, the CDBG Program has received \$1,061,069 in program income from this parking lot revenue. A review of the last five years is included in the table below.

Fiscal Year	Annual Program Income Received	Administration Adjustment	Social Service Allowance	Development Activity Adjustment
2011-2012	\$129,239.02	\$25,847.80	\$19,385.85	\$103,391.22
2012-2013	\$114,821.21	\$22,964.24	\$17,223.18	\$91,856.97
2013-2014	\$110,159.21	\$22,031.84	\$16,523.88	\$88,127.37
2014-2015	\$110,393.94	\$22,078.79	\$16,559.09	\$88,315.15
2015-2016	\$132,527.59	\$26,505.52	\$19,879.14	\$106,022.07

Use of Parking Lot Rental Revenue

We use this revenue to supplement our CDBG allocation to provide additional grants, social service programs, and to fund some staff to help run the program. Our annual CDBG allocation is about \$1,800,000, so this additional funding allows us to increase our CDBG program funding by about 7.0% annually. Those funds go towards physical improvements, like public works projects in eligible locations, as well as towards social service programs such as homeless services and community policing.

The long-term trend in CDBG funding has been downward, particularly when accounting for inflation. The City's CDBG allocation in FY10 at \$2,300,000, so the decline since that time has been about 22%.

All of the salaries and expenses of the Housing & Community Development division are funded through federal sources and revenue from federal investments, including

a portion of this parking lot revenue. In addition, a portion of other staff in the Planning & Urban Development Department is funded through CDBG funding. In FY2017, \$405,000 is allocated from CDBG sources for these City expenses. Of that \$405,000, around \$25,000 (6.25%) is coming from parking lot revenue from the Cotton Street lot.

Use of Sales Proceeds

We are permitted to sell the parking lot, but have been given the guidance that that any revenue received from the sale of the parking lot must be used for CDBG eligible activities. These include administrative costs, social service activities or development activities. HUD has confirmed that the use of a portion of the sale proceeds to purchase a site for the City's sand and salt shed is an eligible use of the funds. The use of this revenue must be identified in our HUD 5-Year Consolidated Plan and a separate accounting of these funds must be maintained.

A portion of the sales proceeds from the Cotton Street lot could continue to be used for eligible City operating expenses. However, unlike the annual rental revenue, this funding would not be recurring and would have to be programmed judiciously.

*Order 217-16/17
Tab 23 4-24-17*

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 2016-2020
HOUSING AND URBAN DEVELOPMENT CONSOLIDATED PLAN AND
FISCAL YEAR 2018 HOUSING AND URBAN DEVELOPMENT
ANNUAL ACTION PLAN
RE: USE OF PROCEEDS FROM SALE OF
CITY-OWNED SURFACE PARKING LOT BOUNDED BY FORE, COTTON, MIDDLE
AND CROSS STREETS**

ORDERED, that \$125,000 from the sale of the city-owned cotton Street parking lot be included in the 2016-2020 Housing And Urban Development Consolidated Plan; and

BE IT FURTHER ORDERED, that the amount of \$100,000 in Urban Development Action Grant Revenue from the sale of a surface parking lot bounded by Fore, Cotton, Middle and Cross streets shall be used for the expansion of treatment services for the addiction program at the Milestone Foundation in the Fiscal Year 2018 Housing and Urban Development Annual Action Plan; And

BE IT FURTHER ORDERED, that \$25,000 in Urban Development Action Grant Revenue, the remainder of the proceeds from the sale of a surface parking lot bounded by Fore, Cotton, Middle and Cross streets, shall be used to fund a pilot panhandling program in the Fiscal Year 2018 Housing and Urban Development Annual Action Plan.

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: April 7, 2017

SUBJECT: Order Approving Substantial Amendment to the 2016-2020 HUD Consolidated Plan and the FY 17/18 HUD Annual Action Plan RE: the use of proceeds from the Sale of the City-owned Cotton Street parking lot

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading April 24th Final Action May 1st

Can action be taken at a later date: ____ Yes ____ X No (If no why not?) A public notice regarding the council meeting and opportunity was published in the Portland Press Herald.

PRESENTATION: (Staff will be available for questions)

I. ONE SENTENCE SUMMARY

Inclusion of the receipt of proceeds from the sale of the City-Owned Cotton Street parking lot in the 2016-2020 HUD Consolidated Plan and the inclusion of the use of \$125,000 in the FY17/18 HUD Annual Action Plan.

II. AGENDA DESCRIPTION

The FY 17/18 HUD Annual Action Plan was approved by the City Council at their April 5th meeting. Subsequent to that approval, the council approved the sale of the City-owned Cotton Street parking lot which will generate proceeds from federal UDAG funding. The receipt of these proceeds must be included in the City's 2016-2020 HUD Consolidated Plan and the use of \$125,000 from the proceeds must be included in the FY17/18 HUD Annual Action Plan.

The Cotton street parcel was established as a parking lot many years ago through a federal program entitled Urban Development Action Grant (UDAG). The proceeds from the sale of the lot can only be used for CDBG eligible activities. The use of the proceeds must be identified in the City's HUD Consolidated Plan and Annual Action Plan and a separate accounting of the funds must be maintained.

During FY17/18 the City proposes to use \$125,000 from the sale proceeds to address immediate, urgent needs within our community, which are identified as:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone's treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the Portland Opportunity Crew program which is a pilot program set to begin this spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.

III. BACKGROUND

The FY 17/18 HUD Annual Action Plan was approved by the City Council at their April 5th meeting. Subsequent to that approval, the council approved the sale of the City-owned Cotton Street parking lot which will generate proceeds from federal UDAG funding. The receipt of these proceeds must be included in the City's 2016-2020 HUD Consolidated Plan and the use of \$125,000 from the proceeds must be included in the FY17/18 HUD Annual Action Plan.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Council Goals addressed:

Health & Human Services: "3. *Continue to provide guidance and policy suggestions around substance use, particularly with regard to: a. the opioid crisis in Portland; b. treatment facilities, including the number of detox beds in city (possibly through increased support for Milestone Foundation).....*; 5. *Continue to seek regional solutions to homelessness, substance use disorder, etc.*"

V. FINANCIAL IMPACT

The appropriation of these funds will not impact to General Fund. During FY17/18 \$125,000 in proceeds from the sale of the Cotton Street parking City will be allocated to the Milestone Foundation and the Portland Opportunity Crew programs.

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

As noted above, any revenue received from the sale of the Cotton Street lot must be used for CDBG eligible activities which include administrative costs, social service activities or development activities. Funding for the Milestone Foundation facility is an eligible CDBG development activity. Funding for the Portland Opportunity Crew is an eligible CDBG social service activity and will supplement a \$17,038 CDBG grant approved by this Council at its April 5th meeting.

VII. RECOMMENDATION

HCD Staff recommends approval of this request. The appropriation of these funds will allow the City to address urgent needs within our community.

VIII. LIST ATTACHMENTS

Prepared by: Mary Davis, HCD Division Director
Date: April 7, 2017

Order 218-16/17
Feb 24 4-24-17

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 \$3,975,000 FOR IMPROVEMENTS TO THE
PORTLAND INTERNATIONAL JETPORT PASSENGER TERMINAL**

ORDERED, that \$3,975,000 from the Portland International Jetport (Jetport) unrestricted fund balance is hereby appropriated for improvements at the Jetport passenger facility, as follows:

- New vertical circulation from gate concourse down to baggage claim \$ 2,325,000
- Restroom renovations in gate concourse and baggage claim \$ 275,000
- Gate 2 & 3 passenger boarding bridge rehabilitation \$ 1,050,000
- Flight Information Display System (FIDS) upgrade \$ 325,000
- Total \$ 3,975,000

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Paul Bradbury, Airport Director

DATE: April 4, 2017

DISTRIBUTION: Jon Jennings, City Manager; Mayor Strimling; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English; Julie Sullivan

SUBJECT: Request for appropriation from the Portland International Jetport's unrestricted fund balance for improvements to the passenger terminal totaling \$3.975 million.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: April 24, 2017 **Final Action:** May 1, 2017

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

I. SUMMARY OF ISSUE (Agenda Description)

The Portland International Jetport is requesting an appropriation from its unrestricted fund balance to make improvements to the passenger terminal building. The Jetport completed a significant expansion in 2012 which greatly improved the passenger experience, but left the inbound passenger approach to baggage claim and gates 1-6 unimproved. At this time Jetport staff is proposing to make the following improvements.

• New vertical circulation from gate concourse down to baggage claim	\$ 2,325,000
• Restroom renovations in gate concourse and baggage claim	\$ 275,000
• Gate 2 & 3 passenger boarding bridge rehabilitation	\$ 1,050,000
• Flight Information Display System (FIDS) upgrade	<u>\$ 325,000</u>
Total	\$ 3,975,000

These improvements represent a first phase in the Jetport's plan to completely match the older sections of the terminal to the level of amenities and finish of the 2012 terminal expansion.

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

The Jetport expansion completed in 2012 provided new airline ticketing, a new security screening checkpoint, new concessions, an outbound baggage system, and four new gates; but left the access from the gate concourse to baggage claim and gates 1-6 unchanged. The passenger terminal improvements being proposed under this appropriation will be the first phase

toward upgrading these areas to match the terminal expansion. This phase will provide new vertical circulation from the second level concourse down to the lower level baggage claim with the installation of two new elevators and a new escalator. This project will also provide for the renovation of four restrooms, two in the gate concourse and two in baggage claim that haven't been renovated in twenty years.

Additionally this appropriation provides for the replacement of the Jetport's two oldest passenger boarding bridges purchased in 1995 with fully refurbished models. It also provides a new flight information display system that is fully integrated with and expands our existing common use airline passenger processing systems.

These terminal improvements are scheduled within the short term capital program developed as part of the Jetport's Sustainable Airport Master Plan that was accepted by the City Council in November 2016.

III. INTENDED RESULT

The approval of this appropriation will allow the Portland International Jetport to make the following investments in the passenger terminal facility.

1. Replace and reconfigure the vertical circulation from the gate concourse to baggage claim. This project will provide two new elevators (insuring redundant availability) and a new escalator from the upper level gate concourse down to baggage claim and ground transportation. It will also renovate the upper and lower elevator/escalator landings with new finishes. The location of this vertical circulation will be shifted west to better align with ground access to the rental car concessions and the parking garage. The current elevator and escalator were installed in 1980, and have reached their useful life. Additionally, the elevator is located outside the normal path of traffic making it difficult to find, and does not service the baggage claim level directly; instead it goes to the lowest level and requires users to take a ramp up to the baggage claim level.
2. The proposed restroom renovations include the two baggage claim restrooms, and two gate concourse restrooms that have not been renovated since 1996. This project will update and match these restrooms to the finish and design of those in the terminal expansion.
3. The two oldest passenger boarding bridges at the Jetport originally purchased in 1995 will be replaced with fully refurbished units. These will be installed at the east end of the terminal in gate positions 2 and 3. The alignment of these bridges will be altered in conjunction with a new gate striping plan that allows all gates to accommodate the larger aircraft sizes now being used by our airline partners.
4. The Flight Information Display System (FIDS) upgrade will fully integrate the existing common use airline passenger processing stations at ticketing and the gates with the FIDS system to seamlessly manage and update data between systems. It will also allow for the reporting and analysis of gate use. Additionally, it will provide for real time gate management during irregular operations.

Construction on these projects will commence in the fall to limit passenger impacts during the busy summer travel period. All improvements will be complete by May 31, 2018 and ready to serve our peak summer travel volumes in 2018.

IV. COUNCIL GOAL ADDRESSED

The Portland International Jetport provides a robust connection for the region to the national air transportation system and in doing so plays an important role in supporting the City Council's economic development goals. Approval of this project allows the Portland Jetport to make needed investment in the terminal building infrastructure to better serve the nearly 1.8 million passengers using it annually.

V. FINANCIAL IMPACT

The Jetport's unrestricted cash fund balance was \$21,446,955 as of June 30, 2016. If approved, the Jetport will use \$3.975 million of its unrestricted cash fund balance to complete these proposed terminal improvements. Airports, like many industries, have substantially increased their liquidity since 2008 in response to the recession. This has resulted in unrestricted cash holdings in excess of 500 days of operating expenses, a level that is high historically. The Jetport has followed this trend, as of June 30, 2016 the unrestricted cash fund balance was equal to 505 days of operating expenses on hand. At the last rating review with S&P and Moody's I outlined the Jetport's capital improvement program and noted it was our plan to maintain a more appropriate floor of 365 days of operating cash on hand. If this appropriation is approved the Jetport will remain well above this floor at 404 days of cash on hand.

The Jetport is an enterprise fund of the City that is fiscally self-sustaining. FAA grant assurances and the covenants for the Jetport's General Airport Revenue Bonds (GARBs) require all revenues generated at the Jetport be pledged to cover only Jetport expenses. The approval of this appropriation has no impact to the City of Portland's general fund or tax rate.

VI. STAFF ANALYSIS

Approval of this appropriation will provide for needed infrastructure investment in the Jetport's passenger terminal consistent with the Jetport's Sustainable Airport Master Plan. Staff recognizes our passengers have a choice on which airport to use. The Jetport's ability to compete for passengers is directly tied to the convenience and service it provides. The terminal must provide a modern, efficient, convenient, and safe connection from ground to air transportation. Staff ranked the poor circulation and lack of elevator redundancy to baggage claim as the highest priority issue for correction within the passenger terminal. This was closely followed by the recommendation to renovate the aforementioned restrooms along the arriving passenger route to baggage claim. These improvements will significantly improve the passenger experience, especially for the arriving (inbound) passenger.

VII. RECOMMENDATION

Jetport staff recommends the City Council approve this request to appropriate \$3.975 million from Jetport unrestricted cash fund balance to proceed with these terminal improvements.

VIII. LIST ATTACHMENTS

Terminal Improvement Plans

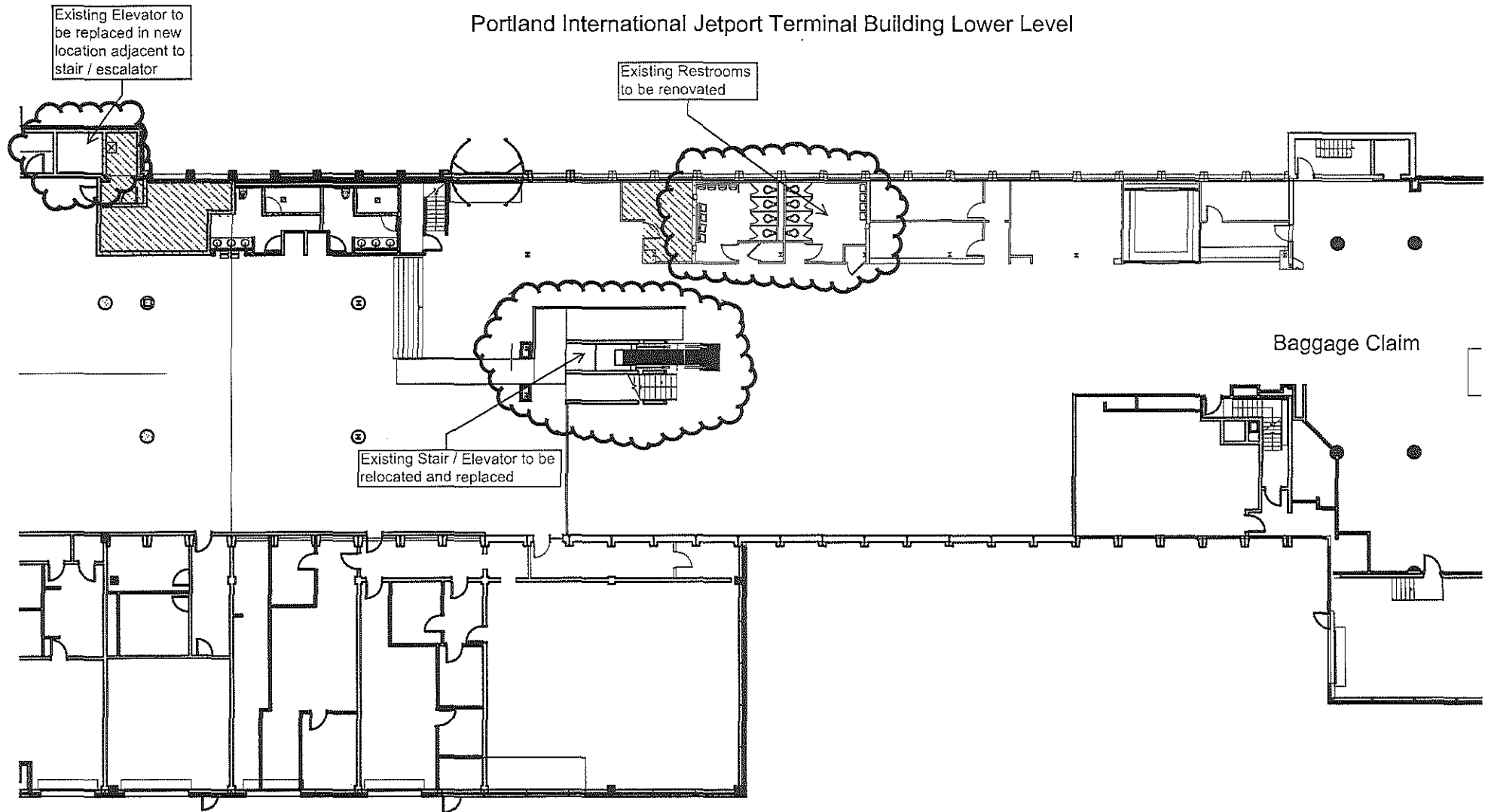
A handwritten signature in black ink, appearing to be "D. Bush", written over a horizontal line.

Signature

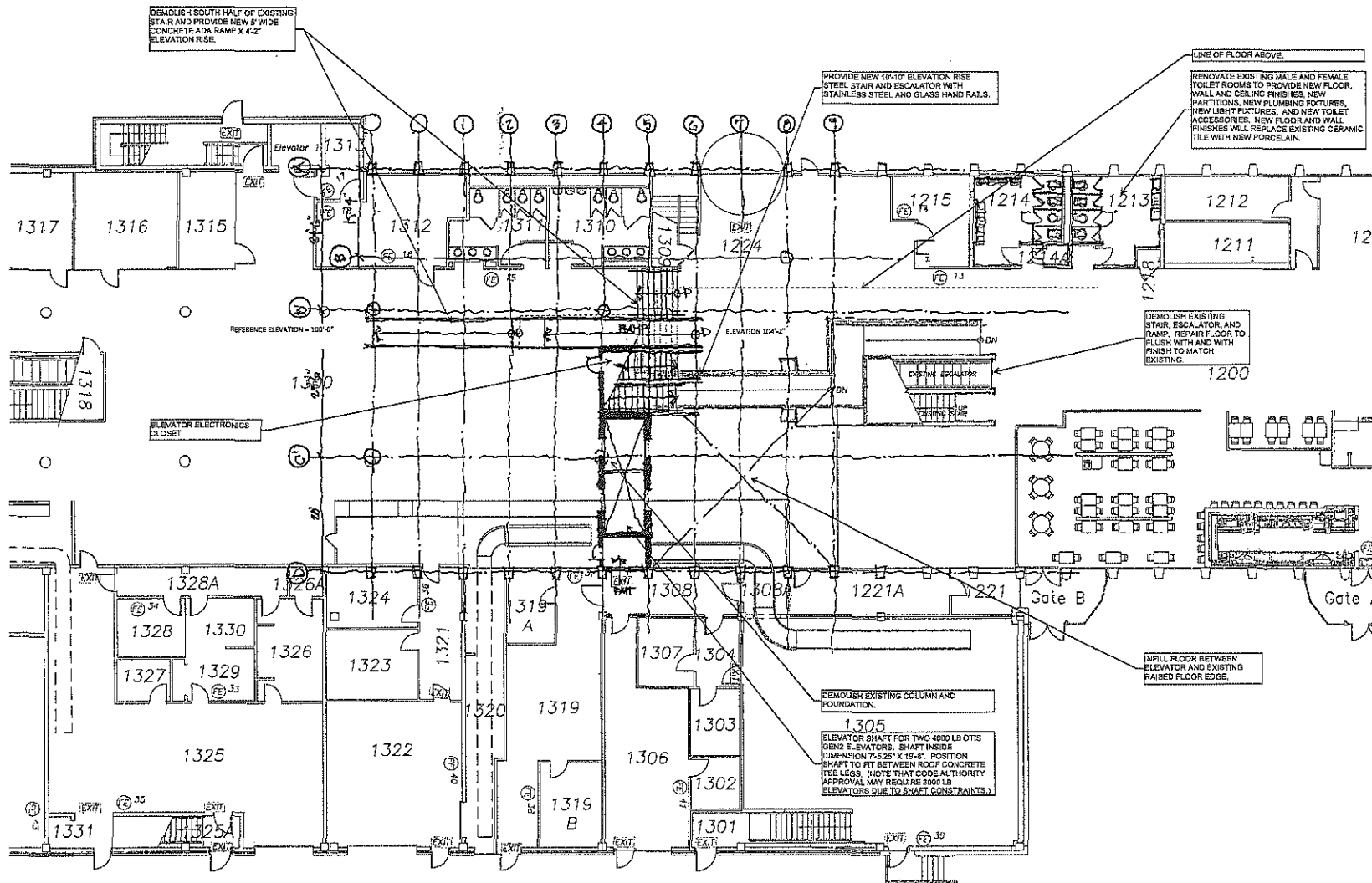
April 4, 2017

Date

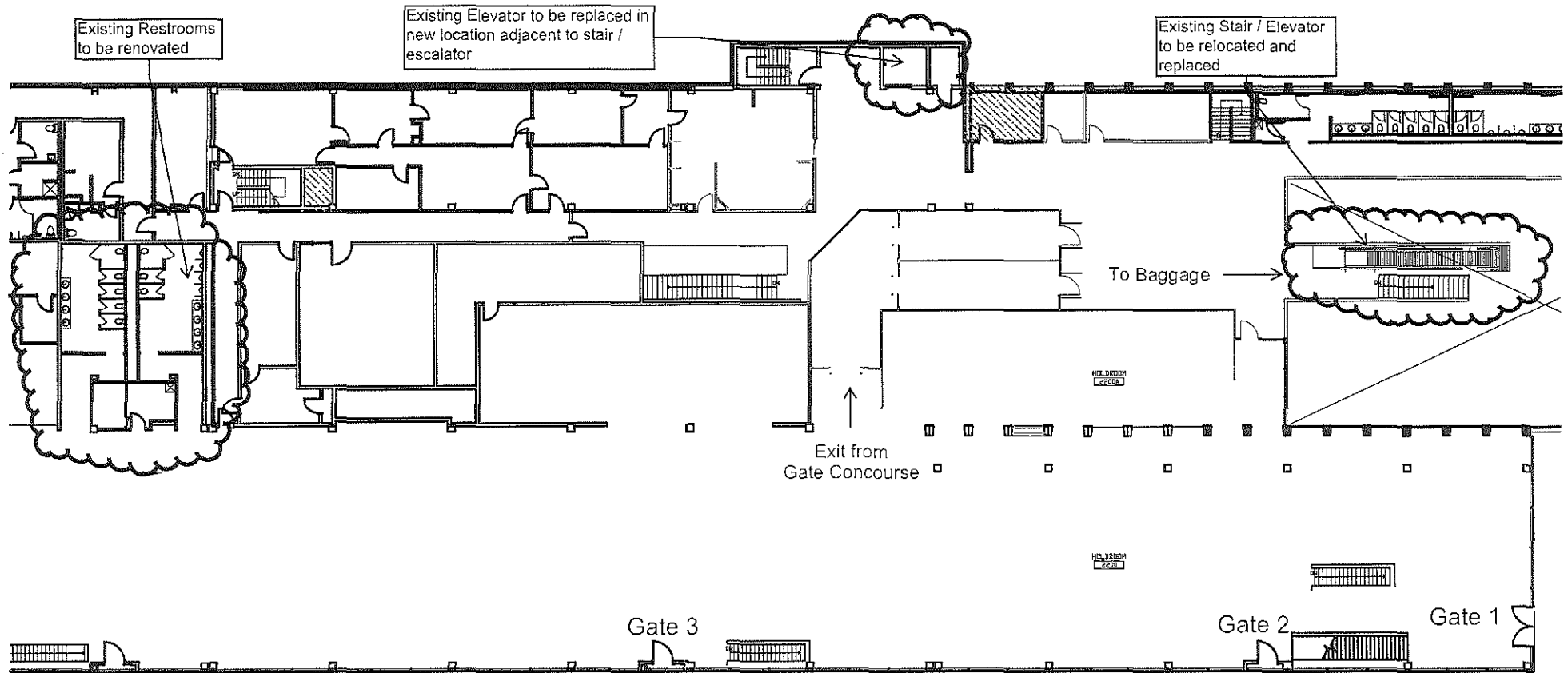
Portland International Jetport Terminal Building Lower Level



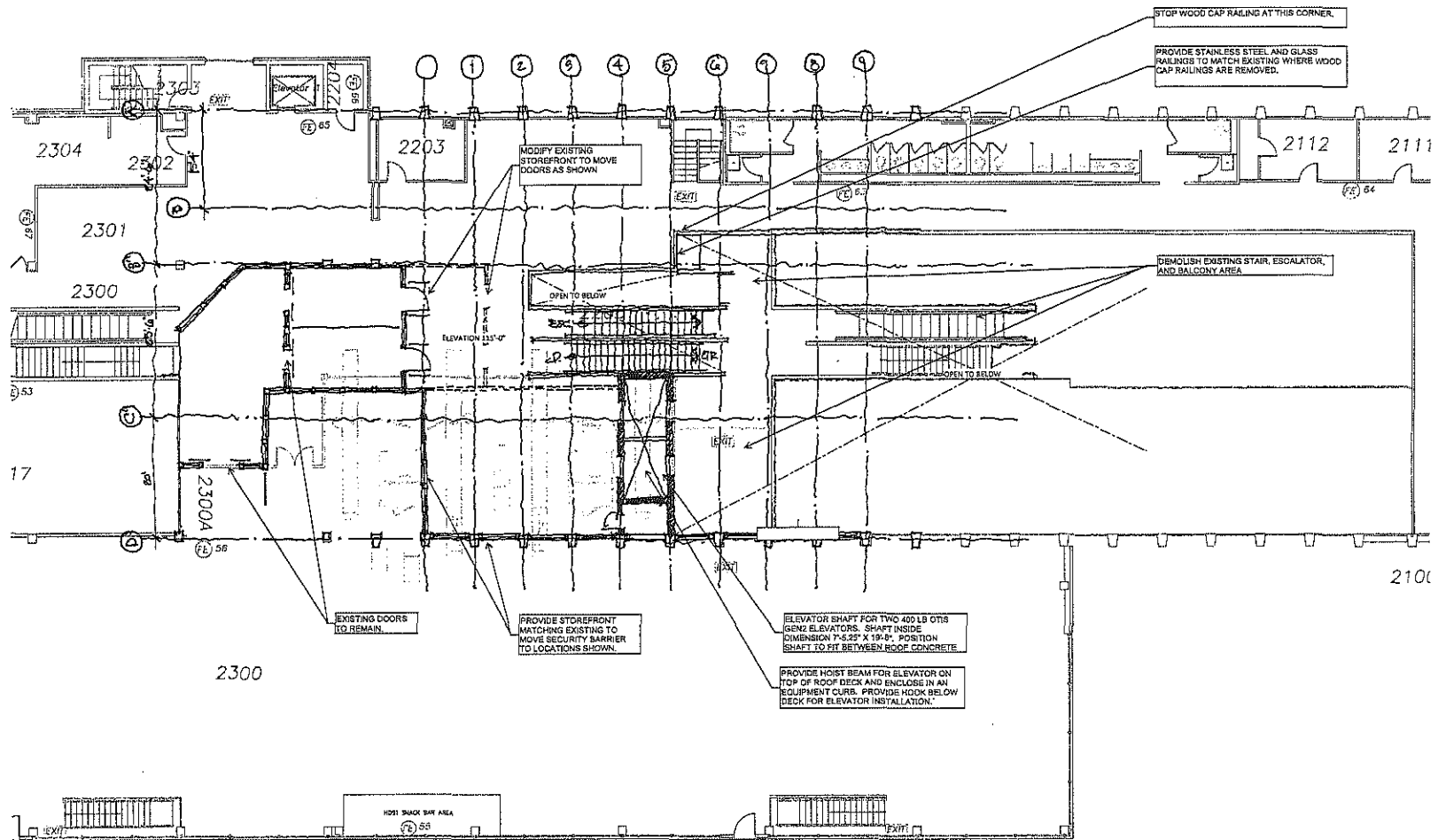




Portland International Jetport Terminal Building Upper Level







Order 219-16/17
Tab 25 4-24-17

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 ORDER 153-16/17
(FY2018 CIP PROJECTS)**

WHEREAS, the Portland City Council adopted Order No. 153-16/17 on April 5, 2017, authorizing the issuance of general obligation bonds of the City of Portland in the amount of \$24,340,500 to finance a portion of the City's FY2018 Capital Improvement Program (collectively as the "Prior Bond Order" and the "FY2018 CIP Projects"); and

WHEREAS, the City Council desires to amend the Prior Bond Order as set forth below;

NOW, THEREFORE, by the City Council of the City of Portland, be and it hereby is:

ORDERED THAT the description of the FY2018 CIP Projects attached as Exhibit A to the Prior Bond Order is hereby replaced in full with Exhibit A (Replacement) attached hereto.

BE IT FURTHER ORDERED THAT, in all other respects, the Prior Bond Order is hereby ratified and confirmed as if more fully set forth herein.

FY18 CIP - General Fund

Exhibit A (Replacement)

	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>			
<u>CBHS Great Room & Live Safety Improvements</u>	<u>225,000</u>	<u>930,000</u>	Added
Deering High School Windows		750,000	Removed
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	Removed
Deering High School Kitchen Remodel / Upgrade		50,000	Removed
Engineering for Roofs		40,000	Removed
King Fire Alarm Replacement Engineering		20,000	Removed
Lyman Moore Fire Alarm Replacement Engineering		20,000	Removed
PATHS - Technology / Network Engineering		20,000	
Facilities Total	\$ 3,056,040	\$ 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		Removed
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 2S15	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	4,949,497	
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
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Green Infrastructure	200,000
Smart Cover Systems for SSO's	45,000
Pole Camera	20,000
FACTS Veranda St paving - ineligible Utility costs	18,000
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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	

MEMORANDUM - City Council Agenda Item

TO: Mayor and City Council

FROM: Brendan T O'Connell – Finance Director (submitting on behalf of School Board)

DATE: 4/14/17

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta

SUBJECT: ORDERS AMENDING ORDER 153-16/17 (FY2018 CIP PROJECTS)

SPONSOR: Mayor Strimling

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading 4/24/17 Final Action 5/1/17

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

PRESENTATION: None

I. SUMMARY OF ISSUE (Agenda Description)

On April 5, 2017 the City Council approved Order 153-16/17, the FY18 Capital Improvement Plan. The plan was the result of a lengthy public process which included all City Departments and the School Department submitting and presenting their prioritized capital improvement plan requests in late 2017, the City Manager presenting the Capital Improvement Plan to Finance Committee, and the Finance Committee and City Council both unanimously endorsing that plan as presented. The School Board has subsequently requested a change to the normal process and voted to ask the City Council consider an amendment, removing seven school projects from the FY18 approved CIP (Deering High School Windows, District Phone System, Deering High School Kitchen / Remodel Upgrade, Energy Management Control Upgrades, Engineering for Roofs, King – Fire Alarm Replacement Engineering, Lyman Moore – Fire Alarm Replacement Engineering) and reallocating that funding to the Casco Bay High School New Entrance and Engineering project.

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

In April 2017 the School Board changed their project prioritization and has requested a re-allocation of their FY18 CIP funding. They would like to remove the \$1,155,000 in funding for the following projects:

Deering High School Windows	\$750,000
District Phone System	225,000
Deering High School Kitchen / Remodel Upgrade	50,000
Energy Management Control Upgrades	50,000
Engineering for Roofs	40,000
King – Fire Alarm Replacement Engineering	20,000
Lyman Moore – Fire Alarm Replacement Engineering	20,000
Total	<u>\$1,155,000</u>

The funding the above seven projects would then be reallocated to a newly authorized Casco Bay High School New Entrance and Engineering project. Additional detail from the School Department is attached.

III. INTENDED RESULT

Closure on FY18 CIP process, so work can begin on the FY18 school CIP projects.

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

Although this particular amendment has no immediate net financial impact, it removes 7 projects from the FY18 CIP which were previously requested by the Department, recommended by the City Manager, and approved by the Finance Committee. It replaces those 7 projects with one which was not recommended for funding by the City Manager or Finance Committee, for a building which may be significantly renovated in the coming years.

VI. STAFF ANALYSIS

Staff and the City Manager chose not to recommend the CBHS entrance project for funding as part of the FY18 process. During a meeting between City and School staff on 12/20/16, the School Department had listed the Casco Bay High School New Entrance and Engineering project as Priority 5 ("Other Projects"), which was significantly lower than any of the other projects recommended by the School Board. The PPS projects recommended for funding by the City Manager were all listed as either a priority 1 ("Health, safety and compliance issues including roof structural upgrades; improvements to indoor air quality; compliance with the Americans with Disabilities Act; hazardous material abatement or removal; and other health, safety and compliance issues") or Priority 2 ("Repairs and improvements not related to health, safety and compliance limited to repairs and improvements to school building structures, windows, doors and water supply or waste disposal systems"). Furthermore, the engineering work recommended for the King and Lyman Moore Fire Alarm Replacements and also the PHS Roof Replacement was included in part to help boost the district's chances at School Revolving Renovation Funding in the FY18 application cycle.

VII. RECOMMENDATION

Staff and City Manager's recommendation is already reflected in the CIP which was approved on April 5, 2017.

VIII. LIST ATTACHMENTS

Additional detail from the School Department on the Casco Bay High School New Entrance and Engineering project and their request is attached.



Portland Public Schools

LEARNING TO SUCCEED

Executive Summary

Portland Board of Public Education

Business Meeting Agenda Item

TOPIC: Reallocation of City Manager's CIP Funds

DATE: April 11, 2017

PREPARED BY: Xavier Botana, Superintendent

Recommended Action:

- ☐ Action Item – Consent
- ☐ Action Item – First Read
- ☒ Action Item – Vote
- ☐ Discussion Item
- ☐ Information Item

Agenda Reference:

VIII.c.

School Year Item: A-89-16/17

Recommendation(s):

Approve revisions to the City Finance Committee's approved CIP

Purpose:

To allow the building of the Casco Bay High School Great Room and accompanying Life Safety improvements

Connection to Comprehensive Plan:

The work of the Portland Board of Public Education ("Board"), as facilitated by the Chair, supports all goals and objectives of the Comprehensive Plan. This proposed action addresses the following two goals:

Goal 2 – WHOLE STUDENT: All Portland Public School students will develop the skills, habits and mindsets they need to engage in and contribute to our diverse and ever-changing world.

Goal 4 – PEOPLE: Portland Public Schools attracts, supports and retains talented and diverse people who use their strengths to achieve our shared goals.

Background:

When CBHS was asked to expand from 280 to 400 students, a master building plan was developed that would bring the school to the level of educational programming to meet the needs of the expanding student population and the school's unique curriculum. The building study, conducted by PDT Architects estimated \$34 million in programmatic and capital improvements (see memorandum from Principal Derek Pierce) attached. To date, very few of those improvements have been made.

One key aspect of the Casco Bay experience is the School Meeting. As evidenced by the pictures attached with this memorandum, the Great Room space where this meeting takes place is inadequate. Students are packed in and some students emotionally cannot handle being in such tight quarters.

In December, the Board submitted a Capital Improvement Plan to the City. The request was for over \$5 million in 2018 CIP (see attached). The Manager's recommendation, which was adopted by the City Finance Committee and is working its way through the Council was for \$2.5 million.

During the hearing process, advocates for Casco Bay High School turned out to advocate for reinstatement of the \$1.15 million. Finance Committee members encouraged the district to evaluate the proposed approved projects, and if they wished to do so, remove \$1.15 million in projects and prioritize the Casco Bay project.

Staff have reviewed the approved projects and is recommending 1.15 million in projects that could be postponed without significant impact on the district's upkeep and maintenance. The DHS windows, while needed, were not included in the district's request to the City. They were located in the 2019 proposed CIP, where they will return. We believe that several engineering reports that were approved by the Council can be also postponed to the 2019 CIP request.

Finally, we have proposed to remove the upgrade to the district's phone system. The IT department is considering other cheaper, short term solutions that will allow us to upgrade the phone servers to become serviceable again. They believe this can be achieved within their current operational budget (~\$60,000).

The proposed replacements are attached as Summary of 2018 CIP Evolution.

I have discussed this plan with City Manager Jon Jennings who understands the rationale behind this request.

If approved by the Board, the City Council does not need to change its CIP advertisement as the bottom line amount remains as advertised.

It is important to remember that the board previously approved the Casco Bay project but not many of the projects that would be postponed to 2019 CIP.

Fiscal Impact:

Removes \$1.15 million in projects from the current approved CIP and replaces it with the same cost Casco Bay project.

Attachment(s):

Memorandum from Principal Derek Pierce
Powerpoint "The Need for Greater Great Space"
CBHS Stair 3 Schematics
Original Board CIP Request
Summary of 2018 CIP Evolution



Derek Pierce
Principal
piercd@portlandschools.org

Casco Bay High School
For Expeditionary Learning

196 Allen Avenue
Portland, Maine 04103
PH(207) 874-8160 • Fax (207) 797-5437
<http://CBHS.portlandschools.org>



Portland Public Schools

March 28, 2018

Dear Superintendent Botana:

At the request of Laurie Davis of the School Board Operations Committee, I write to provide some background and rationale behind the request for the "Greater Great Space" in next year's CIP. I urge the School Board to support including the project in its recent allotment for CIP school projects from the City Council.

Support for this million dollar project will fulfill the city's pledge to our school and community when we agreed to expand about this time five years ago.

In the spring of 2012, Mayor Brennan asked that we expand Casco Bay High School to better meet community demand, and we did so. We've grown since then from 280 to about 400 students. Part of the city's pledge was to expand our facility commensurately. That pledge has been only partially fulfilled. In the fall of 2013, when PDT architects met with students, staff and parents to develop the Casco Bay High School "Master Plan," the top priority for facility upgrades was "a Greater Great Space." This was not surprising. The "Great Space" is the only large, open space in our facility. We gather the whole community there weekly for school meeting. School Meeting teems with student performances, recognitions and rituals (eg: Movin' On Up) that both demonstrate and perpetuate our core school values. The space is also used incessantly from before school until the last student leaves in early evening: for class meetings, for culminations, for hanging out at lunch and before school, for guest speakers, for small group work outside the classroom, for teacher collaboration.... Any visitor to our school knows it is the hub and cultivator of our community.

In February 2014, the Master Plan was released and imagined three phases of renovations. So far about 10% of the work (and the estimated costs) – have been completed. The addition of two science labs and two classrooms was prioritized for the initial work for two reasons:

- 1) We were expanding from 280 to about 400 students over 3 years, and we needed the new classroom space urgently.
- 2) PDT realized that the state safety rules required that if the Great Space was expanded at all in size that a 3rd form of egress would be required from the space. This required 3rd form of egress has evolved to also be framed as our new entrance – which has significant benefits and is required by law – but the largest good for the school community will be the Greater Great Space.

In the current CIP process, this "CBHS Entrance" project was not rated highly by Dave Onos and Kathy Alves, but it was highly rated and fully recommended by the Board of Education. It is distinct from the other "bricks and mortar" issues on the CIP list; it is not about something falling apart. It is about addressing a crucial need that has never been appropriately addressed, for 12 years. This project was valued by the School Board as something equally necessary because of all the projects on the list, it most impacts school culture and student learning.

I have shared some photos with the finance committee of what it looks like currently during our school meeting; they are attached here. It is an obvious safety issue. School meeting felt crowded in this space even before we expanded. That is why the Greater Great Space was the top priority. Now, we have a



Portland Public Schools
Assuming that all students are learning for their future

cohort of students who are too anxious to be a part of the claustrophobic din at school meeting. This is not acceptable.

The preliminary drawings by PDT architects completed last November for this project are also attached; they include creating a "Greater Great Space," a new, distinct entrance for CBHS, a new main office proximate to the Greater Great Space and three new classrooms within our existing footprint to replace the classrooms that would be eliminated to make room for the Greater Great Space.

This spring, the district is also submitting an application to the State Board of Education in support of a new building or massive renovation for PATHS and CBHS. This is one of six applications the district will likely submit, and one of about one hundred that can be expected state-wide. We will not know where we stand in the state's funding process until some time in the spring of 2018. As veterans of the Major Capital School Construction Process know, applications for state funding are always a long-shot in terms of both odds and duration. Even if a PATHS-CBHS building became a high priority in the next round of state funding, it might be a decade before any "ribbon-cutting." The fifteen hundred families or so we will be serving over the next decade deserve a complete school.

In our first dozen years, Casco Bay High School has become one of the highest achieving high schools in the state, consistently out-performing demographic expectations. 98% of our graduates have been accepted to college. More importantly, our students graduate capable of producing high quality work that matters, to themselves and our world. Our educational program has become a reason that families move to Portland - and stay. The same can not be said of our inadequate facility. We are comfortable that our school has been retrofitted into the district's existing facilities. We are proud that there is probably no non-charter public high school in Maine that has had less spent on its facility. We know there is not another non-charter public high school in Maine that does not have a cafeteria, gym or theater. And we are not asking for any of that. We are asking for just over 1 million dollars of the remaining \$36 million dollars that PDT recommended in our Master Plan. We just want a single space where our entire community can comfortably gather and learn from one another and build community, together. Wait till you see what we can do then.

Thanks, as always, for your service to Portland.

Sincerely,

Derek Pierce

Derek Pierce
Principal



Portland Public Schools
Assuming that all students are learning for their future

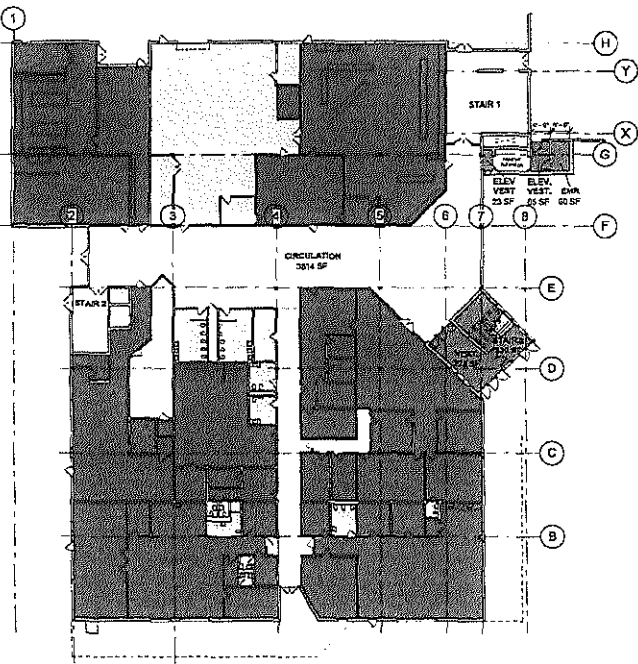
Powerpoint “The Need for Greater Great Space”

The Need for a Greater Great Space

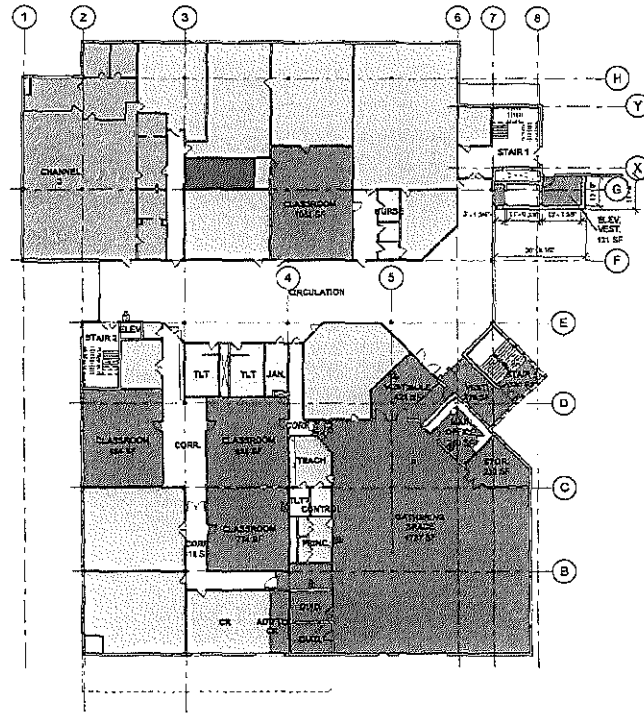




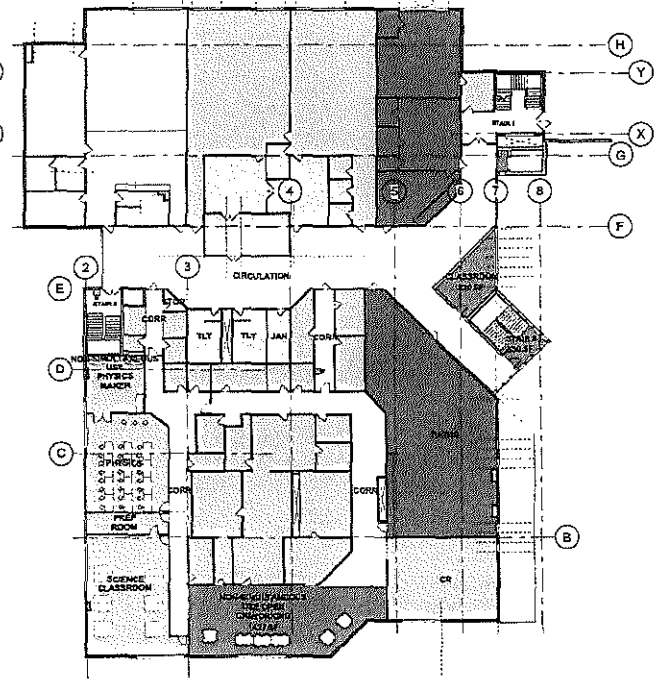
CBHS Stair 3 Schematic Plans



FIRST FLOOR



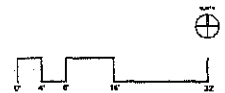
SECOND FLOOR



THIRD FLOOR

SYMBOLS

- CLASS
- CORRIDOR
- GYMNASIUM
- CIRCULATION
- SHARED CORRIDOR
- LINE TV
- TO BE ASSIGNED



Casco Bay High School - PATHS

STAIR #3 - Option 1 Schematic Plans

November 1, 2016

Order 220-16/17
Tab 26 4-24-17

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 ORDER 154-16/17
(FY2018 CIP PROJECTS)**

WHEREAS, the Portland City Council adopted Order No. 154-16/17 on April 5, 2017, appropriating the proceeds of the City's general obligation bonds in the amount of \$24,340,500 and appropriating certain other City funds in the amount of \$2,624,960 to finance a portion of the City's FY2018 Capital Improvement Program (referred to collectively as the "Prior Appropriation Order" and the "FY2018 CIP Projects"), as more particularly described in said Prior Appropriation Order; and

WHEREAS, the City Council desires to amend the Prior Appropriation Order as set forth below;

NOW, THEREFORE, by the City Council of the City of Portland, be and it hereby is:

ORDERED, THAT the description of the FY2018 CIP Projects attached as Exhibit A to the Prior Appropriation Order is hereby replaced in full with Exhibit A (Replacement) attached hereto.

BE IT FURTHER ORDERED THAT, in all other respects, the Prior Appropriation Order is hereby ratified and confirmed as if more fully set forth herein.

FY18 CIP - General Fund		Exhibit A (Replacement)	
	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>			
CBHS Great Room & Live Safety Improvements	225,000	930,000	Added
Deering High School Windows		750,000	Removed
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	Removed
Deering High School Kitchen Remodel / Upgrade		50,000	Removed
Engineering for Roofs		40,000	Removed
King - Fire Alarm Replacement Engineering		20,000	Removed
Lyman Moore - Fire Alarm Replacement Engineering		20,000	Removed
PATHS - Technology / Network Engineering		20,000	
Facilities Total	\$ 3,056,040	\$ 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		Removed
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
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ETHAN K. STRIMLING (MAYOR)
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SPENCER R. THIBODEAU (2)
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JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

Order 221-16/17
Tab 27 4-27-17
DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14
Re: INSTITUTIONAL OVERLAY ZONE

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

That Chapter 14, Sections 14-277 to 14-282 of the Portland City Code are hereby amended as follows:

Art. I. In General, § 14-1--14-15
Art. II. Planning Board, § 14-16--14-45
Art. III. Zoning, § 14-46--14-490

...

Div. 16. Waynflete School Overlay Zone, § 14-276--14-276.10
Div. 16.1. Institutional Overlay Zone (IOZ), § 14-277--14-293
Div. 17. B-7 Mixed Development District Zone, § 14-294-14-304

...

DIVISION 16.1. INSTITUTIONAL OVERLAY ZONE (IOZ)

14-277.—Reserved. Purpose of the Institutional Overlay Zone

The Institutional Overlay Zone (IOZ) designation provides a regulatory mechanism available to the city's four major medical and higher education campuses where an improved regulatory structure is needed to facilitate a consistent, predictable, and clear growth management process. The purposes of the Institutional Overlay Zone are to:

(a) Acknowledge that the city's major academic and medical institutions play a prominent role in the health and well-being of the local and regional community, and in order to sustain that role, these institutions need flexibility to change and grow;

(b) Encourage proactive planning for institutional change and growth which identifies and addresses likely long-term institutional

needs and cumulative impacts while leveraging potential benefits at the neighborhood, city, and regional level;

(c) Ensure that institutional change and growth both complements and, as appropriate, integrates adjacent or surrounding neighborhoods through carefully planned transitions;

(d) Support the formation and continuation of mutually beneficial public-private cooperation;

(e) Support an ongoing public engagement process that benefits both the institutions and nearby neighborhoods;

(f) Reflect Comprehensive Plan and other policy objectives;
and

(g) Provide a consistent regulatory approach to all major institutions which allows unique regulatory requirements that balance the particular needs of institutions with the needs of the surrounding neighborhood and wider community.

14-278.—Reserved. Location and Applicability

The city's four primary medical and higher education institutions are eligible to apply for designation as Institutional Overlay Zones. The Eligible Institutions are the two major hospital institutions of Maine Medical Center and Mercy Hospital and the two major academic institutions of University of Southern Maine and University of New England, their successors and assigns. Designation as an IOZ is the preferred mechanism where the Eligible Institution's proposed development is inconsistent with the existing zoning.

14-279.—Reserved. Establishment of an Institutional Overlay Zone

(a) Application for an Institutional Overlay Zone. Where the Eligible Institution seeks designation as an IOZ, they shall submit a zone change application consisting of two components:

1. An Institutional Development Plan (IDP) (see Section 14-280).
2. A Regulatory Framework (see Section 14-281) that would, when and if adopted, be the text and map amendment to the City's Land Use Code and Zoning Map.

(b) Required Public Involvement. At least two neighborhood meetings shall be required. The first shall be held prior to the formal submission of a zone change application for an Institutional Overlay Zone and the second shall be held during the City's review. Meetings shall identify the concerns, if any, of affected residents and property owners, and inform the development of the Institutional Development Plan (IDP) and Regulatory Framework. Meetings shall be held in a convenient location proximate to the institution. The

applicant shall provide written notification to property owners of record within 500 feet of the proposed IOZ boundary at least ten days prior to the meeting dates and maintain written records of the meetings.

(c) Required Scoping Meeting. The Eligible Institution shall meet with the Planning Authority after the first required neighborhood meeting and prior to submission of the zone change application to confirm the focus of the Institutional Development Plan (IDP) and Regulatory Framework, including associated study areas that may be outside of the proposed IOZ boundary. The IDP and Regulatory Framework will vary in detail and focus depending on the Eligible Institution and its particular context. The content requirements in Sections 14-280 and 14-281 and the comments from neighborhood meeting(s) shall provide direction for the content of the IDP. The Planning Authority or Planning Board may require additional information or modify content requirements as is relevant to the Eligible Institution (see Section 14-280(c)).

(d) Reviewing Authority.

1. The Planning Board shall review the zone change application, including the IDP and Regulatory Framework. At least one public workshop and a public hearing before the Planning Board are required.
2. Upon recommendation of the Planning Board, the City Council shall review and consider adoption of the Institutional Overlay Zone and the accompanying Regulatory Framework as an amendment to the city's code of ordinances.

(e) Future Institutional Development.

1. All new development by the Eligible Institution within the boundary of the IOZ shall be compliant with the IOZ and accompanying Regulatory Framework, consistent with the IDP, consistent with the Comprehensive Plan, and meet applicable site plan standards, unless such standards are superseded by the Regulatory Framework.
2. Any use/development proposed by the Eligible Institution outside the IOZ boundary that complies with the zoning for permitted uses in that location shall be reviewed under the standards of that zone. Any use/development proposed by an Eligible Institution outside of the IOZ boundary that is proposed in a residential zone and is functionally related to the operations within the IOZ shall be addressed by the IDP and require an amendment to the IDP.

14-280.—Reserved. Institutional Development Plan (IDP)

(a) Purpose. Any use conducted by an Eligible Institution and any construction by an Eligible Institution in an Institutional Overlay Zone shall be consistent with an Institutional Development Plan (IDP) approved by the Planning Board in accordance with this ordinance. The purpose of the IDP is to establish baseline data about institutional land uses, facilities, and services and measure, analyze, and address the anticipated or potential impacts of planned institutional growth and change. The IDP shall serve as a background document that supports the proposed Regulatory Framework and frames subsequent site plan review(s).

(b) Planning Horizon. An IDP shall provide the city and abutting neighborhoods with a clear outline of the anticipated or potential growth and change of the Eligible Institution for the short- to medium-term (e.g. 1-5 and 5-10 years respectively), as well as a conceptual growth plan for the long-term (e.g. 10 years or more); however, the specific planning horizons for each institution will be determined as part of the IDP approval process.

(c) Content. The IDP submission shall address the following elements unless specifically modified by the Planning Authority or Planning Board, with the scope and level of detail to be clarified at the required Scoping Meeting:

1. Context Information

- a. The institution's adopted mission, vision, or purpose statement
- b. A summary of relevant baseline data on the institution, including:
 - i. A neighborhood context plan;
 - ii. An inventory of current programs and services;
 - iii. A current census of the number of people using the institution (e.g., employees, enrollment, patients), with an indication of maximums and minimums over time;
 - iv. An inventory and/or plan of all existing property holdings within the main campus and within the City of Portland, including an indication of functional land use links between off-campus properties and the main campus (e.g. remote parking);

- v. An inventory and/or plan of existing facilities, including data on use, floor area, and any existing functional connections between facilities.
 - c. A summary of the baseline characteristics of the existing campus and context of the institution, based on identified study areas, including:
 - i. A summary of existing resources, such as historic, open space, and natural resources;
 - ii. A summary of the existing transportation system, including vehicular, pedestrian, transit, bicycle, and parking supply, demand, and utilization;
 - iii. A summary of existing public infrastructure supporting the institution, including demand, utilization and any capacity issues;
 - iv. Relevant municipal plans, projects, and studies that may influence the IDP study area and opportunities for integrating institutional growth.
 - d. A summary of public involvement in the development of the IDP, including major areas of public concern.

2. Assessment of Future Institutional Growth and Change

- a. A description of institutional needs and areas of future institutional growth and change, including:
 - i. Projected census of users (e.g., enrollment /employment/patient/visitor figures and anticipated variations over time);
 - ii. Institutional objectives for property both within and outside the IOZ boundary (e.g. acquisition and/or disposition), including an indication of any functional land use connection for sites outside the IOZ boundary to the main campus; and
 - iii. A Development Plan addressing anticipated or potential institutional needs and physical improvements, including the proposed boundary of the IOZ and any phasing of the development.

b. Analysis and associated plans that address the following elements in terms of anticipated growth or potential impacts within the identified study area, and support the development parameters as set out in the Regulatory Framework:

i. Transportation and access

- a. An analysis of the projected changes in parking demand, supply, and impacts to the off-street and on-street parking capacity, including an explanation of the proposed parking plan;
- b. An analysis of the projected changes in vehicular, pedestrian, transit, and bicycle access routes and facilities, their capacity, and safety;
- c. A transportation, access, and circulation plan, representing the synthesis of the analysis, and including a program of potential improvements or set of guidelines to address access deficiencies to and within the IOZ. The plan should outline proposed mechanisms and potential strategies to meet transportation objectives, including transportation demand management, phasing, and when a Traffic Movement Permit (TMP) may be required.

ii. Environment

- a. An analysis of potential cumulative impacts on natural resources and open spaces;
- b. An analysis of projected energy consumption, hazardous materials generation, noise generation, and similar issues as relevant;
- c. An environmental plan, representing the synthesis of the analysis and including a proposed program or set of guidelines for future preservation, enhancement, conservation, and/or mitigation.

iii. Infrastructure

- a. An analysis of projected public utility demand and the capacity of associated infrastructure;
- b. An analysis of projected public safety needs and projected impacts to the capacity of these services;
- c. An infrastructure plan, representing the synthesis of the analysis and including a proposed program or set of guidelines to support sustainable growth.

iv. Design

- a. An analysis of projected impacts to neighboring properties and public spaces, including potential shadow, wind, and lighting impacts, impacts of height and massing, and impacts to historic resources;
- b. An analysis of transition areas between the institution and adjoining neighborhoods, including identification of key character defining components of the surrounding context;
- c. An analysis of existing Crime Prevention Through Environmental Design issues and identification of how these principles would be addressed as part of the proposed campus development;
- d. A conceptual built environment/public realm plan, representing the synthesis of the analysis and including a set of guidelines for urban design, landscape, open space, and streetscape treatments, with particular attention to the treatment of edges (both within and abutting the IOZ boundary) to achieve compatible transitions.

v. Neighborhood Engagement

- a. A plan for ongoing community engagement that represents best practices, promotes collaborative problem solving around community concerns, fosters transparency, and identifies mechanisms for neighborhood

feedback and institutional accountability;

- b. A property management framework that identifies the institution's process for handling operational property issues with neighbors;
- c. Strategies for assuring communication pertaining to property acquisition and disposition in surrounding neighborhoods;
- d. A set of construction management principles, to apply to all institutional construction, that represent best practice, aim to minimize short- and long-term construction impacts on surrounding residents and businesses, and ensure a clear communication strategy is in place in advance of construction.

(d) Standards of Review. The IDP shall:

- 1. Address all content requirements, unless explicitly modified by the Planning Authority or Planning Board;
- 2. Reflect the issues/topics identified in the required public process;
- 3. Demonstrate consistency with the city's Comprehensive Plan and the purpose of this ordinance;
- 4. Demonstrate how the property ownership, proposed growth, and requested Regulatory Framework relate to the institution's mission;
- 5. Demonstrate that traffic and parking impacts have been anticipated and that the proposed parking provision is justified as based on an assessment of options for reducing traffic and parking demands;
- 6. Outline an approach to open space, natural, and historic resources that supports preservation and enhancement.
- 7. Demonstrate that potential cumulative environmental impacts have been anticipated and can be minimized or satisfactorily mitigated;
- 8. Demonstrate that utility impacts have been anticipated and can be minimized or satisfactorily mitigated;
- 9. Reflect a comprehensive design approach that ensures appropriate transitions with the existing or future scale and character of the neighboring urban fabric;

10. Promote compatibility with existing or future uses in adjacent neighborhoods, maintain housing, and support local amenities;
11. Anticipate future off-site improvements that would support the integration of the institution into the community and city-wide infrastructure;
12. Conform with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within one hundred (100) feet of designated landmarks, historic districts, or historic landscapes, the IDP shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity; and
13. Incorporate strategies to support clear communication and ongoing public engagement between institutions and nearby neighbors.

(e) Approval. Upon finding that an Eligible Institution's IDP meets the standards of review, the Planning Board shall approve, approve with conditions, or deny an IDP.

(f) Monitoring. The IDP shall establish a schedule for reporting on IDP implementation at regular intervals of not more than ten years from the date of approval of the initial or amended IDP, and identify thresholds for IDP amendments;

(g) Amendments. An approved IDP shall guide campus development unless and until amended. If at any time the Eligible Institutions request minor amendments to an approved IDP, the Planning Authority may approve such minor amendments, provided that they do not constitute a substantial alteration of the IDP and do not affect any condition or requirement of the Planning Board. The applicant shall apply with a written statement of the proposed amendment and proposed amended IDP to the Planning Authority, whose decision as to whether the amendment is minor shall be final. Major amendments shall be reviewed by the Planning Board. When the IDP is amended, the baseline data in the IDP shall be updated as appropriate.

14-281. Regulatory Framework

(a) Purpose. The Regulatory Framework translates the IDP into a set of clear and specific zoning requirements for the IOZ that constitute the text and map amendments to the City's Land Use Code and Zoning Map. The zoning requirements are anticipated to include parameters that guide the growth and change of the institution as

well as broad strategies to address potential impacts, with plans and details to be developed under site plan review.

(b) Applicability. The Regulatory Framework shall apply only to properties that are within the IOZ boundary and to which the Eligible Institution holds right, title, or interest. For these properties, the Institutional Overlay Zone shall supersede the underlying zoning, and all new institutional development shall be conducted in compliance with the Regulatory Framework and the approved Institutional Development Plan. Properties located within the Institutional Overlay Zone not subject to right, title, or interest of the Eligible Institution shall continue to be governed by the regulations of the underlying zoning designation.

(c) Uses. Institutional uses, including hospitals and higher education facilities, shall be permitted, as shall uses that are functionally integrated with, ancillary to, and/or substantively related to supporting the primary institutional use, consistent with the applicable approved IDP.

(d) Content. The Regulatory Framework shall reflect the information and analysis of the IDP. The content shall be tailored to address the particular issues associated with the institution and its neighborhoods. The Regulatory Framework should be succinct and use tables and graphics as possible to address the following, if applicable:

1. Zoning boundary of the IOZ: The area to which the regulations apply, as shown on the zoning map, subject to other provisions of this ordinance (i.e. the map amendment to the City's Zoning Map);
2. Phasing and schedules: Requirements that relate to particular proposed phases; a chart showing the schedule or thresholds for submitting an amended IDP (or elements of an IDP, such as a Transportation Demand Management (TDM) Plan);
3. Uses: Clarification, as necessary, on permitted uses.
4. Dimensional Requirements: Graphics, sketches, or standards, including details for transition zones within the IOZ boundary;
5. Transportation: Elements such as TDM trip reduction targets or contribution to area-wide TDM measures; broad parameters for ensuring pedestrian, vehicular, bicycle and transit access and safety; parking ratios and management strategies; thresholds for access improvements;
6. Environment: The approach to the inclusion of open space and preservation of environmentally-sensitive areas;

7. Mitigation measures: The broad approach to identified mitigation measures, which would be addressed in greater detail in the site plan review process; thresholds for addressing deficiencies; goals for preservation/protection;
8. Design: Graphics and standards to clarify building placement and envelope (height and massing); guidelines for integration of site features; required treatments for transition zones and treatment for all edges (both within and abutting the IOZ boundary); guidelines for establishing campus identity; and
9. Neighborhood Integration: Thresholds and strategies for neighborhood engagement; mitigation of impacts on neighboring properties, including construction impacts; buffering requirements; objectives for pedestrian linkages and safety; other requirements that address community concerns.
10. Monitoring: A schedule for regular monitoring reports on IDP implementation in accordance with the IDP.

(e) Standards of Review: The Regulatory Framework shall:

1. Be consistent with the Comprehensive Plan and the Institutional Development Plan;
2. Provide a clear zoning framework, using graphics and tables as appropriate, to apply to future site plan reviews;
3. Provide specific regulatory statements as appropriate that respond to concerns raised during the required public involvement; and
4. Outline measurable goals and thresholds for improvements or other actions identified in the IDP to be advanced in subsequent site plan applications.

(f) Approval/Adoption. The Planning Board shall review the proposed Regulatory Framework against the standards of review and make a recommendation on the institution's IOZ designation and Regulatory Framework to the City Council for adoption as part of this zoning ordinance.

(g) Amendments. A Regulatory Framework and IOZ boundary as adopted by the City Council shall remain in force unless and until amended. Amendments to a Regulatory Framework and/or IOZ boundary may be brought forth by the city or Eligible Institution. Amendments brought forth by the city will require a supermajority of the City Council to take effect. Proposed amendments to the IOZ boundary or Regulatory Framework shall be reviewed by the Planning Board and adopted by the City Council subject to the provisions of this ordinance.

14-282. Reserved.

* Editor's note. Order No. -16/17, adopted May , 2017, provided that the
Regulatory Frameworks, as they are adopted by the City Council for each Eligible
Institution, shall be codified within this section.

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: April 3, 2017

SUBJECT: Institutional Overlay Zone (IOZ) Text Amendment

SPONSOR: Elizabeth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading April 24, 2017 **Final Action** May 1, 2017

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

Maine Medical Center (MMC) is currently pursuing an Institutional Overlay Zone designation under the new ordinance, and the IOZ framework needs to be in place to allow early adoption of the MMC IOZ and subsequent construction this year.

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 key policy elements

I. ONE SENTENCE SUMMARY

The Planning Board is forwarding a recommendation to the City Council to adopt a text amendment to the land use code to create a process for institutional zoning in the city in the form of an Institutional Overlay Zone (IOZ).

II. AGENDA DESCRIPTION

On March 28, 2017, the Planning Board voted 7-0 to recommend a new Institutional Overlay Zone (IOZ) ordinance to make available a process for the growth and development of major institutions (initially MMC, Mercy, UNE and USM) in view of their central economic, academic, and health care roles in the city and region. The process aims to foster transparency; formalize regular public engagement between the institutions and neighborhoods, the city, and third parties (e.g. METRO and utilities); and provide mechanisms that address the implications of institutional growth and development.

III. BACKGROUND

At least three of these four major institutions are considering major changes to their core campuses, and, for some, the existing zoning context presents challenges. For example, MMC's contract zone, developed in 2005, does not support their long-term vision, and UNE's existing zoning, consisting of five disparate zones, presents challenges for their future planning as well.

The concept of an Institutional Overlay Zone (IOZ) has been adopted in many municipalities as it introduces a longer-range institutional planning process that allows the city to better anticipate municipal needs, and fosters healthy ongoing relationships with surrounding neighbors.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Staff has drafted the Institutional Overlay Zone (IOZ) to achieve a number of goals, among them to create more consistent and predictable regulation for the city's major institutions which allows them to change, grow and contribute to the city's (and region's) economy, cultural life, and health in a sustainable way.

V. FINANCIAL IMPACT

There are no known municipal financial impacts associated with the zoning amendments, although there are broad economic implications of institutional growth for the city, region and state..

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

The ordinance sets out an IOZ mechanism that allows a major institution to seek designation as an IOZ, which would comprise a zoning framework unique to the institution that replaces the underlying zone for institution properties. As part of the process the institution would prepare an Institutional Development Plan (IDP) which sets out the current land use and proposed development. The IDP feeds into a Regulatory Framework and IOZ boundary which form the 'zoning' for the institution and would be incorporated into the land use code following Planning Board and City Council review and approval.

Staff of the Planning and Urban Development Department, in consultation with Corporation Counsel, developed this text over the course of five meetings with the Planning Board and with the input of numerous stakeholders including the major institutions, neighborhood groups and members of the public.

VII. RECOMMENDATION

On March 28, 2017, the Planning Board voted 7-0 to recommend a new Institutional Overlay Zone (IOZ) ordinance. The recommendation was:

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on March 28, 2017, and on the basis of the testimony presented at the public hearing, the Planning Board found that the proposed Institutional Overlay Zone text amendment is consistent with Portland's Comprehensive Plan and therefore recommends adoption of the amendments to the City Council.

VIII. LIST ATTACHMENTS

1. IOZ Process Graphic
2. Planning Board Report to Council (Includes text amendments)

Prepared by: Stuart O'Brien, Planning Director
Date: April 3, 2017



PLANNING BOARD REPORT to the CITY COUNCIL PORTLAND, MAINE

Proposed Text Amendment
Institutional Overlay Zone (IOZ)
City of Portland, Applicant

Submitted to: Portland City Council First Reading: April 24, 2017 Second Reading: May 1, 2017	Prepared by: Jean Fraser and Nell Donaldson, Planning Division Report Prepared: April 3, 2017
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I. INTRODUCTION

On March 28, 2017, the Planning Board voted 7-0 to recommend to the City Council a text amendment to the land use code to create a process for institutional zoning in the city in the form of an Institutional Overlay Zone (IOZ). Staff of the Planning and Urban Development Department, in consultation with Corporation Counsel, developed this text over the course of five meetings with the Planning Board and with the input of numerous stakeholders. The purpose of this report is to present this text to the City Council. The report presents background on the evolution of the IOZ text, a compendium of comments received over the course of the review, a comprehensive plan analysis, and finally, a summary of Planning Board deliberations.

II. BACKGROUND

The Planning and Urban Development Department's work to develop an Institutional Overlay Zone began in 2016 with preliminary discussions with each of the city's four major institutions: Maine Medical Center (MMC), Mercy Hospital, University of Southern Maine (USM), and the University of New England (UNE). At least three of these institutions were considering major changes to their core campuses, and, for some, the existing zoning context presented challenges. For example, MMC's contract zone, developed in 2005, did not support their long-term vision, and UNE's existing zoning, consisting of five disparate zones, presented challenges for their future planning as well (*Table 1*).

Table 1: Major Institutions, Existing Zoning Context

Institution	Current zoning	Surrounding zones
Maine Medical Center (MMC)	Contract Zone (2005)	Mostly R6 plus B2, RP, ROS, R4
Mercy Hospital	Contract Zone (2001)	State St. - R6 Fore River Parkway - IL, IMb, IH
USM	USM Overlay Zone (2006)	R5, B2
UNE	R5, R3, IM, IH, B2	R5, ROS, B2

The Department recognizes that the growth and change contemplated by each of these institutions is integral to their long-term health, and, given their central economic, academic, and health care roles, also critically important to the health of the city, region, and state. However, staff also recognizes that institutional growth and change can place pressure on surrounding neighborhoods and the city more broadly, and that the changes anticipated by these institutions need to be addressed as part of a broader long-term plan for each institution. Such long-range planning would allow the city to better anticipate municipal needs and would foster healthy relationships with surrounding neighbors. In this context, staff developed the concept of the Institutional Overlay Zone.

III. DEVELOPMENT OF THE INSTITUTIONAL OVERLAY ZONE ORDINANCE TEXT

The development of the concept and detailed language for the Institutional Overlay Zone involved concurrent research and outreach with stakeholders and the public, including:

A. Research

Numerous examples of institutional zoning from around the country provided guidance in developing the Institutional Overlay Zone. The Planning Board reviewed examples from other municipalities and the text amendments were informed by provisions from other ordinances. The City's land use code already includes institutional overlay zones for USM and Waynflete, and these also informed the final IOZ ordinance. The new IOZ ordinance would provide a consistent approach for future institutional overlay zones.

In addition, elements of the city's existing land use code, including the code provisions for master development plans (under the site plan ordinance), and the India Street Form-Based Code Zone, helped guide the IOZ text. These provisions informed various elements of the IOZ draft, including the text on amendments, historic preservation, and the Institutional Development Plan.

B. Outreach

Institutions: The Planning and Urban Development Department met with each of the four main institutions and/or their representatives and held follow up discussion throughout the development of the IOZ text. Institutions were invited to comment on draft language presented in Planning Board memos and on interim drafts. Their most recent comments are attached (*Attachment 1*). As feasible, comments from institutions were integrated into the text.

Interested parties: The Planning and Urban Development Department also conducted outreach with interested parties both through informal references, for example as part of the Comprehensive Plan discussions, and through noticing via the city's website and "notify me"/e-mail group noticing lists. Additional noticing to MMC neighbors was undertaken in relation to MMC's intention to follow the new IOZ process and prepare an Institutional Development Plan. Approximately 22 parties either submitted written comments or spoke at Planning Board workshops. The comments are included in *Attachment 2* and considered below in Section VII.

City staff: Last, the Planning and Urban Development Department worked with other city departments to develop the ordinance, and the final text reflects input from Corporation Counsel, the Department of Public Works, the Fire Prevention Bureau, and other departments.

C. Planning Board Workshops

The Planning Board held four public workshops prior to the public hearing on the Institutional Overlay Zone, beginning in November of 2016. These workshops allowed the Board to weigh in on the nascent concept of the IOZ, modify the text as it developed, and provide guidance on core issues. A note summarizing Board discussions is included at *Attachment 3*.

IV. BASIC CONCEPTS OF THE INSTITUTIONAL OVERLAY ZONE ORDINANCE

The proposed Institutional Overlay Zone (IOZ) ordinance establishes a consistent process for subsequent development for each major institution by creating a framework under which each institution would pursue its own, institution-specific IOZ, with accompanying map and text changes to the zoning map and land use code. A flow chart depicting this process appears in *Attachment 4* and is summarized below:

A. Eligible Institution's IOZ Review

In the final draft of the Institutional Overlay Zone ordinance, each of the city's four major institutions are defined as eligible for designation as an IOZ. In order for the designation to be applied, these basic submittals are required:

- *Institutional Development Plan (IDP):* The IDP is a longer term development or master plan, to be developed by the eligible institutions, which would guide each institution's development over the life of the plan. The IDP is envisioned as the basic building block of the Institutional Overlay Zone. The IDP is intended as a stand-alone document. This would be approved by the Planning Board.

- *Regulatory Framework:* The Regulatory Framework is essentially the 'zoning' for each institution, and is meant to evolve from the IDP. The Regulatory Framework would establish the parameters to allow each institution to grow as envisioned in the IDP, yet also formalize requirements, guidelines, and performance measures that address the major ramifications of institutional growth and change. The Regulatory Framework would be adopted into the land use code by the City Council.
- *IOZ Boundaries:* The boundaries of each institution's IOZ would be defined as a geographic element represented as an amendment to the city's zoning map. This would be adopted by the City Council.

The final ordinance requires a public meeting prior to an institution's submission of a draft IDP, Regulatory Framework, and IOZ boundaries. The ordinance also requires a scoping meeting with city staff, where the basic content of the IDP would be established. An additional public meeting would be required following submission of each institution's IDP, Regulatory Framework, and IOZ boundaries.

Pursuant to staff and Planning Board review, an IDP would be voted on and either approved or denied by the Planning Board, and the Regulatory Framework and boundaries, as the 'zoning' for the institution, would either be recommended or not to the City Council. The Council would subsequently conduct their review, and following adoption of the Regulatory Framework, it would be incorporated into the land use code. At the same time, the zoning map would be amended to show the institution's Institutional Overlay Zone.

B. Eligible Institution's Site Plan Review

Following creation of the institution-specific IOZ, site plan-level projects initiated by an institution would be reviewed by the Planning Board for consistency with the IDP, the Regulatory Framework, as well as the site plan standards of the land use code.

V. PROPOSED INSTITUTIONAL OVERLAY ZONE TEXT AMENDMENT

INSTITUTIONAL OVERLAY ZONE (IOZ)

I. Purpose of the Institutional Overlay Zone

The Institutional Overlay Zone (IOZ) designation provides a regulatory mechanism available to the city's four major medical and higher education campuses where an improved regulatory structure is needed to facilitate a consistent, predictable, and clear growth management process. The purposes of the Institutional Overlay Zone are to:

- a. Acknowledge that the city's major academic and medical institutions play a prominent role in the health and well-being of the local and regional community, and in order to sustain that role, these institutions need flexibility to change and grow;
- b. Encourage proactive planning for institutional change and growth which identifies and addresses likely long-term institutional needs and cumulative impacts while leveraging potential benefits at the neighborhood, city, and regional level;
- c. Ensure that institutional change and growth both complements and, as appropriate, integrates adjacent or surrounding neighborhoods through carefully planned transitions;
- d. Support the formation and continuation of mutually beneficial public-private cooperation;
- e. Support an ongoing public engagement process that benefits both the institutions and nearby neighborhoods;
- f. Reflect Comprehensive Plan and other policy objectives; and
- g. Provide a consistent regulatory approach to all major institutions which allows unique regulatory requirements that balance the particular needs of institutions with the needs of the surrounding neighborhood and wider community.

II. Location and Applicability

The city's four primary medical and higher education institutions are eligible to apply for designation as Institutional Overlay Zones. The Eligible Institutions are the two major hospital institutions of Maine Medical Center and Mercy Hospital and the two major academic institutions of University of Southern Maine and University of New England, their successors and assigns. Designation as an IOZ is the preferred mechanism where the Eligible Institution's proposed development is inconsistent with the existing zoning.

III. Establishment of an Institutional Overlay Zone

- a. *Application for an Institutional Overlay Zone.* Where the Eligible Institution seeks designation as an IOZ, they shall submit a zone change application consisting of two components:
 - i. An Institutional Development Plan (IDP) (see Section IV).
 - ii. A Regulatory Framework (see Section V) that would, when and if adopted, be the text and map amendment to the City's Land Use Code and Zoning Map.
- b. *Required Public Involvement.* At least two neighborhood meetings shall be required. The first shall be held prior to the formal submission of a zone change application for an Institutional Overlay Zone and the second shall be held during the City's review. Meetings shall identify the concerns, if any, of affected residents and property owners, and inform the development of the Institutional Development Plan (IDP) and Regulatory Framework. Meetings shall be held in a convenient location proximate to the institution. The applicant shall provide written notification to property owners of record within 500 feet of the proposed IOZ boundary at least ten days prior to the meeting dates and maintain written records of the meetings.
- c. *Required Scoping Meeting.* The Eligible Institution shall meet with the Planning Authority after the first required neighborhood meeting and prior to submission of the zone change application to confirm the focus of the Institutional Development Plan (IDP) and Regulatory Framework, including associated study areas that may be outside of the proposed IOZ boundary. The IDP and Regulatory Framework will vary in detail and focus depending on the Eligible Institution and its particular context. The content requirements in Sections IV and V and the comments from neighborhood meeting(s) shall provide direction for the content of the IDP. The Planning Authority or Planning Board may require additional information or modify content requirements as is relevant to the Eligible Institution (see Section IV.c).
- d. *Reviewing Authority.*
 - i. The Planning Board shall review the zone change application, including the IDP and Regulatory Framework. At least one public workshop and a public hearing before the Planning Board are required.
 - ii. Upon recommendation of the Planning Board, the City Council shall review and consider adoption of the Institutional Overlay Zone and the accompanying Regulatory Framework as an amendment to the city's code of ordinances.
- e. *Future Institutional Development.*
 - i. All new development by the Eligible Institution within the boundary of the IOZ shall be compliant with the IOZ and accompanying Regulatory Framework, consistent with the IDP, consistent with the Comprehensive Plan, and meet applicable site plan standards, unless such standards are superseded by the Regulatory Framework.

- ii. Any use/development proposed by the Eligible Institution outside the IOZ boundary that complies with the zoning for permitted uses in that location shall be reviewed under the standards of that zone. Any use/development proposed by an Eligible Institution outside of the IOZ boundary that is proposed in a residential zone and is functionally related to the operations within the IOZ shall be addressed by the IDP and require an amendment to the IDP.

IV. Institutional Development Plan (IDP)

- a. *Purpose.* Any use conducted by an Eligible Institution and any construction by an Eligible Institution in an Institutional Overlay Zone shall be consistent with an Institutional Development Plan (IDP) approved by the Planning Board in accordance with this ordinance. The purpose of the IDP is to establish baseline data about institutional land uses, facilities, and services and measure, analyze, and address the anticipated or potential impacts of planned institutional growth and change. The IDP shall serve as a background document that supports the proposed Regulatory Framework and frames subsequent site plan review(s).
- b. *Planning Horizon.* An IDP shall provide the city and abutting neighborhoods with a clear outline of the anticipated or potential growth and change of the Eligible Institution for the short- to medium-term (e.g. 1-5 and 5-10 years respectively), as well as a conceptual growth plan for the long-term (e.g. 10 years or more); however, the specific planning horizons for each institution will be determined as part of the IDP approval process.
- c. *Content.* The IDP submission shall address the following elements unless specifically modified by the Planning Authority or Planning Board, with the scope and level of detail to be clarified at the required Scoping Meeting:
 - i. Context Information
 - 1. The institution's adopted mission, vision, or purpose statement
 - 2. A summary of relevant baseline data on the institution, including:
 - a) A neighborhood context plan;
 - b) An inventory of current programs and services;
 - c) A current census of the number of people using the institution (e.g., employees, enrollment, patients), with an indication of maximums and minimums over time;
 - d) An inventory and/or plan of all existing property holdings within the main campus and within the City of Portland, including an indication of functional land use links between off-campus properties and the main campus (e.g. remote parking);
 - e) An inventory and/or plan of existing facilities, including data on use, floor area, and any existing functional connections between facilities.
 - 3. A summary of the baseline characteristics of the existing campus and context of the institution, based on identified study areas, including:
 - a) A summary of existing resources, such as historic, open space, and natural resources;
 - b) A summary of the existing transportation system, including vehicular, pedestrian, transit, bicycle, and parking supply, demand, and utilization;

- c) A summary of existing public infrastructure supporting the institution, including demand, utilization and any capacity issues;
 - d) Relevant municipal plans, projects, and studies that may influence the IDP study area and opportunities for integrating institutional growth.
 - 4. A summary of public involvement in the development of the IDP, including major areas of public concern.
- ii. Assessment of Future Institutional Growth and Change
 - 1. A description of institutional needs and areas of future institutional growth and change, including:
 - a) Projected census of users (e.g., enrollment /employment/patient/visitor figures and anticipated variations over time);
 - b) Institutional objectives for property both within and outside the IOZ boundary (e.g. acquisition and/or disposition), including an indication of any functional land use connection for sites outside the IOZ boundary to the main campus;
 - c) A Development Plan addressing anticipated or potential institutional needs and physical improvements, including the proposed boundary of the IOZ and any phasing of the development.
 - 2. Analysis and associated plans that address the following elements in terms of anticipated growth or potential impacts within the identified study area, and support the development parameters as set out in the Regulatory Framework:
 - a) Transportation and access
 - 1) An analysis of the projected changes in parking demand, supply, and impacts to the off-street and on-street parking capacity, including an explanation of the proposed parking plan;
 - 2) An analysis of the projected changes in vehicular, pedestrian, transit, and bicycle access routes and facilities, their capacity, and safety;
 - 3) A transportation, access, and circulation plan, representing the synthesis of the analysis, and including a program of potential improvements or set of guidelines to address access deficiencies to and within the IOZ. The plan should outline proposed mechanisms and potential strategies to meet transportation objectives, including transportation demand management, phasing, and when a Traffic Movement Permit (TMP) may be required.
 - b) Environment
 - 1) An analysis of potential cumulative impacts on natural resources and open spaces;
 - 2) An analysis of projected energy consumption, hazardous materials generation, noise generation, and similar issues as relevant;
 - 3) An environmental plan, representing the synthesis of the analysis and including a proposed program or set of guidelines for future preservation, enhancement, conservation, and/or mitigation.

c) Infrastructure

- 1) An analysis of projected public utility demand and the capacity of associated infrastructure;
- 2) An analysis of projected public safety needs and projected impacts to the capacity of these services;
- 3) An infrastructure plan, representing the synthesis of the analysis and including a proposed program or set of guidelines to support sustainable growth.

d) Design

- 1) An analysis of projected impacts to neighboring properties and public spaces, including potential shadow, wind, and lighting impacts, impacts of height and massing, and impacts to historic resources;
- 2) An analysis of transition areas between the institution and adjoining neighborhoods, including identification of key character defining components of the surrounding context;
- 3) An analysis of existing Crime Prevention Through Environmental Design issues and identification of how these principles would be addressed as part of the proposed campus development;
- 4) A conceptual built environment/public realm plan, representing the synthesis of the analysis and including a set of guidelines for urban design, landscape, open space, and streetscape treatments, with particular attention to the treatment of edges (both within and abutting the IOZ boundary) to achieve compatible transitions.

e) Neighborhood Engagement

- 1) A plan for ongoing community engagement that represents best practices, promotes collaborative problem solving around community concerns, fosters transparency, and identifies mechanisms for neighborhood feedback and institutional accountability;
- 2) A property management framework that identifies the institution's process for handling operational property issues with neighbors;
- 3) Strategies for assuring communication pertaining to property acquisition and disposition in surrounding neighborhoods;
- 4) A set of construction management principles, to apply to all institutional construction, that represent best practice, aim to minimize short- and long-term construction impacts on surrounding residents and businesses, and ensure a clear communication strategy is in place in advance of construction.

d. Standards of Review. The IDP shall:

- i. Address all content requirements, unless explicitly modified by the Planning Authority or Planning Board;
- ii. Reflect the issues/topics identified in the required public process;

- iii. Demonstrate consistency with the city's Comprehensive Plan and the purpose of this ordinance;
 - iv. Demonstrate how the property ownership, proposed growth, and requested Regulatory Framework relate to the institution's mission;
 - v. Demonstrate that traffic and parking impacts have been anticipated and that the proposed parking provision is justified as based on an assessment of options for reducing traffic and parking demands;
 - vi. Outline an approach to open space, natural, and historic resources that supports preservation and enhancement.
 - vii. Demonstrate that potential cumulative environmental impacts have been anticipated and can be minimized or satisfactorily mitigated;
 - viii. Demonstrate that utility impacts have been anticipated and can be minimized or satisfactorily mitigated;
 - ix. Reflect a comprehensive design approach that ensures appropriate transitions with the existing or future scale and character of the neighboring urban fabric;
 - x. Promote compatibility with existing or future uses in adjacent neighborhoods, maintain housing, and support local amenities;
 - xi. Anticipate future off-site improvements that would support the integration of the institution into the community and city-wide infrastructure;
 - xii. Conform with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within one hundred (100) feet of designated landmarks, historic districts, or historic landscapes, the IDP shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity; and
 - xiii. Incorporate strategies to support clear communication and ongoing public engagement between institutions and nearby neighbors.
- e. *Approval.* Upon finding that an Eligible Institution's IDP meets the standards of review, the Planning Board shall approve, approve with conditions, or deny an IDP.
 - f. *Monitoring.* The IDP shall establish a schedule for reporting on IDP implementation at regular intervals of not more than ten years from the date of approval of the initial or amended IDP, and identify thresholds for IDP amendments;
 - g. *Amendments.* An approved IDP shall guide campus development unless and until amended. If at any time the Eligible Institutions request minor amendments to an approved IDP, the Planning Authority may approve such minor amendments, provided that they do not constitute a substantial alteration of the IDP and do not affect any condition or requirement of the Planning Board. The applicant shall apply with a written statement of the proposed amendment and proposed amended IDP to the Planning Authority, whose decision as to whether the amendment is minor shall be final. Major amendments shall be reviewed by the Planning Board. When the IDP is amended, the baseline data in the IDP shall be updated as appropriate.

V. Regulatory Framework

- a. *Purpose.* The Regulatory Framework translates the IDP into a set of clear and specific zoning requirements for the IOZ that constitute the

text and map amendments to the City's Land Use Code and Zoning Map. The zoning requirements are anticipated to include parameters that guide the growth and change of the institution as well as broad strategies to address potential impacts, with plans and details to be developed under site plan review.

- b. *Applicability.* The Regulatory Framework shall apply only to properties that are within the IOZ boundary and to which the Eligible Institution holds right, title, or interest. For these properties, the Institutional Overlay Zone shall supersede the underlying zoning, and all new institutional development shall be conducted in compliance with the Regulatory Framework and the approved Institutional Development Plan. Properties located within the Institutional Overlay Zone not subject to right, title, or interest of the Eligible Institution shall continue to be governed by the regulations of the underlying zoning designation.
- c. *Uses.* Institutional uses, including hospitals and higher education facilities, shall be permitted, as shall uses that are functionally integrated with, ancillary to, and/or substantively related to supporting the primary institutional use, consistent with the applicable approved IDP.
- d. *Content.* The Regulatory Framework shall reflect the information and analysis of the IDP. The content shall be tailored to address the particular issues associated with the institution and its neighborhoods. The Regulatory Framework should be succinct and use tables and graphics as possible to address the following, if applicable:
 - i. *Zoning boundary of the IOZ:* The area to which the regulations apply, as shown on the zoning map, subject to other provisions of this ordinance (i.e. the map amendment to the City's Zoning Map);
 - ii. *Phasing and schedules:* Requirements that relate to particular proposed phases; a chart showing the schedule or thresholds for submitting an amended IDP (or elements of an IDP, such as a Transportation Demand Management (TDM) Plan);
 - iii. *Uses:* Clarification, as necessary, on permitted uses.
 - iv. *Dimensional Requirements:* Graphics, sketches, or standards, including details for transition zones within the IOZ boundary;
 - v. *Transportation:* Elements such as TDM trip reduction targets or contribution to area-wide TDM measures; broad parameters for ensuring pedestrian, vehicular, bicycle and transit access and safety; parking ratios and management strategies; thresholds for access improvements;
 - vi. *Environment:* The approach to the inclusion of open space and preservation of environmentally-sensitive areas;
 - vii. *Mitigation measures:* The broad approach to identified mitigation measures, which would be addressed in greater detail in the site plan review process; thresholds for addressing deficiencies; goals for preservation/protection;
 - viii. *Design:* Graphics and standards to clarify building placement and envelope (height and massing); guidelines for integration of site features; required treatments for transition zones and treatment for all edges (both within and abutting the IOZ boundary); guidelines for establishing campus identity; and
 - ix. *Neighborhood Integration:* Thresholds and strategies for neighborhood engagement; mitigation of impacts on neighboring properties, including construction impacts; buffering requirements; objectives for pedestrian linkages and safety; other requirements that address community concerns.
 - x. *Monitoring:* A schedule for regular monitoring reports on IDP implementation in accordance with the IDP.

e. *Standards of Review:* The Regulatory Framework shall:

- i. Be consistent with the Comprehensive Plan and the Institutional Development Plan;
 - ii. Provide a clear zoning framework, using graphics and tables as appropriate, to apply to future site plan reviews;
 - iii. Provide specific regulatory statements as appropriate that respond to concerns raised during the required public involvement; and
 - iv. Outline measurable goals and thresholds for improvements or other actions identified in the IDP to be advanced in subsequent site plan applications.
- f. *Approval/Adoption.* The Planning Board shall review the proposed Regulatory Framework against the standards of review and make a recommendation on the institution's IOZ designation and Regulatory Framework to the City Council for adoption as part of this zoning ordinance.
- g. *Amendments.* A Regulatory Framework and IOZ boundary as adopted by the City Council shall remain in force unless and until amended. Amendments to a Regulatory Framework and/or IOZ boundary may be brought forth by the city or Eligible Institution. Amendments brought forth by the city will require a supermajority of the City Council to take effect. Proposed amendments to the IOZ boundary or Regulatory Framework shall be reviewed by the Planning Board and adopted by the City Council subject to the provisions of this ordinance.

VI. Regulatory Frameworks of Eligible Institutions (The regulatory frameworks adopted by the Council for each Eligible Institution will be codified within this section.)

VI. COMPREHENSIVE PLAN ANALYSIS

The city's draft comprehensive plan, currently under review, contemplates institutional development in several capacities. Supporting "sustainable growth in our educational and medical institutions" appears as an explicit economic goal of the plan, and promoting "the orderly expansion of institutional uses, such as educational and hospital campuses, which are central to workforce development, employment, and the health of the local and regional economies" is defined as one of many economic strategies for the future. Last, the main campuses of the four Eligible Institutions are identified on the Priority Nodes and Corridors map as areas for further study and investment.

The city's adopted comprehensive plan also contains goals and policy supporting a framework for long-range institutional planning, as is presented in the IOZ. The comprehensive plan community vision supports the city as "the economic service center for the region" and a place of "diverse job opportunities, quality employment, and a stable economy." The 1994 *Industry and Commerce Plan* highlights the need to "[e]nhance higher education and research and development opportunities."

VII. INSTITUTION COMMENTS and PUBLIC COMMENTS

A. Institution Comments

All four of the institutions to which the proposed IOZ applies have taken time to provide feedback on one or more versions of the draft IOZ text since mid-January, and are aware of the City Council timetable for review. The letters in *Attachment 1* represent only the most recent comments (on the late February draft) and these comments have largely been addressed.

Many of the suggested revisions were helpful "wordsmithing" to avoid unintended interpretations and to improve clarity. There were several more substantive concerns that staff suggest have been addressed, although not necessarily in the way suggested. These include:

Table 2: Summary of Institution Comments and associated IOZ revisions (since January 2017)

Issue/Concern	How IOZ revised to address
Preferences were expressed as to the use of the terms “proposed” / “potential” / “projected” in relation to needs, growth, data or impacts associated with an institutions’ plans	The IOZ language has been carefully reviewed to consider the meaning of these terms in the context of the clause and its intent. The wording has been modified to reflect the need for the IDP to provide information that allows other parties (e.g. the neighborhood, utilities, and the city) to understand broad future implications of the proposals, and that supports and links with the Regulatory Framework.
Concern that some of the information required in the IDP is sensitive in that it affects business decisions and ability to negotiate	The text has been modified to address this point. Where an institution has applied for an IOZ and is concerned about these requirements, the mechanism of the scoping meeting and associated modifications to content requirements would allow further consideration.
Some of the Regulatory Framework requirements are typically left to site plan review stage	The ordinance anticipates that there may be situations where the Regulatory Framework includes different standards than currently in the site plan ordinance and these would need to be articulated. In other cases, the Regulatory Framework would identify the broad approach expected in future site plan submissions in order to be consistent with new IOZ zone.
Would like to see clarification/examples of best practice e.g. construction management and ongoing neighborhood engagement	Staff suggest that these subjects would suitable for a Technical Standard that provides more space for details and can be updated to reflect the latest “best practice” in these areas.
Would like to see definitions e.g. minor and major amendments; functional land use link (of properties outside IOZ boundary), neighborhood context, and sustainable.	It is suggested that where the definition is important to the institution that it be discussed and agreed at the scoping meeting and/or defined in the IDP/Regulatory Framework. Staff have reviewed the IOZ language from other municipalities and in general find there is less definition and greater discretion for interpretation in most of the relevant examples as compared to the proposed IOZ ordinance for Portland.
Concern regarding permitted uses	Unlike many IOZ ordinances, the final draft text does not include an explicit list of permitted uses. The Regulatory Framework language provides the opportunity for each institution to be more explicit regarding permitted uses within their institution-specific IOZ.
Concern regarding level of certainty in regulation provided by IOZ and IDP process (i.e. “pending proceeding status”)	Staff does not feel that the pending proceeding designation is applicable, since an IDP is not a project entitlement application but a planning and regulatory process. However, staff does strongly agree that some sort of certainty should result from the significant effort needed to properly complete an IDP. Staff has added language stating that, for regulatory changes to an IOZ brought forth independently by the city, a supermajority of the council be required.
Concern regarding treatment of property outside the proposed IOZ boundary	In the final draft text, staff has clarified language requiring that uses proposed by Eligible Institutions in residential zones be addressed by the IDP. Staff has also clarified language requiring the IDP to include “ <i>strategies for assuring communication pertaining to property acquisition and disposition in surrounding neighborhoods.</i> ” The intent is to preserve some degree of discretion around real estate transactions by the institutions, but encourage a process whereby plans for expansion or disposition, particularly as they may relate to residential neighborhoods, are made reasonably transparent.

B. Public Comments

The proposed text amendments have been advertised and noticed to interested citizens in accordance with the ordinance requirements. In addition, neighbors of MMC were noticed in view of MMC’s intention (confirmed during the development of the IOZ ordinance) that MMC would be pursuing IOZ status.

All of the public comments that have been received to date are included in *Attachment 2*. The most frequent comments have been collated and listed below along with an explanation of how the current IOZ text addresses the comment. The text aims to strike a balance between being too detailed at this zoning level, but also ensuring that the IDP and Regulatory Framework provide adequate information and regulations to anticipate the implications of an institution's growth plans and ensure these are adequately addressed in future site plan applications.

Table 3: Summary of Public Comments and associated IOZ revisions (December 2016-February, 2017)

Issue/Concern (in frequency order, highest to lowest)	How IOZ revised to address
Justification for the proposed parking provision and importance of TDM	The IOZ language has been strengthened to specifically include (in the IDP standards of review, IVdv) <i>"Demonstrate that...the proposed parking provision is justified as based on an assessment of options for reducing traffic and parking demands"</i> . The Regulatory Framework contents refers to trip reduction targets and TDM measures.
Height and design of new buildings and associated impacts e.g. shadows, edge massing and transitions	The IOZ language has introduced more detailed requirements for the IDP, including extensive information and analysis of the proposals, their impacts, and a proposed outline of measures /improvements/plans to address these. The IDP/Regulatory Framework review standards and Regulatory Framework contents include specific review criteria. The IOZ provides an overall framework, and these issues (as well as other impacts noted below) would be considered in greater detail when specific development proposals are considered during the site plan review.
Construction impacts e.g. noise, vibration, nuisance, construction parking	
Traffic impacts e.g. in neighborhood and on surrounding highways, including re pedestrian access	
Environmental impacts e.g. re drainage, loss of pervious surfaces, and noise	
Local impacts such as parking, lighting, and loss of open spaces	Clearer references to "open space" have been added to the IOZ text re submission content and standards of review. A standard of review for the Regulatory Framework is to <i>"Provide specific regulatory statements as appropriate that respond to concerns raised during the required public involvement"</i> - and this would address local issues as raised.
Need for constructive public engagement	The IDP content requirements includes a detailed section on "neighborhood engagement" that highlights the need for ongoing engagement that reflects "best practices" for communication and dialogue, and ensures that construction impacts and ongoing property management issues (eg employee smoking) are anticipated and addressed.
Encroachment into residential areas/divestment of properties in residential areas	The IDP content requires an inventory of all of the institution's property within the City of Portland, an indication of the functional land use links between off-campus properties and the main campus, and a statement of objectives for the properties as related to the mission of the institution. Where the use/proposal would be in a residential zone outside of the IOZ, it would need to be addressed in the IDP.
Need for long range planning and clearer timeframes	The IOZ text clarifies that the time horizon for the IDP would focus on the anticipated or potential growth and changes for the short to medium term, and include a conceptual vision for the long term (10+ years). The precise timeframes would be identified by the institution to reflect their mission and business plan.
Economic impacts	An institutional expansion or zoning change could have potential broad economic impacts such as on property values and tax revenues, but such impacts are very difficult to anticipate, quantify and evaluate as part of the IOZ process. More specific identifiable impacts would be addressed by the IDP and Regulatory Framework (and Site Plan re details).
Inclusion of other institutions	The focus for the initial IOZ is on the larger institutions that may require special zoning if their future development is not consistent with existing zoning. It is anticipated that the IOZ process would be extended once it has been fine-tuned.

X. BOARD DELIBERATION AND RECOMMENDATION

As noted above, the Planning Board spent considerable time between November of 2016 and late March of 2017 reviewing iterations of the Institutional Overlay Zone text. Institutions, neighbors, and other stakeholders were involved at each Planning Board workshop and in the time between. Over the course of the review, the Planning Board deliberated on questions of how to manage institutional expansion, how to provide regulatory certainty to the institutions, how to improve public engagement and community relations through this process, and how to dovetail the IOZ with site plan regulations.

Ultimately, the Board found that the proposed text strikes a balance between requiring long-range planning and allowing institutional flexibility; fostering transparency around institutional growth plans and preserving a degree of confidentiality; and encouraging creative zoning approaches but maintaining regulatory control. Fundamentally, the Board agreed that the text presented here encourages better institutional planning, better city planning, and better relationships between institutions and their neighbors. In the long term, the text should also support the ability of institutions to grow and change, and in that, their health and the health of the city more broadly.

On March 28, 2017 the Planning Board voted 7-0 as follows:

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on March 28, 2017, and on the basis of the testimony presented at the public hearing, the Planning Board finds that the proposed Institutional Overlay Zone text amendment is consistent with Portland's Comprehensive Plan and therefore **recommends** adoption of the amendments to the City Council.

ATTACHMENTS

1. Institution comments
 1. Letter from USM (Berstein Shur) 3.8.17
 2. Letter from Mercy 7.8.17
 3. Letter from UNE 3.6.17
 4. E-mail from MMC 3.2.17
2. Public Comments
 - PC-1. Barowitz correspondence 12.6.16
 - PC-2. Snyder correspondence 12.7.16
 - PC-3. St. John Valley Neighborhood Association correspondence 12-16
 - PC-4. Martin correspondence 12.13.16
 - PC-5. McKenzie Bowcott correspondence 12.11.16
 - PC-6. Bowcott correspondence 1.10.17
 - PC-7. Vilani correspondence 1.9.17
 - PC-8. McNamara correspondence 1.10.17
 - PC-9. Sabina correspondence 1.10.17
 - PC-10. Fuller correspondence 1.10.17
 - PC-11. Western Promenade Neighborhood Association (Pringle) correspondence 1.10.17
 - PC-12. Alexander correspondence 1.16.17
 - PC-13. Snyder correspondence 1.26.17
 - PC-14. Fuller correspondence 2.6.17
 - PC-15. Knoll correspondence 2.7.17
 - PC-16. Donnelly correspondence 2.10.17
 - PC-17. Barowitz correspondence 2.12.17
 - PC-18. Wells correspondence 2.13.17
 - PC-19. Fuller correspondence 2.19.17
 - PC-20. Pringle correspondence 3.7.17
 - PC-21. McNamara correspondence 3.27.17
 - PC-22. Sabina correspondence 3.28.17
3. Summary of the four IOZ PB Workshop discussions December 2016 - February 2017
4. Figure showing IOZ Process



Att. 1

Bernstein, Shur,
Sawyer & Nelson, P.A.
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Portland, ME 04104-5029

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Mary E. Costigan
(207) 228-7147 direct
mcostigan@bernsteinshur.com

March 8, 2017

Portland Planning Board
389 Congress Street
Portland, ME 04101

RE: Draft IOZ Ordinance

Dear Chair Boepple and Planning Board Members:

I am writing on behalf of the University of Southern Maine regarding the latest draft text for the proposed IOZ Ordinance. Many of our comments have been addressed and we appreciate the staff's time and attention to our concerns. We would like to provide the following input on the few remaining areas left for discussion.

First, we support the current draft which leaves participation in the IOZ voluntary. If the Board were compelled to create a trigger for mandatory participation, it would seem that one based upon a request to amend the existing zoning would be appropriate. As you are aware, USM currently has an overlay zone, so triggers for mandatory participation based upon project size or a particular timeframe would be unduly burdensome to USM.

In regard to the question of regulatory certainty, while we appreciate the concept of requiring a supermajority to amend an IOZ when initiated by someone other than the institution, we believe it does not go far enough. This ordinance is requiring a lot of effort and expense on behalf of the institutions. In return, they should be provided the certainty that they can move forward with their development plans without the risk of the zoning changing in a way that would prevent them from doing so. Similar to a Master Development Plan, an Institutional Development Plan is a "cohesive and integral development program consisting of multiple buildings and associated site improvements built in phases over an extended timeframe." As such, IDPs should be afforded the same regulatory certainty as Master Development Plans. We suggest the following language: "Approval of the IDP shall confer pending proceeding status upon development within the IOZ with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the IDP remains valid."

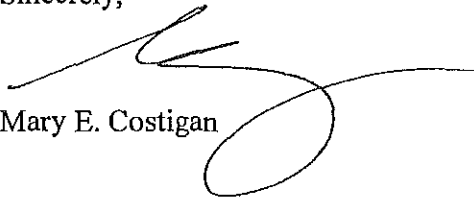
March 8, 2017
Page 2

Finally, with regard to the new language regarding the planning horizon, we would request that the long-term "growth plan" be characterized as a long-term "vision." The term provides more flexibility for deviations from that vision, as opposed to a plan.

Thank you for your review and consideration.

Sincerely,

Mary E. Costigan

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.



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www.mercyhospital.org

March 8, 2017

Stuart O'Brien, Planning Director
City of Portland Planning Authority
389 Congress Street, 4th Floor
Portland, Maine 04101

RE: Institutional Overlay Zone, 2-28-17 Revised Draft IOZ
Mercy Hospital Commentary

Dear Mr. O'Brien,

Thank you again for meeting with the Mercy team on 3/6/17.

Maintaining a regular dialogue on the proposed Institutional Overlay Zone (IOZ) has been informative. Based on our discussions, a zoning change is not required and thus Mercy will not have to apply for an IOZ. Mercy can proceed with development of the Fore River campus, in accordance with the current Contract Zone Agreement. Mercy's next step will be to submit a Level Three Site Plan application for review.

Mercy Hospital appreciates and supports the concept of the IOZ and how it facilitates an institution's need for flexibility to change and grow within a framework that reflects the City's needs and comprehensive planning objectives. At some point in the future Mercy Hospital may find it beneficial to apply for an IOZ. We want to take an active role in the development of the pending IOZ requirements. As you have requested, Mercy representatives have reviewed the draft IOZ materials. The following are our comments on the Revised Draft IOZ dated 2/28/17:

Section I.c Ensure that institutional change and growth both complements and, as appropriate, integrates adjacent or surrounding neighborhoods through carefully planned transitions.

Comment: Adjacent neighborhoods are easily identifiable. Surrounding neighborhoods is more subjective. How and by who are surrounding neighborhoods identified? Further, what measures if any, within an IOZ, will help address potential future zoning of the surrounding neighborhood i.e. how does the institution possibly protect itself through an IOZ, from zoning changes sought by its neighbors, for example?

I.e Support an ongoing public engagement process that benefits both the institutions and nearby neighborhoods.

Comment: What does "ongoing public engagement" mean?



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II. Location and Applicability:

Comment: We interpret this paragraph to mean that an institutions application for an IOZ is strictly voluntary. We fully support this. Further, we believe that Mercy's Phase 2 plans are entirely consistent with the existing Contract Zone Agreement, thus, Mercy does not see a need for the IOZ at the Fore River Campus at the current time.

IV. c.i.2. a) A neighborhood context plan.

Comment: Is there a definition of this?

IV.c.i.2. c) A current census of the number of people using the institution.....

Comment: Will an institution be allowed to limit the amount of data it is required to submit given the potential for proprietary information and census data that relate to its competitive position in the market?

IV. c.i.2. d & e) An inventory and/or plan of all existing property holdings within the main campus and within the City of Portland, including an indication of functional land use links between off-campus properties and the main campus (e.g. remote parking):

Comment: There can be a significant difference in cost between an inventory and developing a plan. Who determines which is required? When declaring existing holdings, is this owned property only or does it include rental properties? There should be a definition of functional land use links as well as functional connections.

IV.c.ii.1. a) Projected census of users...

Comment: Will an institution be allowed to limit the amount of data it is required to submit given the potential for proprietary information and census data that relate to its competitive position in the market?

IV. c. ii. 1. b) Institutional objectives for property both within and outside the IOZ (e.g. acquisition and/or disposition), including an indication of any functional land use connection for sites outside the IOZ boundary to the main campus.

Comment: There is a concern that identifying future property acquisitions outside the zone could significantly impact future negotiations and property cost.

IV. d. x. Promote compatibility with surrounding uses in adjacent neighborhoods, maintain housing, and support local amenities.

Comment: What are the specific requirements to maintain housing? Does this mean that housing properties cannot be repurposed or the land repurposed? Would lost housing units need to be replaced?

IV. d. xi. Anticipate future off-site improvements that would support the integration of the institution into the community and city-wide infrastructure.



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Comment: This should have more definition to it. 'Future off-site improvements' is very broad and could potentially be very expensive.

V. b. Applicability

Comment: Should read 'Eligible Institution holds the right, title *or* interest.'

V.c. Uses

Comment: The terms "functionally integrated with, ancillary to, and/or substantively related to supporting the primary institutional use..." seem potentially restrictive, particularly in light of the Mercy Contract Zone Agreement schedule of allowed uses. Will Mercy be allowed to address uses within the Regulatory Framework? Even as an institutional use, Mercy seeks to maintain flexibility for future land use activity on the campus.

Our team plans to attend the upcoming Planning Board meeting on 03/14/17.

Thank you for your time and effort with this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Connolly". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Michael Connolly
Senior Director of Support Services
Mercy Hospital
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(e) connollym@emhs.org



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By Email

March 6, 2017

Stuart O'Brien,
Planning Director
City of Portland
389 Congress Street
Portland, ME 04101

Barbara Barhydt, Development
Review Mgr.
City of Portland
389 Congress Street
Portland, ME 04101

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

Jean Fraser, Planner
City of Portland
389 Congress Street
Portland, ME 04101

Re: Institutional Overlay Zone Draft/Workshop

Dear Tuck, Barbara, Nell and Jean:

Nell has sent us the latest (2-28-2017) draft of the Institutional Overlay Zone (IOZ) language for our review and comment by the close of business today.

While the University of New England (UNE) continues to be encouraged by the Planning Staff's revisions to the draft IOZ language, a few issues in the language remain that concern UNE:

- The New Draft IDP "Assessment of Future Institutional Growth and Change" in IV.c.ii.2. continues to refer to "proposed" changes rather than "potential" changes as we had requested. We understood that what will be shown on an IDP is intended to be less detailed and more conceptual than what is shown on a site plan application. Similarly, the use of "would" rather than "could" in IV.c.ii.2.d)3) implies a more definitive level of design than what UNE can provide at the conceptual level that the IDP represents.
- It appears that the terms "major" and "minor," as these terms are used in IV.g. regarding amendments to an approved IDP, still need to be defined.
- We appreciate that it would take a supermajority of City Council votes to amend an approved IOZ where the institution is not the party requesting the change. However, this does not protect the IOZ Regulatory Framework against citizen initiatives and referenda.



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- Further, this draft still does not treat IOZ development as the current Ordinance treats master plan development, as it does not give projects included in the IDP "pending proceeding" status.

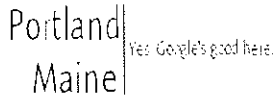
Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Alan Thibeault".

Alan Thibeault,
Assistant Vice-President for Planning
UNE

cc: William Bola, Vice-President for Operations, UNE
James N. Katsiaficas, Esq.



Helen Donaldson <hcd@portlandmaine.gov>

final text for IOZ

Penelope E. St Louis <STLOUP@mmc.org>

Thu, Mar 2, 2017 at 12:18 PM

To: Jean Fraser <jf@portlandmaine.gov>

Cc: "Alexander M. Green" <AGreen@mmc.org>, "Alkan, Basak (Basak.Alkan@perkinswill.com)" <Basak.Alkan@perkinswill.com>, Mark Harris <HARRIM6@mainehealth.org>, "O'Brien, Stuart" <sgo@portlandmaine.gov>, "Barhydt, Barbara" <bab@portlandmaine.gov>, "Donaldson, Helen" <hcd@portlandmaine.gov>

Jean: Thank you. I am drafting this s I sit at Logan Airport. I read the text of the IOZ on the bus on the way down here and have been unable to confer with eh senior leaders at MMC regarding the staff changes.

Please excuse the typos etc.

I am most concerned about the following language:

III.e Future Inst Devel. The second sentence is problematic. If a property is purchased by an institution 3 years after the IDP is approved, and meets all of the requirements of the underlying zone, even if a conditional use, and it not functionally related to the operations of the main institutional campus, why would it need to be included in the IDP? I would understand if the use is functionally related to the IOZ campus. However, the current language states "any use/development," and I think that may create issues and unintended consequences.

IV. C. II 2 e 3. This requirement appears far reaching and is unfair to institutions who are entitled to negotiate for land purchases without having to disclose in advance such a thought or potential transaction. Such an obligation by an institution to disclose, in advance, would result in inflated prices for property purchased by non-profits. Folks cannot forget that non-profits must be good stewards of the finances entrusted to them to carry out their mission. I question if the City's economic development department or the City Manager would advocate for this obligation to attach to any business in the city including private or public. If what you intend in the language is communication following acquisition or disposition that may be more reasonable. The language should be amended to reflect that.

IV.C. II 2 d ix. I would ask this to be modified to add the terms "existing or future uses." The reason for this is that a transformation of a particular area in the City may be ripe for a different character. To be forced to design a project that is compatible with Morrill's Comer, for instance, when Morrill's Comer could be so much more than it is today with some short term planning, do you really want UNE to design to be compatible with that character??? Whereas, if you insert these additional words, you allow the institution to promote compatibility with the character that is to be achieved through redevelopment.

V. Regulatory Framework

a. Knowing that this is the zoning piece of the IOZ concept, it seems misplaced to insert "as well as clarify how potential impacts will be addressed" in the Purpose statement. If the Purpose statement has no legal effect because it is a mere introduction, that would need to be clarified. However, as written, you are asking for more of a site plan submission at the IDP level and, as I understand it, that is not the intent of the IOZ/IDP concept. I might suggest the removal of that text.

d. VII. Again the request for mitigation would be more appropriately addressed during site plan and is not zoning.

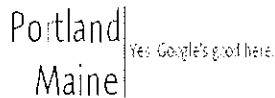
Viii. I think Basak needs to comment of the Design text

ix. Screening and buffering requirements are premature at the IDP level and buildings will not be designed at this stage in the process. Site plan thoroughly addresses screening and buffering.

G. Finally, I am very concerned about the "Amendment" section as drafted. I suggest that to rezone from an IOZ/IDP, one must have right, title and interest in the property. The way this section is drafted it would appear anyone could request a rezoning of institutional property already approved under an IOZ/IDP. If this is the intent, it is in direct opposition to the issue Mary Costigan raised on behalf of USM and I discussed with Tuck O'Brien. There needs to be an element of security for an institution who has expended effort, time and money, that it will not be subject to rezoning requests by one or more dissatisfied individuals. I would suggest this section be altered or eliminated.

This is not complete and I. Would like to opportunity to discuss with you and others at the City to vet this issues rather than addressing them with the Planning Board on March 14. Thank you.

Sent from my iPad



Helen Donaldson <hcd@portlandmaine.gov>

Fwd: MMC Expansion notes for the Planning Board meeting Tuesday night

Jean Fraser <jf@portlandmaine.gov>

Tue, Dec 6, 2016 at 12:45 PM

To: "Donaldson, Helen" <hcd@portlandmaine.gov>

for inclusion in the PB Memo on IOZ

----- Forwarded message -----

From: **Zack Barowitz** <zbarowitz@gmail.com>

Date: Mon, Dec 5, 2016 at 7:01 AM

Subject: MMC Expansion notes for the Planning Board meeting Tuesday night

To: jf@portlandmaine.gov

Cc: Tuck O'Brien <tuckobrien@me.com>, Damon Yakovleff <Damon.yakovleff@gmail.com>, Nikki Anderson

<n.annetteanderson@gmail.com>, Norman Maze <nmaze@shalomhouseinc.org>, Emma Holder

<pna@parksideneighborhood.org>, Anne Pringle <oldmayor@maine.rr.com>, Ian Jacob <iancasperjacob@gmail.com>

Jean,

Please review the following points for the Planning Board to consider in conjunction with the proposal to expand Maine Medical Center:

1. Implementation of the Libbytown traffic study, particularly the **restoration of two-way traffic on Congress Street between 295 and St. John Street**. Currently, the one-way streets are serving to divert through traffic *into* downtown. The current traffic alignment simply would not work. What's more, ambulances get stuck waiting for trains (this is a common enough occurrence that I was able to snap a picture--see attached). Thus, MMC needs to get on board with the traffic study recommendations for the expansion plan to work.

2. I wrote a column for the *Phoenix* outlining how the current agglomeration of **Maine Medical is blighting the surrounding streets and neighborhoods**. Were expansion to continue in the same manner the blight would undoubtedly spread and any economic development would have to be counter-balanced by decrease in value of abutting areas (e.g; tax revenue). You can find the article below or link to it here. My suggestions:

- Improve the streetscape for pedestrians and develop vibrant commercial spaces (24-hour cafe, pharmacy, restaurant, beauty salon) on Congress Street around the new entrance.
- Set backs to create a human-scale feel
- Buildings overhanging sidewalks (like in the wild west, to provide protection from weather)
- Heated sidewalks (currently they salt the heck out of the area with is costly and environmentally destructive)

3. Convert the surface parking lot on Brackett/Vaughn be turned into **housing**.

I have copied members of adjacent neighborhood association on this message.

Thanks,
Zack

Sick Building: The Maine Medical Center's \$512,000,000 Expansion

Maine Medical Center dug through its couch cushions and came up with \$512 million to spend on an expansion of its Portland campus. Although the plan doesn't add any new beds, it does call for 128 new rooms — which the hospital must have in order to meet new demands of patient care and stay competitive in a growing industry.

In addition to being a renowned hospital, Maine Medical Center is one of the largest employers in the state. So when it says it wants to build, it's fairly easy for officials to respond "how high?"

MMC's proposed expansion will create hundreds of jobs in the health care, construction and IT sectors. But those jobs come at a cost, and those that pay are unlikely to reap many benefits; a large hospital's effect on a neighborhood can be akin to having a cement block dropped on a flower pot.

So why is this?

Hospitals are notoriously among the most difficult types of buildings to design. The sheer volume of people, technology and movement, coupled with the turnover of all of the above, make their containment nearly impossible. Throw in the challenge of creating a building that is both sterile and uplifting, and it's enough to drive the most talented designer to review RFPs for wastewatertreatment plants.

Given the difficulties and contingencies of designing a hospital, it's little wonder that their exteriors often appear an afterthought. Situated high upon the Western Promenade, Maine Med's current configuration is an undistinguished agglomeration of stark Modernist edifices and brutalist parking structures crowded around a (somewhat gloomy) original 1874 structure. Fortress-like

facades have rendered blight beyond the castle walls to the boundary streets below. Gilman, Congress, Crescent, Wescott, Bramhall and Forest streets are all fairly run-down and have been for decades despite their proximity to some of the most valuable real estate in Maine.

Portland-area residents have every reason to be concerned with the planned Maine Med expansion; the shadows will loom longer, the winds will whip colder, parking garages will become larger, and the traffic will grow denser — adding to the spread of decay.

Ironically, the westward roll of commercial and residential development along Congress Street from Longfellow Square to Thompson's Point is hot, with hundreds of proposed housing units, restaurants and (of course) breweries. The break in the path is smack in the area designated for the bulk of the expansion. The quarter-mile stretch of Congress Street from Salvage BBQ to Bramhall Square has just two commercial spaces (La Bodega Latina and Portland Glass), not including the permanently "unfinished" storefronts in the MMC parking garage. The blight is attributable to a monotonous pedestrian experience: a steep hill, fast traffic and bleak streetscape of retaining walls and parking garages. It should come as little consolation that a recent beautification effort included hanging banners declaring competency in "Urology," "Gynecology" and "Cancer."

Were this projected expansion slated for an isolated green expanse (such as the MMC Scarborough campus), the peripheral pedestrian experience would be of little consequence. But in a dense urban environment, great care must be taken to scale and form but also to use.

Far from being a monument that sucks in automobiles, the hospital necessarily should learn how to interact with the street, starting with an improved pedestrian experience that heals the neighborhoods on its borders. Street-level commercial development — visitors' cafe, gift shop, pharmacy, restaurant and even a bookstore — will not only better serve hospital customers but make for a healthy bottom line, both for the institution and the city as a whole.

—
207-838-6120
917-696-5649
ZacharyBarowitz.com

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12/8/2016

City of Portland Mail - Fwd: MMC Expansion notes for the Planning Board meeting Tuesday night

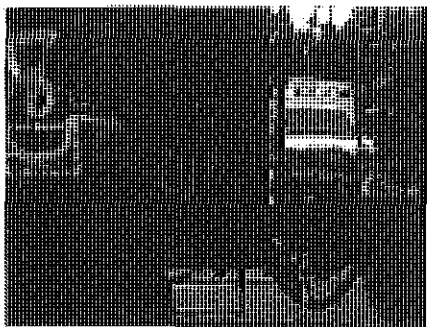
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Jean Fraser, Planner
City of Portland
874 8728



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409K

Jean Fraser <jf@portlandmaine.gov>

Notice From City of Portland Regarding - Vicinity of Maine Medical Center Questions

1 message

Karen Snyder <karsny@yahoo.com>

Wed, Dec 7, 2016 at 2:39 PM

Reply-To: Karen Snyder <karsny@yahoo.com>

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

Jean,

I have yet again got another notice of more development that affects me in the City of Portland.

This unnecessary yet huge Maine Medical Center project, what streets will this proposed development actually be on and how far and up does it go?

What exactly is an IOZ ordinance and does it actually protect local residents or yet once again allow developers to trample on the quality of life of residents?

Regards,

Property Owner on Gilman St.
K. Snyder

the Saint John Valley Neighborhood Association

Concerns regarding MMC proposed expansion

Project announcement

- Lack of transparency
- MMC is in breach of the current contract zone agreement (CRA) by failing to apprise members of the MMC Neighborhood Council of hospital development plans as mandated by the contract.
- How do we enforce the rules going forward?

Project design

- What will the new structures look like?
- At what point and in what forum will neighborhood input be considered relative to design, location, size and scope of the project?
- Neighborhood integration is important especially height
- How will traffic be affected?
- What will happen to current green space?
- Are there plans for streetscapes?

Proposed 13 story parking structure

- It's too big
- It doesn't compliment the existing buildings in the neighborhood
- Increase in traffic (How will this be managed?)
- Increased pollution
- Increased noise levels
- Reduced property values
- Contrary to neighborhood goals of enhanced livability and walkability
- Negative effect on sunlight and wind patterns
- Why haven't alternatives to this plan been proposed?
- Lack of security in current parking structures which leads to...
- Prostitution
- Drug use and public drinking
- Graffiti
- Suicide attempts
- Littering

Construction management

- How will the demolition of current structures be performed?
- How will demolition effect local residencies and businesses?
- What are the phases of construction? and How long will each phase of construction last?
- How will construction effect local residencies and businesses?
- How will any damage to local residencies and businesses be handled? (Remember the crane that toppled in 2006 crushing a house whilst the new MMC maternity wing was being built?)

- Baseline reads on our properties?
- Where will construction materials be stored?
- How will construction impact street parking?
- Where will construction workers park?
- What are the guidelines for acceptable noise levels during construction?
- Are there any provisions for loss of income to local businesses? and loss of rent due to tenants moving on?

Future planning

- What is MMC's master plan?
- They have already told us that they will need more parking and more beds in the future. What is their plan to accomplish this?

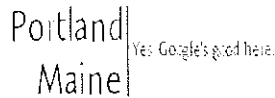
moses sabina <mosessabina@yahoo.com>

Nov 22 (7 days ago)

to Garry, Tuck, stjohnvalleyne., Helen, me

Please add impact to resident parking to that list. As of now, parking is at a premium, and next to impossible to find a spot when there is no parking on one side of the street. Happy Thanksgiving! -Moses

[12.13.16- St John Valley Neighborhood Association confirmed as public comment for 12.13.2016 PB Workshop]



Jean Fraser <jf@portlandmaine.gov>

Hello Jean, If possible pls incude my memo in tonight's Planning Board workshop. Thank you . Sarah Martin

Sarah Martin <BOCCafe@hotmail.com>

Tue, Dec 13, 2016 at 2:30 PM

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

Memorandum

To: City of Portland Planning Board

From: Sarah Martin Valley Street, Portland Maine

Re: MMC Expansion

Date December 13, 2016

As an owner and occupant of a two family 1880's era home, I have great concern over the size, the scope and the likely negative impacts of Maine Medical's proposed expansion.

During one of the recent construction projects the constant driving of pilings, disturbed not only our tenants quiet enjoyment but the actual plaster in our home. Additional negative experiences included the use of surface lots in our neighborhood as trash covered construction dumps wrapped in broken and bent chain link often with torn, flapping, often vandalized green mesh. The precious few parking spots available to residents in the neighborhood were diminished by contracted workers and we all had the overall feeling that we were living on a construction job site for many months at a time.

While I agree that there may be some added value to the neighborhood by relocating the main entrance to Congress Street, the mere consideration of a thirteen story parking structure abutting our R6 neighborhood seems completely out of touch with the hospital's spoken commitment to being "good neighbors".

Thirteen stories? I'm sure that the planning board is aware of this but consider for a moment a comparison in size.

The Holiday Inn on Spring Street-Eleven stories.

Peoples United Bank next to the library-Eleven stories.

Deering Pavillion-Eleven stories.

Portland House Condominiums -Eleven stories.

The Westin Portland Harborview(the old Eastland)-Thirteen stories

One City Center-Thirteen stories.

In fact there would only be three buildings in the entire city taller than this proposed structure, Franklin Towers, The Time and Temp building and Back Bay Towers.

I completely understand that the useful life of the existing employee garage is at its end. However, to expect to move 1,280 parking spots across Gilman street into a thirteen story parking structure higher than the treetops and towering over our buildings on Valley, Gilman and A Streets is just too much.

If we estimate a hundred cars per level, then why not dilute the impact a tower would have by relocating spots to other locations? The South lot on Bracket and Vaughn currently holds 400 cars. If the hospital were to go up one deck high in that lot, we have just reduced the tower to nine stories. Two levels brings the Gilman block proposal down to five!

I think the hospital owns the lot known as the Classic Eye lot on the one way section of Congress across from the jail entrance...about a hundred cars. How about developing a couple of stories of parking there? Two levels and we are down to seven stories on the Gilman lot. Another thought would be to lift the constraints of the current Contract zone and allow the hospital to purchase the properties on either side of their 887 Congress Street property to develop office/retail and parking in a structure similar in design to their surrounding buildings. This too would make more sense than pushing the development directly into the shadow of the residential piece(peace) of our neighborhood.

December 11, 2016

To the Portland Planning Board:

We are property owners of 8 A Street and co-owners of two businesses in the area effected by MMC's proposed expansion. We are writing about the impact of Maine Medical Center's construction plans within our neighborhood. We ask for your serious consideration to the many concerns we have about this project.

Parking Garage -

We oppose any changes to the MMC's zoning that would allow building heights to increase, especially as it pertains to the proposed parking garage on the Gilman Street lot. Our home, which we bought in 2006 and have spent considerable time and money renovating, is directly across the street from this lot. The proposed height of this garage would dwarf the residential buildings adjacent to it, encourage more traffic, and detract from the livability of the neighborhood. We feel certain that it will reduce our property values, increase pollution from car exhaust, become a hot spot for criminal activity and encourage further economic decline within the neighborhood.

One of the recommendations from the 2008 Peninsula Traffic Study was to enact parking policies that will decrease traffic volumes and "construct and promote remote parking, connected to downtown by frequent, reliable transit". Where is MMC's progressive initiative to encourage remote parking and ride-sharing for it's employees? Rather than working with the city to reduce traffic congestion, MMC plans to build a larger garage which will only guarantee an increase in congestion on Portland's roadways. The more parking is made available for MMC's employees, the more its employees will drive into our neighborhood every day. We as residents would like to encourage a new plan that would make use of MMC's Scarborough campus or another remote commuter lot to reduce the congestion we witness every day in this neighborhood. At the very least, we ask that MMC build a replacement garage on the current location, set into the hillside, or increase the size of the existing garage on Forest Street. There are multiple options available that will avoid placing a giant parking garage the center of the neighborhood.

MMC Main Entrance -

We have been working with our neighbors for the last several years to make the neighborhood more livable. We have a vision which includes walkability, traffic calming, residential development, green spaces, and crime reduction. We see the neighborhood as being a distinct area of Portland with it's own appealing character and attractions, including the Inn at St. John, Sea Dogs, Salvage BBQ, and Pizza Villa. Having the main entrance to MMC located here could introduce many new challenges which would run contrary to our vision. There are many questions that will need to be answered before we can support the proposed location for the main entrance. For example, what will the hospital do about visitors and employees on the public streets smoking, littering and using parking spots that would ordinarily be available to residents without driveways? What will the structure look like and will it be in keeping with the scale of surrounding buildings? What will the hospital do to ensure minimal disruption to residents and business owners during the construction phase? How will green spaces be integrated into the design? Whatever plan comes to pass, we encourage MMC to be as transparent as possible and consider the goals of the neighbors who live and work in this neighborhood.

Sincerely,

Jenny MacKenzie and Garry Bowcott
8 A Street

1/10/2017

To the Planning Board,

After reviewing the Institutional development plan presented on 1/10/17, we have noticed some areas of concern regarding the proposed parking structure on the Gilman street block.

- A 13 story parking structure will stand out like a sore thumb in a residential neighborhood where the tallest building is 4 stories.
- There is no proposal for a setback to integrate the parking structure with the surrounding businesses and residencies.
- If fig 4.2 on page 41 is correct and the trend of employees utilizing alternative forms of transport continues then MMC will see a reduction in parking needs moving forward. Will we end up with a parking structure that is obsolete and cannot be used for any other purpose? Why are they proposing a larger parking structure if the demand for parking is decreasing over time?
- MMC has not offered any other solutions to their parking needs. There are numerous options available to them such as construction on the Vaughn Street surface lot, additional levels on the Forest Street lot and footprint expansion. All of these options are supported by the Saint John Valley Neighborhood Association but for some reason MMC refuses to acknowledge them as options.
- As the city is obviously in a state of rapid development, we need to start making wise decisions regarding parking and it's integration with neighborhoods. If we allow MMC to construct this parking behemoth we are destroying the livability of a neighborhood via pollution, traffic congestion, crime, decreased sunlight and street level interaction.

Please take these concerns into account as you consider MMC's institutional development plan.

Sincerely,

Garry Bowcott
8 A Street
Portland, ME
04102

1.9.2017

To whom it may concern,

I am writing to you about the proposed MMC construction project. As a business owner at 919 Congress St, Salvage BBQ I have concerns regarding how this will impact my business. Right now we have tremendous sunlight that illuminates the restaurant from the South and west. Increasing building heights in the neighborhood will block this light and impact our business negatively. We have worked hard to make our business a success in a neighborhood that was neglected and not seen as a viable business center. There was a similar attitude in Longfellow square when we opened Local 188 in 1999 and now Longfellow Square is a bustling mecca of restaurants and bars. I would like to see the same trend continue down Congress Street but the proliferation of institutional buildings impedes the type of pedestrian activity necessary to create such an environment.

I am also concerned about my business being disrupted during a lengthy construction phase. What are the plans for demolition of the existing buildings? How will traffic be impacted? How will pedestrian access be impacted? How will noise levels be managed?

Jay Villani
Salvage BBQ
919 Congress St.

My name is Tim McNamara and I live at 251 Valley Street.

I've read through the draft IDP submitted by Maine Med and have several questions relative to the rhetoric and the data offered in Chapter Four-Parking and Transportation.

My understanding is that the hospital needs to substantiate their request for change of zoning by proving need. I believe that the Chapter Four is an attempt to show that the hospital is doing all they can to reduce the number of vehicles on campus yet prove they still have the need to park 1,100 employees on Gilman Street. I write to challenge the positions taken by the hospital in Chapter Four.

At a December 6th meeting of neighbors, senior hospital management and City staff, we discussed ideas of alternatives or incentives offered by the hospital to employees to reduce the number of single passenger trips to and from campus. Our thought was ...fewer single passenger trips-fewer spots required in the new garage. Minutes from that meeting, recorded by hospital staff, reflect that Maine Med President Rich Peterson "*acknowledged that thought will be given to trying to provide additional incentives to Maine Med employees to car pool, bike or use other means of alternative transportation*". ...it was even discussed as to whether we are asking the hospital to alter societal norms embedded around car ownership and use or to attempt to change our behaviors.

At that meeting, senior hospital management made no reference to any Alternative Transportation Plan in place and certainly no mention of the "Get on Board" program. "Get on Board" is the program that Chapter Four hails as a "*focus of institutional policy*." and "*an integral part of the fabric and culture of MMC*" (See pages 39/41 of Draft IDP)

In the 2005 CRA between Maine Med and the City, Chapter 18 requires that "*an analysis of effectiveness and functioning of the Alternative Transportation Plan shall be provided* (by the hospital) *to the City Council's Transportation Committee on an annual basis*." I've reviewed agendas and minutes from that committee dating back to 2013.

Nowhere can I find a reference to a hospital report on the functioning or effectiveness of any ATP.

As residents who will be directly impacted by a 13 story garage plopped down in the middle of our neighborhood, we have asked the right questions and made the right suggestions relative to reducing single passenger trips without hearing from the hospital of any plan in place to achieve such. Then out of nowhere, Chapter Four of the IDP asks us to believe that in 2015 the hospital has "incentivized" 35 % of their employees, up from 14% in 2008, to commute to work by means of something other than a single occupancy vehicle trip?

From 14% to 35% in seven years? Pretty spectacular. Where did these numbers come from? If we are to believe these numbers, then can we anticipate that in five years that number will be 50%? then 65% ten years from today?

The problem is we can't believe these numbers.

In 2015 they claim that 1,571 employees participated in the program. They claim that that amounted to 35% of their employees. That would be true if the hospital employed 4,488 people. The Maine Med Website claims that they employ more than 6,000 people. So the real number is closer to 25% participation in the program. The percentages are off from the first year of their reporting. (2008, 648 participants reflected as 14% of all employees. More like 10%)

The number of employees they claim to be riding their bikes to work in 2015 is 229. Yet they only have the capacity to store 184 bikes.

The number of employees using "ride share" in 2015 is 1, 021. Let's say every one of those ride-share participants carpooled to work with two other people, (unlikely as that may be) that would mean according to Chapter Four, that 340 cars would *"be given access to preferred parking in a gated, ID card access only area of the Employee garage that connects directly to the main lobby on the ground floor of the hospital."* 340 Cars? That's well more than a quarter of the total spots available in the current garage and would be physically impossible to accomplish.

The bottom line on Chapter Four is that the numbers and the stories just don't add up. I would encourage the Planning Board to kick the entire Chapter back to the hospital for a complete overhaul and to demand validation of their data so an accurate and legitimate parking and transportation baseline can be established .

Thank you.

Re: PB Workshop 1-10-2017 Institutional Overlay Zone (IOZ)/MMC Institutional Development Plan

1 message

moses sabina <mosessabina@yahoo.com>

Tue, Jan 10, 2017 at 12:04 PM

Reply-To: moses sabina <mosessabina@yahoo.com>

To: Jean Fraser <jf@portlandmaine.gov>

To the Portland Planning Board:

My name is Moses Sabina, I am an owner/resident at 4 Gilman Street. I have attended MMC Neighborhood Council meetings quarterly since the inception of the council. The purpose of that council is to keep the neighbors of MMC apprised of any and all MMC developments.

In the case of these development plans, the council members were made aware of the plans three days before they were printed in the Press Herald. Neighbors were given no opportunity to be involved in a constructive dialogue to help MMC develop their needs with minimal impact, or even some improvement to the surrounding neighborhoods. Unfortunately, this selfish "close to vest" behaviour is exactly why the neighborhood council was created in the first place, and why it is all the more mockery now that MMC has dismissed including neighborhood representatives in an important discussion which should have included all the options for addressing their parking needs.

I ask you to consider their blatant disregard for their neighbors when you review their plans for the thirteen story dark tower they want us to live next to. I ask that you not give any variance over the height restriction in the current zoning until all other options for parking have been thoroughly vetted, regardless of the cost to MMC to divide the parking between more than one location. Otherwise, it will be the neighbors suffering the the long term price of this development plan.

Respectfully,
Moses Sabina

From: Jean Fraser <jf@portlandmaine.gov>

To: "Fraser, Jean" <jf@portlandmaine.gov>

Sent: Friday, January 6, 2017 5:42 PM

Subject: PB Workshop 1-10-2017 Institutional Overlay Zone (IOZ)/MMC Institutional Development Plan

Hello

I am sending this e-mail to those who sent me written comments on the proposed IOZ zone and/or on the MMC plans for expansion back in December, or who have contacted me about the proposed IOZ ordinance.

MMC have requested a zone change in order to expand/modernize - and the new IOZ ordinance is the City's proposed process - with an aim to provide a clear, predictable growth management structure for institutions that would allow flexibility but also require proactive planning and a more transparent and defined mechanism for understanding and addressing community concerns. As currently drafted, only the main campuses of

Re: UNE

My name is Robert P. Fuller, a resident, taxpayer and owner of #37 College Street. With the possible exception of parking and traffic, it is doubtful that anything planned in the immediate vicinity of College Street would be an issue except to its property owners. But a concern of one should have the same weight as an issue for many.

Back in December 2011 one of the Vice Presidents said that UNE wanted to become more responsible. Hopefully that translated into going to be more responsible and that means to all of us. In theory and in practice leaders of organizations are supposed to reach out into the community and not allow any one subordinate to create an adversarial role with the neighbors. Does anybody want a repeat of the hoo-rah on the Biddeford campus about 15 years ago?

In a 2011 magazine interview, the president of UNE said that they were just about where they wanted to be in terms of size. A year later, as part of an application submission, UNE said that they had been unsuccessful in being able to squeeze any more parking on the main campus.

Based on those two statements, there should be no changes from my bound toward Ginn and McDougall Halls on the west or for at least 25 feet out from the #33-37 College Street north line. Finally, the north side of College Street itself and sidewalk would remain where they are now. This is the way it should be. Remember, the greatest material investment for most of us is our real property. This is true for myself and my sister at #33-35 College Street.

When you review for the overlay and master plan for UNE, do not forget US residents. When you review according to a set of standards, do the parts add up to a whole? Does it look sensible? How does it fit with the human condition? There is no good reason, with proper planning, that UNE and all its neighbors cannot peacefully coexist in the same surroundings.

Robert P. Fuller
January 5, 2017

**Western Promenade Neighborhood Association
Comment to Planning Board re IOZ**

1/10/17

Members of the Board, my name is Anne Pringle and I am commenting on the proposed IOZ framework on behalf of WPNA.

To echo David Eaton, I want to publicly thank MMC for agreeing to be the guinea pig for this new zoning concept and process. As some of you may know, there was a very contentious process when the Conditional Zone was approved. To date, this process and the dialogue has been much more open and we appreciate the early engagement.

Rather than comment on the specifics of the MMC IDP proposal, which will get a lot more scrutiny later and which I do think reflects the IDP framework, I want to comment on a few elements of the proposed IOZ framework:

First institutional encroachment has been a big issue in our neighborhood with two major institutions, MMC and Waynflete. The existing zoning protections, I think staff would agree, is inadequate as it gauges the impact of encroachment on a building-by-building basis, rather than on cumulative impact. The Waynflete IOZ recognizes this and precludes, I believe, school uses in buildings outside the zone boundary. So, the school cannot purchase or have donated a building outside the zone. To avoid institutional encroachment, WPNA believes the new IOZ should preclude institutions from purchase or acceptance of donations of properties outside the proscribed zone, except for the sale of properties to free up funds for institutional uses within the IOZ..

If an institution already owns property outside the IDP boundary, those properties should be identified and a plan, even a long-term plan, identified to relocate the institutional uses in those buildings to the IDZ area or a location outside a residential zone.

Second, it is recognized that these institutions have a major traffic and parking component. Since they each exist in already developed contexts, to a large extent

residential, significant and creative efforts should be made to reduce dangerous traffic impacts parking demand and assure that parking does not dominate the area and utilize land that might later be needed for institutional growth, leading to a subsequent request to expand the IDP boundaries.

Third, it has been suggested that MECA be included among institutions subject to the IOZ framework. With more residential housing downtown, the impact of MECA on its context should also be subject to the scrutiny that the proposed IOZ framework sets forth. Similarly, Waynflete should also be subject to the IOZ framework and process, should it at some point wish to revise its Overlay Zone.

Fourth, I have come to understand, through litigation, that purpose statement, no matter how helpful in understanding the basis for legislative action, have no legal import. In the proposed purpose statement I see some very good language that I believe should be pulled forward into the text to provide more explicit definition in the IOZ framework requirement, for example the reference to “carefully planned transitions”

Finally, there is no question that each of these institutions, including the two suggested to be added, are very valuable elements to our community. What the Board is seeking is to establish balance and predictability for both the institution and its neighborhood contact.

Public Comments on MMC Institutional Development Plan

1 message

toddmalexander@gmail.com

Mon, Jan 16, 2017 at 6:54

<toddmalexander@gmail.com>

PM

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

Cc: "basak.alkan@perkinswill.com" <basak.alkan@perkinswill.com>, "Western Prom Neighborhood Association <oldmayor@maine.rr.com>" <oldmayor@maine.rr.com>

Jean: Comments on MMC's draft IDP;

Generally, I am supportive of the long-term plan to;

- i) create an IOZ to govern future campus development
- ii) shift development activity to the Congress Street corridor
- iii) allow for greater density and/or building heights along the Congress Street corridor to accommodate the plan

Either as a condition of an IOZ and/or included as a provision within the IOZ, the city should consider requirements for MMC to address the following;

- i) Real estate holdings in abutting residential districts that may not be located in the areas covered by the IOZ. More specifically, the city could require MMC to develop and implement a divestment plan for those non-core properties that most directly impact predominantly residential neighborhoods. Properties that could be addressed in that plan; 19 West Street, 112 West Street, 94 and 98 Chadwick, and 227 and 231 Western Promenade.
- ii) Hospital vehicle traffic in the Western Prom neighborhood generated from users of the South Parking Lot. One possible solution is to create an exit-only ramp/lane from the South Lot onto Vaughn street (far southeast corner of

lot). This will eliminate a high volume of hospital vehicle traffic on Chadwick and West Streets.

iii) Inclusion of residential uses in any future redevelopment plans for the South Lot. This parcel serves as the natural transition from institutional/commercial uses located to the north and west to residential uses to the south and east. Any future development in this location should further reinforce and compliment this transition. The size of the lot allows for an orderly change in property types from commercial/institutional...to mixed use...to residential. The residential development requirement could be structured to directly complement MMC's operations; housing for residents and staff, extended stay housing for visitors, etc.... One way to regulate a requirement for residential uses for the South Lot is through trigger/performance mechanisms, such as; for every X thousands of SF of non-residential space proposed for this lot, MMC is required to create X units of housing.

Respectfully,

Todd M. Alexander

3 Carroll Street

Sent from Mail for Windows 10

CORRECTION - MMC Neighborhood Meeting Held on January 18, 2017

1 message

Karen Snyder <karsny@yahoo.com>

Thu, Jan 26, 2017 at 5:01 PM

Reply-To: Karen Snyder <karsny@yahoo.com>

To: "Deborah S. Boroyan" <BOROYD@mmc.org>, Jean Fraser <jf@portlandmaine.gov>

Cc: Saint John Valley Neighborhood Association <sjvna1@gmail.com>

There is a correction in point 2 (two) below. I added a sentence to the end of the point. "These window replacements should be paid for by MMC."

Karen

From: Karen Snyder <karsny@yahoo.com>

To: Deborah S. Boroyan <BOROYD@mmc.org>; Jean Fraser <jf@portlandmaine.gov>

Cc: Saint John Valley Neighborhood Association <sjvna1@gmail.com>

Sent: Thursday, January 26, 2017 3:02 PM

Subject: Re: MMC Neighborhood Meeting Held on January 18, 2017

Hi Deborah and Jean,

During this MMC neighborhood meeting, it was said that the construction would span a 5 year time frame. This is not sustainable for the health of property owners and tenants to live through 5 years of construction on Gilman St and Valley St.

As a property owner on Gilman street, the proposed MMC's development proposal is causing quite a lot of stress and concerns amongst the local residents.

Depending on what the final agreed proposal and what is acceptable to property owners, the below needs to be considered for this development proposal to ease the stress, health concerns, and quality of life impact of any construction around Gilman and Valley St.

1) Construction noise should only allowed from Monday to Friday between 9am and 5pm. There should be NO construction on weekends. Residents need the weekend to decompress and destress. If not, the health and quality of life of residents will be compromised.

2) Prior to construction, all houses on Gilman and Valley street, the windows are to be replaced with soundproof windows. If the parking garage is made up of concrete, this means alot of noise and debris will be generated in the air. The properties around this area must not be comprised by hazardous abatement and noise. These window replacements should be paid for by MMC.

3) Because MMC employees use the Gilman street sidewalk constantly, for safety concerns, MMC needs to provide sidewalk lighting on this street.

4) The construction vehicles should be prohibited from parking on Gilman or Valley Street. Construction workers should be required to park in an off site parking lot and bused in just like MMC employees. The parking of construction vehicles is a nuisance for property owners because I have all ready had to experience this for the last 2 years on the East End.

5) There are concerns as to how are the property owners suppose to advertise for future tenants knowing that MMC is proposing a 5 year construction time frame? How are the property owners suppose to retain tenants if tenants don't want to put up with the constant noise and debris that will be generated? When someone buys or rents a property, there is an expectation to be considered and that is the law of NUISANCE "If a nuisance interferes with another persons quiet or peaceful or pleasant use of his/her property" It maybe the basis for a law suit ordering the person or entity causing the nuisance to desist (stop) or limit the activity. This is a huge concern as a property owner renting to tenants. MMC needs to address these concerns.

As indicated above, no matter what the final decision is on this proposal, the above issues must be addressed by MMC with solutions which have to be agreed upon by the neighborhood residents.

Regards,
K. Snyder
24 Gilman

From: Deborah S. Boroyan <BOROYD@mmc.org>
To: "'karsny@yahoo.com'" <karsny@yahoo.com>
Sent: Wednesday, January 18, 2017 12:18 PM
Subject: MMC Neighborhood Meeting

****This e-mail is being sent on behalf of Rich Petersen.****

Dear Neighbor,

Thank you for attending the Maine Medical Center Neighborhood Meeting on January 12, 2017. We hope that you found the meeting informative and we are looking forward to continuing our dialogue about this important project.

The input you provided before the Neighborhood Meeting, relating to traffic patterns, pedestrian and bicycle routes, and the amenities you most value in your neighborhoods, is being reviewed by Basak Alkan, the Urban Planner who is assisting with the development of MMC's project and advising on how that project can best interact with our neighborhood.

MMC is committed to transparency and being a thoughtful neighbor while planning for these important enhancements to our facilities and ability to meet the health care needs of our community.

Please go to <http://www.mmc.org/modernization> for more information and updates about this project, including additional Neighborhood Meetings.

Regards,

Rich Petersen

Deborah S. Boroyan
Executive Assistant to the President
Maine Medical Center
(207) 662-2491
boroyd@mmc.org

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37 College Street
Portland, ME 04103-2617
January 23, 2017

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

Dear Neil Donaldson;

This is my reply to the proposed Text of the Institutional Overlay Zone (IOZ). This was part of a memorandum dated January 6, 2016 (2017).

P.2 Institutional overlay zone text

In the first place, all four institutions concerned, in the spirit of "Total Transparency", should, if not already done so, furnish available as public record all applicable copies of their Charter, articles of incorporation, by laws, etc., including those still in force from predecessor organizations. In this way the public will know what activities the institutions may or may not do.

P.2 IV 1c purpose - Insert the words "abutting or" before the word "surrounding." In this manner the reading will be - "... integrates abutting or surrounding neighborhoods ...".

The insert is necessary to protect the integrity of the privately owned parcels of #33-37 College Street. These properties are probably in a unique situation where they surround nothing. For the last two years it is UNE that surrounds these parcels of land, unaltered, a minor technicality such as this, could lead to those parcels of land not being recognized as a neighborhood at all and shut out of the planning process. Therefore, a neighborhood is one or more privately owned parcels of land to include those abutting or surrounding an Institutional overlay zone.

The remainder of my comments are more general in nature for the time being. It is assumed that you are looking for more headings or amplify existing ones in the Proposed Text.

P.3 Permitted use - this must mean consistent with their articles, charter, etc.

P.5 IDP - Is this the same as the term "Master Plan", which has not appeared in the Proposed Text?

P.5 IV 5d (ii) 3a - What is "TDM"?

IV 5d (ii) 3b - Does this include adding, deleting or altering parking designations on a public street?

IV 5d (ii) 4b - Does this also embrace water draining into naturally occurring soil that is present?

IV 5d (ii) 4f - Assume that this also includes offensive soundwaves along with convergence of soundwaves both as the result of one or more appurtenances such as grates, fans, generators, compressors, circulators emitting

January 23, 2017

a sound that can be detected only in a narrow area, not always at ground level.

IV 5d (ii) 5d - What is "CPTED"?

IV 5d (ii) 5f - Presume any problems to be addressed in Section IV 5e 5 and 9

P. 6 IV 5d (ii) 6c - Construction Management - Does this include liabilities resulting in damage to private property due to construction, demolition, altering, filling, contour changes - Should private property owners pay for institutional damages upon them by the above activities not covered by their insurance? If the expansion of an institution upon a private property owner causes repeated damage claims and the insurance company raises the premium as higher risk, should the institution pay the difference between the rates since it is they who have "thrust" themselves upon the private property owner?

Likewise, where would there be an institutional maintenance clause that would totally protect private property owners against neglect (institutional owned tree falls upon private property house causing damages)?

IV 5e 5 Mitigation - assume this covers changes to appurtenances and appliances already in place such as troublesome lighting, noises, soundwaves.

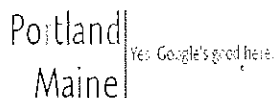
IV 5e 9 - Neighborhood Integration - would this be the heading under which a list of problems would be made item by item to include 5e 5 preceeding - all leading to a resolution?

That is all for now. Hope to receive your reply very soon.

Yours in Sensible planning,

Robert P. Fuller

Robert P. Fuller



Jean Fraser <jf@portlandmaine.gov>

Fwd: Maine Med IOZ - South Lot Concerns

1 message

Melissa Knoll <melissa.knoll@gmail.com>

Tue, Feb 7, 2017 at 10:24 PM

To: jf@portlandmaine.gov

----- Forwarded message -----

From: **Melissa Knoll** <melissa.knoll@gmail.com>

Date: Tue, Feb 7, 2017 at 10:18 PM

Subject: Maine Med IOZ - South Lot Concerns

To: planningboard@portlandmaine.gov, "Ozgur Basak Alkan, AICP, LEED AP" <Basak.Alkan@perkinswill.com>, jf@portlandmaine.gov

Cc: Anne Pringle <oldmayor@maine.rr.com>, Scott Knoll <scott.knoll@gmail.com>

Dear Jean & Basak,

Thank you for taking neighborhood comment while planning the next Maine Med expansion. We live at the corner of West and Vaughan Street, so are in very close proximity. The move to make the entrance closer to Congress St sounds like a good one. We would like to see the high volume of Maine Med traffic reduced in the west end neighborhood.

We, as well as our neighbors, have two requests as you consider zoning change:

1. Move the exit of the surface lot on Brackett/Chadwick so traffic is directed away from the West End neighborhood. It is a huge safety and traffic congestion concern. I wrote a detailed e-mail regarding our concerns on Jan. 4th which I'll forward to Jean. There is broad west end neighborhood support for such a change.
2. It appears Maine Med is asking for long term approval to put a large 75 foot tall building on this same South Lot surface parking lot (see page 35 of the Maine Med Institutional Development Plan). The height and setback of a potential building on that lot should be kept the same as the surrounding R4 and R6 neighbors. A 75 foot building with a 5 foot setback as proposed on their plan would be enormous. Please keep the maximum height at the same level as the current R-6 & R-4 zone.

We could put together a neighborhood petition if this helps our case. Let us know if you think this would be valuable.

Thank you,
Melissa & Scott Knoll

Fwd: Maine Med Traffic Volume & Safety Concerns from Chadwick Parking Lot

1 message

Melissa Knoll <melissa.knoll@gmail.com>

Tue, Feb 7, 2017 at 10:23 PM

To: jf@portlandmaine.gov

Here is the e-mail detailing the traffic problems caused by the South Lot exit. Frequent high rates of speed can be added to this list.

Thank you,
Melissa

----- Forwarded message -----

From: **Melissa Knoll** <melissa.knoll@gmail.com>

Date: Wed, Jan 4, 2017 at 2:14 PM

Subject: Maine Med Traffic Volume & Safety Concerns from Chadwick Parking Lot

To: Basak.Alkan@perkinswill.com

Cc: Anne Pringle <oldmayor@maine.rr.com>

Hello,

Thank you for taking the neighborhood concerns into consideration in designing Maine Med's next expansion. We have three small children and live on the corner of West & Vaughan Street in Portland, Maine. We and many of our neighbors have expressed concern about the erratic driving and large volume of traffic from the surface lot on Chadwick/Brackett West Street. All of the exiting traffic is directed toward our neighborhood from the one way exit on Chadwick, and 90% turns left down West, and then left on Vaughan.

Major problems include ~

- High traffic volume, especially at busy times of day
- Drivers are unfamiliar with the area, there is no signage back to the highways
- Drivers are distracted - many are on phones, in a hurry, have health problems, or are lost
- Cars frequently drive on West Street as if it is a one way street (like Chadwick) and drive on the left side of the road
- Cars do not come to full stops at Chadwick/West stop sign & West/Vaughan stop sign

- Most drivers have been at the hospital and are not paying full attention to driving safely or the children in the neighborhood
- Both Chadwick & the West Prom are one way streets heading away from the hospital making it difficult to access the hospital entrance, which adds to traffic congestion

Our neighborhood is young and vibrant with 10+ small children that live directly on this block. There have been several close calls already with traffic. It seems like there could be a reasonable solution to direct this unnecessary traffic away from the West Prom neighborhood. I look forward to speaking to you more about this. Please feel free to contact me and I can describe or show you the problem in more detail.

Thank you!

Best,
Melissa & Scott Knoll
83 West St
Portland, ME 04102

Google Groups

Comment on MMC overlay zone

Sara Anne Donnelly <sara@saraannedonnelly.com>

Feb 10, 2017 9:18 AM

Posted in group: **Planning Board**

To the Planning Board:

This letter is in regards to the proposed overlay zone that would allow Maine Medical Center to expand. I do not oppose the zone or the expansion, but as an abutting neighbor I do think it's important to call attention to trouble that we have had in convincing Maine Medical Center to be respectful of our space. I do this in hopes that perhaps provisions could be written into the overlay zone that protect the neighborhood from harm caused by the hospital and its expansion.

I live at 19 Ellsworth Street, which I have owned or managed since 2012. My two-unit home is two doors down from the current main entrance to the hospital on Bramhall Street. Soon after I bought the property, MMC banned smoking on its grounds. Since then, the neighborhood has struggled with patient and employee smokers that have effectively been pushed onto our sidewalks. There are dozens of them, particularly on warm days, smoking throughout the day at a near constant.

The hospital has met with neighborhood reps as far as I know (I was only invited to one meeting) and has reluctantly steered smokers away from some parts of the abutting neighborhood. They refuse, however, to re-establish a smoking space on their grounds, ignoring the reality that unlike other no-smoking hospitals their campus is in the middle of a densely populated area. This leaves us with a policy that is like a balloon pushed on one end that juts out on the other. The smokers that are deterred from one part of our neighborhood only migrate to another.

That's where my house comes in. Across the street, at Hill and Ellsworth, is a popular corner for employees of the hospital to smoke. This is no accident. The hospital about a year ago installed "Buttler" cigarette butt collectors at this corner, which it pays to maintain. These Buttlers are in front of private property. They effectively validate and even encourage smokers from the hospital to come to our neighborhood in front of private property and smoke. Which they do, by the dozens daily on warm days. Sitting on stoops and lounging on the sidewalk in their MMC uniforms.

The Buttlers were pitched by MMC to the neighbors (including me) as a way to collect the smokers away from the windows of those with concerns, and to gather the butts that were so many the rumor was they clogged up the sewer underneath the sidewalk. We were told that the Buttlers would be moved if there was a problem. But this is not the case.

I have spoken with six property owners or tenants around these Buttlers who have serious concerns about the effect of the smokers on our health, our quality of life, and our property value. I relaid this concerns to the hospital. To date, the hospital has done nothing to divert its employee smokers away from our sidewalks. I have particular concerns about the smoke as I work from home, my tenant is also home and is undergoing chemotherapy, and my infant daughter is cared for at home. Next door, my neighbors have a one-year old son who is also home most of the day. The smoke from the MMC employees comes into our windows almost constantly during warmer months. Over a year ago, the young mother next door and I joined a neighborhood meeting with MMC to talk about the smokers. We were listened to but nothing of substance was ultimately done. We were even told by MMC counsel to ask the smokers to move ourselves.

Next week, the owner of the property on the corner and I will finally meet with MMC to discuss the employee smokers at the corner of Hill and Ellsworth. But even if we are successful at resolving our issue, other property owners will suffer as the smokers will only migrate. The only effective way to respect the neighborhood would be to alter this flawed no-smoking policy and return a space for smokers to hospital grounds. But the hospital will not consider this. They seem to hope that we will just go away. This meeting alone is a perfect example -- it was first promised to us in October. It is only now happening, after repeated follow-ups from the neighborhood.

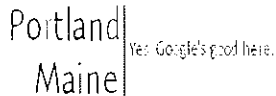
I recognize that the overlay zone and the expansion are a separate issue, but I am concerned that the expansion will bring more smokers to our neighborhood and that the hospital will not be held accountable for its promises to respect our health and our quality of life. I have attended a couple of the neighborhood meetings about the expansion held by MMC, and the rhetoric about respect and concern for the neighborhood is heartwarming. But if the ongoing and very real damage to the neighborhood caused by another of MMC's sweeping changes is any indication, the needs of the neighbors may ultimately be ignored.

I write this letter in hopes that perhaps there is some way the zone can be written to better protect us neighbors.

Thank you for reading, and I'm happy to answer any questions you may have.

Best,
Sara

Sara Anne Donnelly
Writer o Writing Coach
M 207.632.1042 O 207.274.6848
www.saraannedonnelly.com
@SaraADonnelly



Helen Donaldson <hcd@portlandmaine.gov>

Submission of Comment Planning Board re: MMC IOZ

Zack Barowitz <zbarowitz@gmail.com>

Sun, Feb 12, 2017 at 2:57 PM

To: Helen Donaldson <hcd@portlandmaine.gov>, Jean Fraser <JF@portlandmaine.gov>

Cc: Tuck O'Brien <tuckobrien@me.com>, Jeff Levine <JLEVINE@portlandmaine.gov>, Brian Batson <bbatson@portlandmaine.gov>

Submission of Comment to IOZ

In reviewing the memo to the Portland Planning Board Nell Donaldson regarding the Draft Institutional Overlay Zone (IOZ), several items came up as matters of concern.

Section 1c clearly and rightly states that the purpose of the IOZ is to "Ensure that institutional change and growth both complements and, as appropriate, integrates adjacent or surrounding neighborhoods through carefully planned transitions"

However, several elements of the plan run counter to this condition.

Foremost among them is the amount of surface parking, particularly the proposed 13 story lot slated for the Corner of Gilman and Congress Streets. Aside from the fact that parking structures are not typically built to such heights because they can cause dizziness; the placement of an inordinately tall structure will indubitably have a detrimental effect on adjacent properties.

A simple survey of existing garages on Congress, Crescent, and Forest Streets would show adjacent properties adversely affected. So much so, that were it be the cynical policy to erect garages to devalue adjacent properties; it would allow for more cost effective future expansion. In any case; the proposal is in direct conflict with this portion of the IOZ.

Secondly; part and parcel of IOZ for an institution of the type, size, and location of Maine Medical Center is a Traffic Demand Management program (TDM). The memo states that Meghan Houdlette, PE of the firm VHB has been brought on to assist in the fulfillment of this portion of the IOZ. It is however, of some concern that in a private meeting with Penny St. Louis of MMC and Basak Alkan; Ms. Alkan told me that the hospital have "no position" on the recommendations put forth in the Libbytown Traffic Circulation & Streetscape Study. This is concerning for several reasons:

- The hospital will only benefit from the implementation of the recommendations of the study
- MMC had previously endorsed the findings of the study, why the change of position?
- The adoption of the recommendations represents the bare minimum of what a 21st century TDM of a project of this scope should entail. The team should consider a

regional approach to transportation that encompasses all existing and future modes and systems including intercity park and rides, driverless cars, as well as bicycle and pedestrian infrastructure.

Finally, a graphic taken from the Public Meeting/Open House from January 12, 2017 shows a circular "1/4-mile walk radius" from surrounding areas to the MMC campus. However, the perimeter seems to reference an arbitrary center point within the MMC campus. To wit, the distance from a perimeter point on Grant Street to the nearest edge of the campus is twice that of one taken on Saint John Street. As such, the map is not terribly accurate and not as useful a tool as it could be.

Thank you for your kind attention to these matters.

Zack Barowitz,
Huntress Street

--

207-838-6120
917-696-5649
ZacharyBarowitz.com

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Portland
Maine | yes, Google's good here.

Jean Fraser <jf@portlandmaine.gov>

Re: Institutional Overlay Zone (IOZ) PB memo for 2.14.2016

1 message

Timothy wells <welmaurya@gmail.com>

Mon, Feb 13, 2017 at 9:44 PM

To: Jean Fraser <jf@portlandmaine.gov>

Jean,

A couple of comments about the Institutional Overlay Zone draft.

1. I think the city should be more specific about the planning period. I noticed that several cities, including SF, Oakland, Berkley require hospitals and universities to submit 20 year plans every 5 years. I think Portland should adopt the same policy. 20 years actually isn't that long when you are planning large construction projects and forces some rigor and long term thinking about the smartest, most effective way to grow.

2. I think the city should require the institutions to answer the questions:

- a) How will expansion impact economic growth for the city, county and state?
- b) What will be the positive and negative effects on the immediate surrounding neighborhoods? How will the plans impact property prices?
- c) What is the impact on city property taxes?

Thank you for including these for the meeting on Tuesday.

Best regards,

Tim

Tim Wells
207-807-3876 MOB

On Feb 10, 2017, at 5:35 PM, Jean Fraser wrote:

Hello all

Please find attached the staff cover Memo for the Planning Board at next Tuesdays meeting, along with the final agenda for the meeting. The Memo contains the "final draft" of the IOZ ordinance text.

My name is Robert P. Fuller, owning and residing at #37 College Street. My sister owns #33-35 College Street. Together our properties comprise a neighborhood, though small in size. For the last two years, save for a public College Street, we are completely surrounded by the UNE campus. This is probably a unique situation, considering the four institutions cited for an overlay zone.

Four generations have lived in the home at #37 College Street, built by my grandfather about 110 years ago. Within our surroundings we are afforded a good view on all four sides, especially out our front window at a historic district. It is relatively safe and peaceful here on a predominately graduate campus. Traffic is usually manageable, except with special events.

Communication between the institutions and the neighborhoods need improvement. Hopefully the overlay zone process will send communications and resultant outcomes to a high level of order that the public should expect and get from an institution.

As part of the total transparency process, it should not be unreasonable to obtain from each institution information about each building and structure as to function, hours of operation, and who uses it. City oversight must insure that any activities of the institution are in keeping with its charter, articles, and by-laws.

In terms of overlay zone and institutional development process, the more details on a plan, the better for the neighborhoods. Without a detail requirement, there is always the temptation for an institution to produce vague plans. Who can say what the impact will be upon a neighborhood with changes in lighting, trees, traffic, impervious surfaces, parking, drainage, surface elevations, air circulators, vents, generators, compressors, construction or maintenance work, kinds of machinery employed, added doorways, trash removal, deliveries, pick-ups, hours of operation, converging soundwaves/noises and so forth?

Setbacks, transitions and buffers are of paramount importance to all neighborhoods, no matter the size. Dimensional figures applied to bordering or abutting neighborhoods cannot be uniformly implemented with a fixed set of standards. One size does not fit all. Instead, each jog of the bounds that abut or adjoin an institution must be treated on a case by case basis.

The outcome of the overlay zone process should leave each neighborhood as good or better in terms of protection. Our neighborhood quality of life is at stake and so are our real property values.

February 19, 2017

Jean Fraser <jf@portlandmaine.gov>

IOZ2 messages

Anne Pringle <oldmayor@maine.rr.com>

Tue, Mar 7, 2017 at 6:05 PM

To: "Fraser, Jean" <jf@portlandmaine.gov>

Cc: "Watson, Trevor" <trevorewatson@gmail.com>, "O'Brien, Tuck"

<sgo@portlandmaine.gov>, "Sanders, Jeff" <Sandej4@mmc.org>, "Peterson, Rich" <peterri@mmc.org>

Jean,

I have been working like a house afire to get ready to go on vacation tomorrow, but have not focused as well on the IOZ text as I had hoped. My energy level is running down to zero with all that is going on just before I leave...

But see attached proposed changes, comments, and questions on the latest draft of the IOZ. As I will be away I guess they should be sent to the PB, unless staff agrees with everything and incorporates them into a new draft!...

A major concern is that the language seems to focus on accommodating institutional needs. See the language I suggest in the purpose statement to better balance neighborhood impact, **especially encroachment**. As I have noted twice, since I have learned that purpose statements have no legal import, I think this language needs to be pulled into the text. I am not sure what to make of the language in various sections about acquisition and disposition.

Re the process of engagement with the neighbors. I must say I am very impressed with our experience with MMC this time around vs. last time. Maybe it's just because we are dealing with different personalities. Jeff Sanders is very open and I believe he hears us. He is also very clear about the hospital's needs. I feel we are engaged in problem-solving, both theirs and, hopefully, ours. Hiring Basak Alkan was a great commitment on MMC's part. Maybe this kind of hire should be required to bring the institution along on the community planning spectrum...

Anne



INSTITUTIONAL OVERLAY ZONE (IOZ)

I. Purpose of the Institutional Overlay Zone

The Institutional Overlay Zone (IOZ) designation provides a regulatory mechanism available to the city's four major medical and higher education campuses where an improved regulatory structure is needed to facilitate a consistent, predictable, and clear growth management process. The purposes of the Institutional Overlay Zone are to:

- a. Acknowledge that the city's major academic and medical institutions play a prominent role in the health and well-being of the local and regional community, and in order to sustain that role, these institutions need flexibility to change and grow;
- b. Encourage proactive planning for institutional change and growth which identifies and addresses likely long-term institutional needs and potential benefit to the surrounding area, city, and regional levels; ~~and cumulatively evaluates the impacts of any proposed encroachment into residential neighborhoods; and leverages while leveraging potential benefits to the neighborhood, city, and regional level;~~ (NOTE: VERY important to address the issue of potential encroachment. What is meant by "leverages")
- c. Ensure that institutional change and growth both complements and, as is appropriate, integrates adjacent or surrounding neighborhoods through carefully planned transitions;
- d. Support the formation and continuation of mutually beneficial public-private cooperation;
- e. Support an ongoing public engagement process that benefits both the institutions and nearby neighborhoods;
- f. Reflect Comprehensive Plan and other policy objectives; and
- g. Provide a consistent regulatory approach to all major institutions, which allows unique regulatory requirements that balance the particular needs of institutions with the needs of the surrounding neighborhood and wider community.

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II. Location and Applicability

The city's four primary medical and higher education institutions are eligible to apply for designation as Institutional Overlay Zones. The Eligible Institutions are the two major hospital institutions of Maine Medical Center and Mercy Hospital and the two major academic institutions of University of Southern Maine and University of New England, their successors and assigns. Designation as an IOZ is the preferred mechanism where the Eligible Institution's proposed development is inconsistent with the existing zoning.

III. Establishment of an Institutional Overlay Zone

- a. *Application for an Institutional Overlay Zone.* Where the Eligible Institution seeks designation as an IOZ, they shall submit a zone change application consisting of two components:
 - i. An Institutional Development Plan (IDP) (see Section IV).
 - ii. A Regulatory Framework (see Section V) that would, when and if adopted, be the text and map amendment to the City's Land Use Code and Zoning Map.
- b. *Required Public Involvement.* Soon after the City becomes aware of any institutional plan to request a zone change, the applicant shall advise any abutting neighborhood association(s) of its plan to request a zone change. (NOTE: earlier notices came up at a recent meeting of about 14 NAs.) At least two neighborhood meetings shall be required. The first shall be held prior to the formal submission of a zone change

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application for an Institutional Overlay Zone and the second shall be held during the City's review. Meetings shall identify the concerns, if any, of affected residents and property owners, and inform the development of the Institutional Development Plan (IDP) and Regulatory Framework. Meetings shall be held in a convenient location proximate to the institution. The applicant shall provide written notification to property owners of record within 500 feet of the proposed IOZ boundary at least ten days prior to the meeting dates and maintain written records of the meetings.

- c. *Required Scoping Meeting.* The Eligible Institution shall meet with the Planning Authority after the first required neighborhood meeting and prior to submission of the zone change application to confirm the focus of the Institutional Development Plan (IDP) and Regulatory Framework, including study areas that may be outside of the proposed IOZ boundary (NOTE: What does this mean?). The IDP and Regulatory Framework will vary in detail and focus depending on the Eligible Institution and its particular context. The content requirements in Sections IV and V and the comments from neighborhood meeting(s) shall provide direction for the content of the IDP. The Planning Authority or Planning Board may require additional information or modify content requirements as is relevant to the Eligible Institution (see Section IV.c).

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- d. *Reviewing Authority.*

- i. The Planning Board shall review the zone change application, including the IDP and Regulatory Framework. ~~→ One or more public workshops and a public hearing before the Planning Board are required.~~ (NOTE: Given the size and complexity of these institutions, I think it should be acknowledged up front that it likely than more than one workshop will be required.)
- ii. Upon recommendation of the Planning Board, the City Council shall review and consider adoption of the Institutional Overlay Zone and the accompanying Regulatory Framework as an amendment to the city's code of ordinances.

- e. *Future Institutional Development.*

- i. All new development by the Eligible Institution within the boundary of the IOZ shall be compliant with the IOZ and accompanying Regulatory Framework, consistent with the IDP, consistent with the Comprehensive Plan, and meet applicable site plan standards, unless such standards are superseded by the Regulatory Framework.
- ii. Any use/development proposed by the Eligible Institution outside the IOZ boundary that complies with the zoning for permitted uses in that location shall be reviewed under the standards of that zone. Any use/development proposed by an Eligible Institution outside of the IOZ boundary that is a conditional use in the zone in that location shall be addressed by the IDP. NOTE: What about use/development not compliant with underlying zones, e.g the West Street transplant center?)

IV. Institutional Development Plan (IDP)

- a. *Purpose.* Any use conducted by an Eligible Institution and any construction by an Eligible Institution in an Institutional Overlay Zone shall be consistent with an Institutional Development Plan (IDP) approved by the Planning Board in accordance with this ordinance. The purpose of the IDP is to establish baseline data about institutional land uses, facilities, and services and measure, analyze, and address the anticipated or potential impacts of planned institutional growth and

change. The IDP shall serve as a background document that supports the proposed Regulatory Framework and frames subsequent site plan review(s).

- b. **Planning Horizon.** An IDP shall provide the city and abutting neighborhoods with a clear outline of the anticipated or potential growth and change of the Eligible Institution for the short- to medium-term (e.g. 1-5 and 5-10 years respectively), as well as a conceptual growth plan for the long-term (e.g. 10 years ~~plus or more~~); however, the specific planning horizons for each institution will be determined as part of the IDP approval process.

- c. **Content.** The IDP submission shall address the following elements unless specifically modified by the Planning Authority or Planning Board, with the scope and level of detail to be clarified at the required Scoping Meeting:

i. Context Information

1. The institution's adopted mission, vision, or purpose statement
2. A summary of relevant baseline data on the institution, including:
 - a) A neighborhood context plan;
 - b) An inventory of current programs and services;
 - c) A current census of the number of people using the institution (e.g., employees, enrollment, patients), with an indication of maximums and minimums over time;
 - d) An inventory and/or plan of all existing property holdings within the main campus and within the City of Portland, including an indication of functional land use links between off-campus properties and the main campus (e.g. remote parking);
 - e) An inventory and/or plan of existing facilities, including data on use, floor area, and any existing functional connections between facilities.
3. A summary of the baseline characteristics of the existing campus and context of the institution, based on identified study areas, including:
 - a) A summary of existing resources, such as historic, open space, and natural resources; (Note: does this mean, for example, the Western Prom in the case of MMC? Is the intent that the IDP demonstrate that it will not negatively affect these existing resources?)
 - b) A summary of the existing transportation system, including vehicular, pedestrian, transit, bicycle, and parking supply, demand, and utilization;
 - c) A summary of existing public infrastructure supporting the institution, including demand, utilization and any capacity issues;
 - d) Relevant municipal plans, projects, and studies that may influence the IDP study area and opportunities for integrating institutional growth.
4. A summary of public involvement in the development of the IDP, including major areas of public concern. Good!

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ii. Assessment of Future Institutional Growth and Change

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1. A description of institutional needs and areas of future institutional growth and change, including:
 - a) Projected census of users (e.g., enrollment /employment/patient/visitor figures and anticipated variations over time);
 - b) Institutional objectives for property both within and outside the IOZ boundary (e.g. acquisition and/or disposition), including an indication of any functional land use connection for sites outside the IOZ boundary to the main campus; (NOTE: I think you are trying to address my suggestion that acquisition not be allowed outside that IOZ, but I am not sure this satisfies that suggestion. Again, this is the issue of encroachment, which should NOT be allowed into residential neighborhoods.
 - c) A Development Plan addressing anticipated or potential institutional needs and physical improvements, including the proposed boundary of the IOZ and any phasing of the development.
2. Analysis and associated plans that address the following elements in terms of anticipated growth or potential impacts within the identified study area, and support the development parameters as set out in the Regulatory Framework:
 - a) Transportation and access
 - 1) An analysis of the proposed changes in parking demand, supply, and impacts to the off-street and on-street parking capacity, including an explanation of the proposed parking plan;
 - 2) An analysis of the proposed changes in vehicular, pedestrian, transit, and bicycle access routes and facilities, their capacity, and safety;
 - 3) A transportation, access, and circulation plan, representing the synthesis of the analysis, and including a program of potential improvements or set of guidelines to address access deficiencies to and within the IOZ. The plan should outline proposed mechanisms and potential strategies to meet transportation objectives, including transportation demand management, phasing, and when a Traffic Movement Permit (TMP) may be required.
 - b) Environment
 - 1) An analysis of potential cumulative impacts on natural resources and open spaces; (NOTE: impact of individual projects should be analyzed, as well as cumulative impact. Minor individual impacts can build up to a major cumulative impact. This is what happened with Waynflete over the years.
 - 2) An analysis of projected energy consumption, hazardous materials generation, noise generation, and similar issues as relevant;
 - 3) An environmental plan, representing the synthesis of the analysis and including a proposed program or set of guidelines for future preservation, enhancement, conservation, and/or mitigation.

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c) Infrastructure

- 1) An analysis of projected public utility demand and the capacity of associated infrastructure;
- 2) An analysis of projected public safety needs and projected impacts to the capacity of these services;
- 3) An infrastructure plan, representing the synthesis of the analysis and including a proposed program or set of guidelines to support sustainable growth.

d) Design

- 1) An analysis of projected impacts to neighboring properties and public spaces, including potential shadow, wind, and lighting impacts, impacts of height and massing, and impacts to natural and historic resources;
- 2) An analysis of transition areas between the institution and adjoining neighborhoods, including identification of key character defining components of the surrounding context;
- 3) An analysis of existing Crime Prevention Through Environmental Design issues and identification of how these principles would be addressed as part of the proposed campus development;
- 4) A conceptual built environment/public realm plan, representing the synthesis of the analysis and including a set of guidelines for urban design, landscape, open space, and streetscape treatments, with particular attention to the treatment of edges (both within and abutting the IOZ boundary) to achieve compatible transitions. Good.

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e) Neighborhood Engagement

- 1) A plan for ongoing community engagement that represents best practices, promotes collaborative problem solving around community concerns, fosters transparency, and identifies mechanisms for neighborhood feedback and institutional accountability; Good!
- 2) A property management framework that identifies the institution's process for handling operational property issues with neighbors; Good!
- 3) Strategies for assuring reasonably transparent (NOTE: MMC was not at all transparent about the sale of the residential properties as required the contract zone. They really kept us in the dark for years on this. Need to be more explicit about what is meant by "reasonably transparent"? communication pertaining to property acquisition and disposition in surrounding neighborhoods (NOTE: This should not be allowed - encroachment! The whole purpose of the IOZ is predictability, BOTH for the institution and the neighborhood.)
- 4) A set of construction management principles, to apply to all institutional construction, that represent best practice, aim to minimize short- and long-term construction impacts on surrounding residents and businesses, and ensure a clear

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communication strategy is in place in advance of construction.

d. *Standards of Review.* The IDP shall:

- i. Address all content requirements, unless explicitly modified by the Planning Authority or Planning Board;
 - ii. Reflect the issues/topics identified in the required public process;
 - iii. Demonstrate consistency with the city's Comprehensive Plan and the purpose of this ordinance;
 - iv. Demonstrate how the property ownership, proposed growth, and requested Regulatory Framework relate to the institution's mission;
 - v. Demonstrate that traffic and parking impacts have been anticipated and that the proposed parking provision is justified as based on an assessment of options for reducing traffic and parking demands;
 - vi. Outline an approach to open space, natural, and historic resources that supports preservation and enhancement.
 - vii. Demonstrate that potential cumulative environmental impacts have been anticipated and can be minimized or satisfactorily mitigated;
 - viii. Demonstrate that utility impacts have been anticipated and can be minimized or satisfactorily mitigated;
 - ix. Reflect a comprehensive design approach that ensures appropriate transitions with the existing or future scale and character of the neighboring urban fabric;
 - x. ~~Remove~~ Demonstrate compatibility with surrounding uses in adjacent neighborhoods, maintain housing, and support local amenities;
 - xi. Anticipate future off-site improvements that would support the integration of the institution into the community and city-wide infrastructure; NOTE: What does this mean?
 - xii. Conform with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within one hundred (100) feet of designated landmarks, historic districts, or historic landscapes, the IDP shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity; and
 - xiii. Incorporate strategies to support clear communication and ongoing public engagement between institutions and nearby neighbors.
- e. *Approval.* Upon finding that an Eligible Institution's IDP meets the standards of review, the Planning Board shall approve, approve with conditions, or deny an IDP.
- f. *Monitoring.* The IDP shall establish a schedule for reporting on IDP implementation at regular intervals of not more than ten years from the date of approval of the initial or amended IDP, and identify thresholds for IDP amendments;
- g. *Amendments.* An approved IDP shall guide campus development unless and until amended. If at any time the Eligible Institutions request minor amendments (how defined?) to an approved IDP, the Planning Authority may approve such minor amendments, provided that they do not constitute a

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substantial alteration (How defined?) of the IDP and do not affect any condition or requirement of the Planning Board. The applicant shall apply with a written statement of the proposed amendment and proposed amended IDP to the Planning Authority, whose decision as to whether the amendment is minor shall be final. Major amendments shall be reviewed by the Planning Board. When the IDP is amended, the baseline data in the IDP shall be updated as appropriate.

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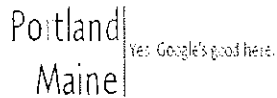
V. Regulatory Framework

- a. *Purpose.* The Regulatory Framework translates the IDP into a set of clear and specific zoning requirements for the IOZ that constitute the text and map amendments to the City's Land Use Code and Zoning Map. The zoning requirements are anticipated to include parameters that guide the growth and change of the institution as well as clarify how potential impacts will be addressed, though some details may be more fully developed under site plan review.
- b. *Applicability.* The Regulatory Framework shall apply only to properties that are within the IOZ boundary and to which the Eligible Institution holds right, title, and interest. For these properties, the Institutional Overlay Zone shall supersede the underlying zoning, and all new institutional development shall be conducted in compliance with the Regulatory Framework and the approved Institutional Development Plan. Properties located within the Institutional Overlay Zone not subject to right, title, or interest of the Eligible Institution shall continue to be governed by the regulations of the underlying zoning designation.
- c. *Uses.* Institutional uses, including hospitals and higher education facilities, shall be permitted, as shall uses that are functionally integrated with, ancillary to, and/or substantively related to supporting the primary institutional use, consistent with the applicable approved IDP.
- d. *Content.* The Regulatory Framework shall reflect the information and analysis of the IDP. The content shall be tailored to address the particular issues associated with the institution and its neighborhoods. The Regulatory Framework should be succinct and use tables and graphics as possible to address the following:
 - i. *Zoning boundary of the IOZ:* The area to which the regulations apply, as shown on the zoning map, subject to other provisions of this ordinance (i.e. the map amendment to the City's Zoning Map);
 - ii. *Phasing and schedules:* Requirements that relate to particular proposed phases; a chart showing the schedule or thresholds for submitting an amended IDP (or elements of an IDP, such as a Transportation Demand Management (TDM) Plan);
 - iii. *Uses:* Clarification, as necessary, on permitted uses.
 - iv. *Dimensional Requirements:* Graphics, sketches, or standards, including details for transition zones within the IOZ boundary;
 - v. *Transportation:* Elements such as TDM trip reduction targets or contribution to area-wide TDM measures; broad parameters for ensuring pedestrian, vehicular, bicycle and transit access and safety; parking ratios and management strategies; thresholds for access improvements;
 - vi. *Environment:* The approach to the inclusion of open space and preservation of environmentally-sensitive areas;
 - vii. *Mitigation measures:* The approach to identified mitigation measures, which would be addressed in greater detail in the site

2_28_17 revised draft IOZ

- plan review process; thresholds for addressing deficiencies; goals for preservation/protection;
- viii. *Design:* Graphics and standards to clarify building placement and envelope (height and massing); guidelines for integration of site features; required treatments for transition zones and treatment for all edges (both within and abutting the IOZ boundary); guidelines for establishing campus identity; and
- ix. *Neighborhood Integration:* Thresholds and strategies for neighborhood engagement; mitigation of impacts on neighboring properties, including construction impacts; screening and buffering requirements; objectives for pedestrian linkages and safety; other requirements that address community concerns.
- x. *Monitoring:* A schedule for regular monitoring reports on IDP implementation in accordance with the IDP.
- e. *Standards of Review:* The Regulatory Framework shall:
 - i. Be consistent with the Comprehensive Plan and the Institutional Development Plan;
 - ii. Provide a clear zoning framework, using graphics and tables as appropriate, to apply to future site plan reviews;
 - iii. Provide specific regulatory statements as appropriate that respond to concerns raised during the required public involvement; and
 - iv. Outline measurable goals and thresholds for improvements or other actions identified in the IDP to be advanced in subsequent site plan applications.
- f. *Approval/Adoption.* The Planning Board shall review the proposed Regulatory Framework against the standards of review and make a recommendation on the institution's IOZ designation and Regulatory Framework to the City Council for adoption as part of this zoning ordinance.
- g. *Amendments.* A Regulatory Framework and IOZ boundary as adopted by the City Council shall remain in force unless and until amended. Amendments to a Regulatory Framework and/or IOZ boundary not brought forth by the institution as part of an IDP amendment will require a supermajority of the City Council to take effect. Amendments to the IOZ boundary or Regulatory Framework shall be reviewed by the Planning Board and adopted by the City Council subject to the provisions of this ordinance.

VI. **Regulatory Frameworks of Eligible Institutions** (The regulatory frameworks adopted by the Council for each Eligible Institution will be codified within this section.)



James Dealaman <jdealaman@portlandmaine.gov>

Neighborhood Concerns over IOZ IDP Process relating to existing Contract Zone Language

1 message

stjohnvalleyneighborhood <stjohnvalley@live.com>

Mon, Mar 27, 2017 at 11:40 PM

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

Cc: "sgo@portlandmaine.gov" <sgo@portlandmaine.gov>, "jf@portlandmaine.gov" <jf@portlandmaine.gov>, stjohnvalleyneighborhood <stjohnvalley@live.com>, moses <mosessabina@yahoo.com>, "garrybowcott@hotmail.com" <garrybowcott@hotmail.com>, Jenny MacKenzie <jenabeat@hotmail.com>, "boccafe@hotmail.com" <boccafe@hotmail.com>, "nmaze@shalomhouseinc.org" <nmaze@shalomhouseinc.org>, "Jacob, Ian" <iancasperjacob@gmail.com>, Zack Zack Barowitz <zbarowitz@gmail.com>, Holder Emma <pna@parksideneighborhood.org>

<http://thebollard.com/2010/02/07/getting-the-institutional-creeps/>

March 27, 2107

To the City of Portland Planning Board:

In reviewing the latest IOZ draft with a group of neighbors yesterday, a couple of questions came up:

Once the IOZ is adopted, are all restrictions and covenants in place under an institution's current Contract Zoning eliminated?

The language in the IOZ, Chapter V Regulatory Framework states that the IOZ shall supersede the underlying zoning.

There is also language throughout the IOZ referencing for example that the institution's IDP provide a description of the Assessment of Future Institutional Growth and Change.

In the Chapter IV Neighborhood Engagement paragraph there is language that references (reasonably transparent communication pertaining to property acquisition...)

I'm not sure how we missed this but the language has us very concerned that the new IOZ *completely* removes restrictions currently in place on Maine Med's ability to expand in our neighborhood outside of their current footprint.

Additionally, several other mandates present in the hospital's current contract zoning will apparently go away upon the adoption of the IOZ.

Specifically:

- Reporting requirements for Helicopter landings.
- Reporting requirements for the institutions Alternative Transportation Plan.
- Mandated quarterly meetings for the purpose of keeping the neighbors apprised of future development plans.:
- Snow ban parking provisions
- Signage compliance

I'm assuming some of the above may be addressed in the MMC IDP, or are already part of city code.

Back to the footprint question...While we as a group agreed to and even suggested loosening expansion restrictions to allow for possible development of-for example the Sportsman's Club lot, we did so with a consideration towards diluting the impact of 1,200 cars being parked by the hospital on the Gilman Street block. An abandoning of the expansion restriction in its entirety is not what we envisioned and puts the neighborhood right back into the path of potentially major institutional creep.

Taking a look at a possible scenario:

The hospital already owns two surface lots on the west side of Valley at A Street.

With a complete removal of restriction against expansion outside the footprint, what keeps them from buying the other four parcels and creating another institutional super-block?

If I understand it correctly, in the case of the super-block, prior to being approved for use, the institution would need to have presented plans for this purchase and expansion in their IDP, and have the IDP approved by the Planning Board and the Council.

This is where I start to get confused.

- How can the institution include in their IDP, their intention to develop that block if they have not yet purchased the other property?
- How "transparent" or detailed can an institution possibly be in sharing their plans for acquisition and development in the IDP and still protect their position of confidentiality as a buyer?
- How will an institution be able to present, as required by the IDP, a description of their "institutional objectives for property both within and outside the IOZ boundary" and still protect their property buying interests?
- If, in order to protect the confidentiality of the buyer/seller, an institution is not required to present specifics about their "assessment of future institutional growth and change" including specific properties to be purchased or sold, how is the neighborhood to protect themselves from potentially unfettered growth by the institution?

Our biggest fear outside the prospect of a thirteen story parking garage, is that of a constant, ever expanding Maine Medical Center presence in our neighborhood.

This was a fear addressed and remedied in Chapter 1 of the 2005 Conditional Zone document and remains an active concern of those who live in this neighborhood. I've attached a copy of the Conditional Zone document along with a link to a story from 2010 relating to our neighborhood's concern over constant institutional expansion.

I'm sure there are parts of this process that many of us still need to understand. I greatly appreciate the patience and clarity that city planning staff, particularly Tuck and Jean, have demonstrated when speaking with me and my neighbors in trying to teach us about the process.

At this point however, I just don't see how the IOZ/IDP process demonstrates enough governance, control or influence over the institutions to protect those who might be negatively impacted by unrestricted expansion.

Before approving this approach, we need to figure out how the IOZ/IDP process can maintain and incorporate the protections provided by the current Conditional Zone Agreement; drafted and included for the long term benefit of our neighborhood, while still allowing consideration for thoughtful and agreed upon expansion by the institutions in our neighborhoods.

Thank you.

Tim McNamara

251 Valley Street

Portland, Maine



FINAL Contract 4.25.05 cra new patient visitor.odt

82K

Order 172-04/05

Given 1st reading: 2/23/05 Postponed on 3/7/05

Public Hearing & postponed on 4/4/05

Amended & Passage: 4/25/05 9-0

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN VICINITY OF WESTERN PROMENADE/ MAINE MEDICAL CENTER**

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below:

**CONDITIONAL ZONE AGREEMENT
MAINE MEDICAL CENTER**

AGREEMENT made this ____ day of _____, 2005, by **MAINE MEDICAL CENTER**, a Maine corporation with a principal place of business located in the City of Portland, County of Cumberland and State of Maine, its successors and assigns ("MMC").

WITNESSETH:

WHEREAS, MMC is the owner of land and buildings located in Portland at Map 53, Block D, Lots 1, 2 and 7; Map 53, Block E, Lots 1, 2, 10 and 13; Map 53, Block G, Lots 1 and 13; Map 54, Block H, Lot 1; and Map 64, Block C, Lots 1 and 2; and Map 55, Block B, Lot 13 (the "**PROPERTY**"); and

WHEREAS, MMC is the largest provider of obstetrical services in Maine and provides the only statewide fulltime maternal fetal medicine service serving women and newborns at high risk and MMC has the only Level III neonatal intensive care unit in Maine; and

WHEREAS, in order to respond to the changing professional and clinical standards for the care of sick infants within the neonatal intensive care unit and to meet the spatial requirements of today's routine and high risk obstetrical and newborn care, MMC must build an addition comprised of 192,000 square feet (the "Charles Street Addition"); and

WHEREAS, MMC proposes to construct the Charles Street Addition by expanding vertically, on the site of an existing medical building bounded generally by Charles Street, Wescott Street, Ellsworth Street and Crescent Street; and

WHEREAS, in order to avoid a substantial expansion of the footprint of the buildings at MMC and, instead, to construct the Charles Street Addition by vertical expansion, it is necessary to modify the otherwise applicable height requirement in the R-6 Zone; and

WHEREAS, in order to accommodate the needs of the Charles Street Addition and to improve parking and traffic circulation on the MMC campus, MMC proposes to construct a new 512 car capacity parking garage along Congress Street (the "New Parking Garage"); and

WHEREAS, in order to achieve the requisite parking capacity within the available space, MMC needs to build the New Parking Garage at a height taller than the currently applicable height limit in the R-6 Zone and also to locate the New Parking Garage closer to Congress Street than the currently applicable setback requirement in the R-6 zone; and

WHEREAS, in order reduce transport time for critical patients coming to MMC's emergency department, MMC proposes to construct a helicopter landing pad on top of the

existing parking garage which fronts on Congress Street (the “Helicopter Landing Pad” also occasionally referred to as “Heliport or Helistop”); and

WHEREAS, in order to replace currently fragmented heating and cooling systems throughout its campus, **MMC** intends to construct a central utility plant, built into the hillside between the hospital and Gilman Street (the “Central Utility Plant”); and

WHEREAS, the Central Utility Plant will be built at a proposed height of 45 feet but is also designed to accommodate a future vertical expansion of two additional floors, with a maximum future height of 70 feet; and

WHEREAS, **MMC** currently has operating rooms, intensive care beds, and adult and pediatric beds in an existing building constructed in 1985 (expanded in 1998) and referred to as the “L. L. Bean Wing;” and

WHEREAS, **MMC** has no current construction plans for the L. L. Bean Wing, but anticipates that the L. L. Bean Wing will need to be expanded vertically at some time within the next decade; and

WHEREAS, the L. L. Bean Wing was designed structurally to accommodate such vertical expansion by an additional two stories; and

WHEREAS, **MMC** desires to provide for such eventual vertical expansion within this Agreement and additional vertical expansions, except as noted below, are not included within the scope of this Contract and will be subject to negotiation and approval in the future, when presented; and

WHEREAS, by expanding vertically for the Charles Street Addition rather than horizontally, **MMC** will need to remove only two residential buildings, and will do so in full

compliance with the housing replacement requirements of section 14-483 of the Portland Code of Ordinances; and

WHEREAS, in addition to such required replacement, **MMC** will divest itself of ownership of nine other buildings (two on Crescent Street, two on Ellsworth Street, one on Hill Street and four on Bramhall Street), enabling others to return them to residential use; and

WHEREAS, **MMC** has requested a rezoning of the **PROPERTY** in order to permit the above-described improvements; and

WHEREAS, the **CITY** by and through its Planning Board, pursuant to 30-A M.R.S.A. §4352(8) and Portland City Code §14-60, *et seq.*, and §14-315.3, after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions more specifically set forth below; and

WHEREAS, the **CITY** has determined that because of the unique circumstances of the location of an urban medical center campus in close proximity to historic and densely populated neighborhoods within the R-6 Zone, and in order to balance the interests of **MMC** and its residential neighbors, it is necessary and appropriate to impose the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan; and

WHEREAS, on April 25, 2005, the **CITY** authorized the amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the zoning requirements for the **PROPERTY**;

NOW THEREFORE, in consideration of the rezoning, **MMC** covenants and agrees as follows:

1. **MMC** will restrict any further expansion of its uses¹ in the Western Prom/ Parkside/ Gilman Street neighborhoods to the property specifically included in the following defined Campus²:

- (a) The main campus, bounded by the north side of Bramhall Street, the
- (b) western side of Wescott Street, a portion of the northern side of Crescent Street terminating with the proposed end of the new garage, and the south side of Congress Street between the existing and proposed new garage, and the eastern side of Gilman Street;
- (c) The existing medical office building located on Congress Street across from the main campus;
- (d) The Vaughn Street parking lot and McGeachey Hall;
- (e) The existing West Street Medical Office Building located behind the row houses at the eastern end of West Street (CBL 55-B-13);
- (f) The block bounded on Congress Street, Gilman Street, Valley Street and A Street.

2. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit A: Helistop Overlay Zone Map

Exhibit B: Site Plan

- 1. Sheet C050: Campus Plan, Revision date: 9/16/04
- 2. Sheet C100: Site Plan, Revision date: 9/16/04
- 3. Sheet C101: Site Plan, Revision date: 9/16/04
- 4. Sheet C102: Site Plan, Revision date: 9/16/04
- 5. Sheet C103: Site Plan, Revision date: 9/16/04
- 6. Sheet C400: Landscape Plan, Revision date: 9/16/04

¹ "Future expansion of its uses" shall mean new construction of building(s) and or conversion of existing uses (including residential uses) into hospital related uses and the like. It shall not mean the occupancy of an existing building which contains a legally conforming medical related use.

² This provision shall not prohibit **MMC** from expanding or building in other areas of the City if permitted by zoning.

7. Sheet C401: Landscape Plan, Revision date: 9/16/04
8. Sheet C402: Landscape Plan, Revision date: 9/16/04
9. Sheet C403: Landscape Plan, Revision date: 9/16/04
10. Landscape Plan at Existing Garage, See sheets 401 & 402
11. Pedestrian Connection to Congress Street, 4/14/04
12. Parking Garage Rendered Elevation, North, (Option 1; Exhibit B, p.12, April 25,2005)
13. Parking Garage Rendered Elevation, (Option 1, Exhibit B, p. 12, perspective; April 25, 2005)
14. Parking Garage Rendered Elevation, South, 1/27/05
15. Central Utility Plant Rendered Elevation, 1/27/05
16. Charles Street Addition Rendered Elevation, South 1/27/05
17. Charles Street Addition Rendered Elevation, East 1/27/05
18. Charles Street Addition Rendered Elevation, North 1/27/05
19. Charles Street Material Board 1/27/05
20. Street Vacation/Acceptance and Land Transfer Plan (Sheet 1)
21. Street Vacation/Acceptance and Land Transfer Plan (Sheet 1)
22. Concrete Sidewalk Plan

Exhibit D: Miller Memo 01/06/05 and MMC Helipad Flight Paths, Harris Miller Miller & Hanson Inc., 9/16/04

Exhibit E: Helipad Operating Guidelines (2 pages); source, Lifeflight of Maine

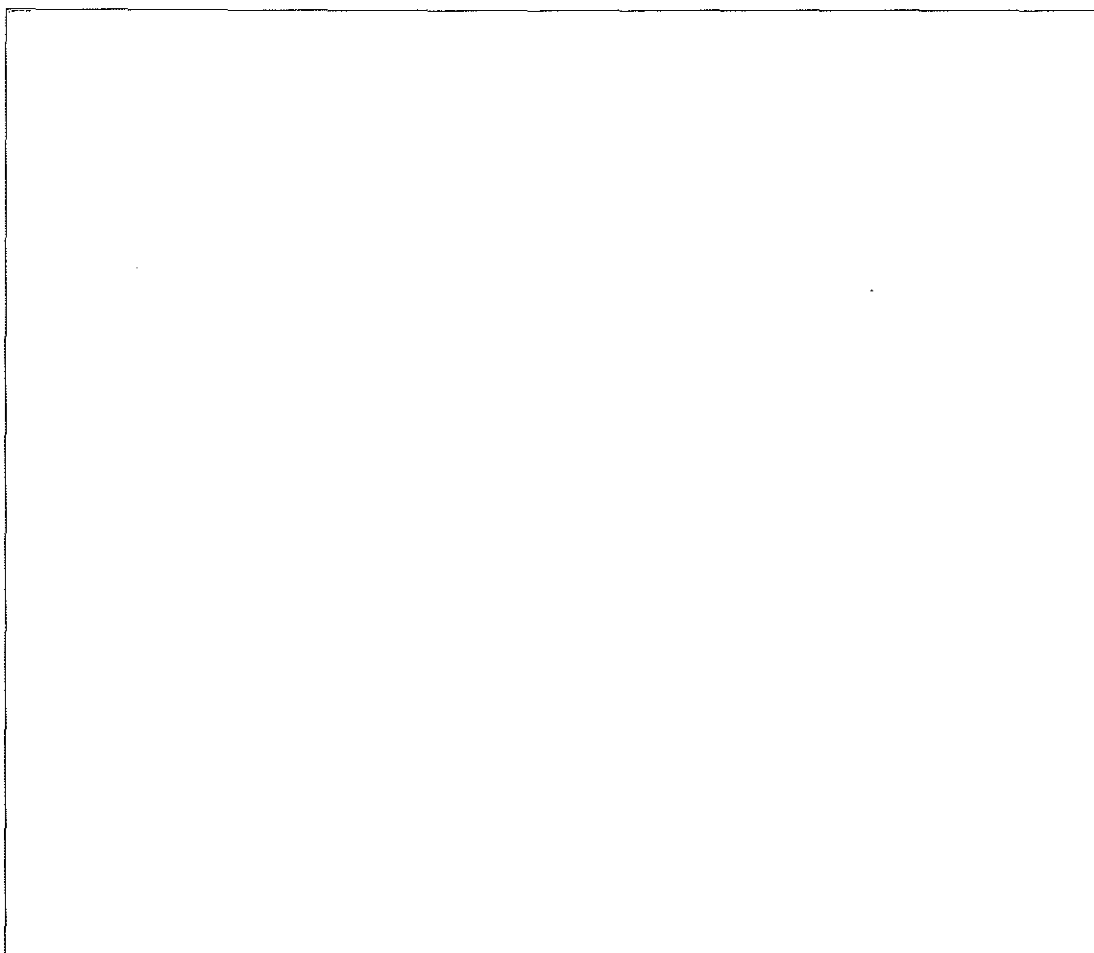
Exhibit F: Helipad Plans

1. Heliport Plan, 1/27/05
2. Heliport Elevation, 1/27/05
3. Heliport Perspective, 1/27/05

Exhibit G: Vaughan Street Parking Lot Landscaping Plan

1. Landscape Plan, 7/8/04
2. Wall Treatment
3. Fence Detail
4. Landscape Section

3. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by Portland City Code §14-49, by adopting the map change amendment below, which map change includes a Helistop Overlay Zone as more particularly depicted on Exhibit A.



4. The **PROPERTY** and site improvements shall be developed and operated substantially in accordance with the site plan shown on Exhibit B (the "Site Plan"), which Site Plan includes but is not limited to street layouts, landscaping, and building elevation drawings for initial construction, subject to the approval of the Site Plan by the City's Planning Board in compliance with the requirements of Chapter 14, Article V. The architectural treatment of the façade of the New Parking Garage may be revised during site plan review and shall meet the site plan standards of 14-526(16). Minor revisions to the Site Plan in the nature of field adjustments may be approved by the Planning Authority, without the need for amendment of this Agreement or further approval by the City Council.

5. No building permits shall be issued unless and until **MMC** receives conditional use approval pursuant to section 14-474 (Expansion of Institutional Use) and section 14-483 (Housing Replacement), site plan approval pursuant to section 14-483(e) of the City Code, approval under the Site Location of Development Act and an MDOT traffic movement permit, if required. No occupancy of the newly constructed buildings shall be permitted unless and until all site plan conditions of approval have been satisfied and the City Council has taken final action on the street discontinuances and street acceptances required for the realignment of certain streets, as shown on the Site Plan (Exhibit B).

6. MMC shall provide to the CITY a performance guarantee covering all required site improvements under section 14-525(j) of the City Code and the two replacement dwelling units provided under paragraph 6(d) of this Agreement.

7. The **PROPERTY** shall be governed by the zoning provisions, as such may be amended from time to time, applicable in the zoning districts underlying the Conditional Zone except as follows:

(a) Height Limits. The maximum structure height (measured according to the definition of “building, height of” in section 14-47) shall be:

- 95 feet for the Charles Street Addition, as depicted on the Site Plan
- 70 feet for the New Parking Garage, as depicted on the Site Plan
- 45 feet for the Central Utility Plant, as depicted on the Site Plan
- 111 feet for the L. L. Bean Wing, as already constructed.

(a) Setbacks.

- The minimum setback of the New Parking Garage shall be zero (0) feet from the right of way line of Congress Street.
- The minimum setback of the southeast corner of the Charles Street Addition shall be five (5) feet from the relocated right of way line of Ellsworth Street, as depicted on Exhibit B.
- The minimum setback of the Central Utility Plant shall be five (5) feet from Gilman Street.

(d) Replacement Housing. The replacement of the two existing residential structures at 33 Crescent Street (identified as Map 53, Block E, Lot 2) and 37 Crescent Street (identified as Map 53, Block E, Lots 1, 10 and 13) containing a total of seven dwelling units and two single-room occupancies by a portion of the New Parking Garage shall be deemed to meet the requirements of section 14-137(c), provided that MMC shall comply fully with the requirements of section 14-483 (Preservation and Replacement of Housing Units). Specifically, MMC shall comply with section 14-483 by (i) converting the building at 325-329 Brackett Street identified as Map 54, Block D, Lot 7 (the last approved use of which was office space) into two dwelling units prior to the issuance of a certificate of occupancy for the New Parking Garage and then divesting itself of ownership of the building prior to the issuance of a certificate of occupancy for the Charles Street Addition and (ii) paying Three Hundred Fifteen Thousand Five Hundred Eighty dollars (\$315,580.00) into the CITY’s Housing Development Fund (representing five dwelling units and two single-room occupancies) upon

approval of the Site Plan by the **CITY's** Planning Board. The deadline for divestiture may be extended by the Planning Authority if **MMC** demonstrates that reasonable good faith efforts to market the property instituted at least 6 months prior to the deadline have failed to produce a bona fide offer at or above fair market value and on commercially reasonable terms.

(e) Sidewalks. **MMC** shall comply with the **CITY's** Brick District Policy Plan, except that, at the time of final site plan review, the Planning Board may approve the use of concrete sidewalk materials, as shown on Exhibit B 22, because of the particular needs or requirements of the hospital use.

(f) Street level uses in garage. The street level of the new parking garage may be used for any use allowed in the B-2 zone.

8. The Helicopter Landing Pad shall not be subject to the provisions of section 14-409 (Heliports), but shall be governed by the provisions of the Helistop Overlay Zone, sections 14-325 through 14-327), except as follows:

(a) Setbacks. Because it is to be located on the roof of an existing structure, the landing pad shall not be required to meet the setback requirements of Section 14-327(3) or the fencing requirements of Section 14-327(4).

(b) Flight routes. **MMC** shall identify preferred flight routes, to be approved by the **CITY**, designed to minimize noise impact of helicopter flights on surrounding residential areas, shall notify all flight providers likely to use the Helicopter Landing Pad of such preferred routes, and shall take the following measures to ensure that such preferred routes are utilized whenever weather conditions, safety considerations and the best interests of the patient being transported permit, with the expectation that this will be the usual case. **MMC** will instruct all providers which regularly use the Helicopter Landing Pad that pilots must file an exception report with the Air Medical Provider Administration of Lifeflight of Maine or its successor entity for operations modified for safety considerations or at the direct request of Approach Control at the Portland International Jetport. Logs of these exception reports will be made available to **MMC** and to the **CITY** every six months. When and if the Portland Jetport has the capacity to maintain and preserve data which specifically identifies flight routes actually taken by aircraft using the Helicopter Landing Pad, the **CITY** shall consult such data to review compliance with this paragraph, and **MMC**, upon request of the **CITY**, will be responsible for the **CITY's** reasonable costs of translating such data into useable form, but not for the costs of the flight monitoring. Initially, such preferred flight routes shall be as shown on the map attached to this Agreement as Exhibit D. At the initiative of either the **CITY** or **MMC**, the map of preferred flight routes may be amended from time to time by agreement between **MMC** and the City Council. The City Council shall consult with the Portland International Jetport and shall convene a neighborhood meeting to obtain input from residents of any affected residential areas before agreeing to any such amendment. An agreement between the parties to change preferred flight routes under this paragraph shall include noise mitigation measures in addition to those described in paragraph 7(g) below provided the noise mitigation measures are recommended by

an independent noise consultant. In addition, after one full year of operation of the Helicopter Landing Pad (measured from the date of the first patient transport flight to use the Helicopter Landing Pad), the City Council shall review the operation of the preferred flight routes and may initiate amendments to the map of preferred flight routes, following the procedures specified above. In connection with review or amendment of flight routes under this paragraph, the CITY may engage the services of an independent consultant and MMC will reimburse the CITY for its reasonable costs of obtaining such consulting services provided that the CITY, in advance of engaging the consultant, affords MMC an opportunity to comment on the scope of the consultant's engagement.

(c) Fly Neighborly. In negotiating any contract or agreement with any provider of emergency medical transport by helicopter, MMC will require the provider to operate in compliance with the "Fly Neighborly Guide" revised February 1993, (and any subsequent revisions) prepared by the Helicopter Association International Fly Neighborly Committee and published by the Helicopter Association International. MMC shall establish a complaint number and a protocol for handling complaints, which shall be publicized within the neighborhood, and the complaints will be reviewed no less than quarterly by the Maine Medical Center Neighborhood Council, noted below.

(d) Helipad operating guidelines. Helicopter landings on the Helipad are approved for emergency patient care only. Any use of the Helicopter Landing Pad for other than emergency patient care transport shall be deemed a violation of this Agreement and shall result in the termination of the Helicopter Overlay. The following standard practices will be incorporated as general policy for operations in and out of the Maine Medical Center Helipad and shall be communicated by MMC to providers. At all times, the Pilot in Command (PIC) will determine safety of operations as a first consideration. Under normal operating circumstances, take-offs, landings and standing-by on the Helicopter Landing Pad shall be conducted according to the Operating Guidelines, attached hereto as Exhibit E, subject at all times to the judgment of the helicopter pilot concerning safety and to the judgment of the emergency medical personnel concerning the health of the patient.

(e) Equipment. In generating any specifications in connection with the negotiation of any contract or agreement with any provider of emergency medical transport by helicopter, MMC will specify that helicopters utilizing the Helicopter Landing Pad (with the exception of U.S. military or government aircraft) are relatively new turbine powered aircraft meeting requirements under ICAO Annex 16 Chapter 8 for in-flight noise levels and complying with FAA airworthiness standards, 14 CFR part 36.11 and 14 CFR 21 Sub-part D, or any amended or successor requirements or standards.

(f) Design and construction. The Helicopter Landing Pad shall be constructed as shown on Exhibit A.

(g) Mitigation. MMC will pay for the installation costs associated with the full installation of soundproofing improvements contained within Exhibit D, except in lieu of central air conditioning MMC will also pay for the installation of ventilation improvements to one or more rooms within each such dwelling unit as reasonable and appropriate as determined by the

CITY. The **CITY** shall contract for such work and **MMC** shall be responsible for the costs associated therewith, plus a 10% administrative fee to be paid to the **CITY**. Before entering into any contract for such work, the **CITY** shall notify **MMC** and give **MMC** the opportunity to comment on the scope of the proposed work and the estimated cost thereof. The properties to be included under this provision are as follows: 879 Congress Street (Map 53, Block I, Lot 16), 921 Congress Street (Map 65, Block D, Lot 17), 925 Congress Street (Map 65, Block D, Lot 16) and 929 Congress Street (Map 65, Block, D, Lot 14). Such funds shall only be expended if the present owners of such buildings request such improvements no earlier than six months and no later than eighteen months after commencement of the operation of the Helicopter Landing Pad. For a period of five years from the date of this Agreement, any new owner of the aforementioned properties may request such improvements no later than eighteen months after purchase of said property(s).

(h) Accreditation. The principal provider of air medical transport to **MMC** shall be accredited by the Committee on Accreditation of Medical Transport Systems or its successor agency. Providers using the helicopter landing pad shall be accredited by the Committee on Accreditation of Medical Transport Systems or its successor agency, unless special circumstances warrant a non accredited provider such as the Air National Guard, the U.S. Coast Guard or other users.

9. Signage shall comply with the requirements of sections 14-336 through 14-372.5 of the City Code, except as otherwise approved by the Planning Board under Chapter 14, Article V.

10. For the purpose of keeping surrounding residential areas apprised of its future development plans, and to address any neighborhood issues related to the operations of the **MMC** campus (including but not limited to complaints or operating issues with respect to the helipad and future planning and development programs associated with **MMC**), **MMC** shall, no less than quarterly, and with two weeks written notice, invite representatives of the Maine Medical Center Neighborhood Council to meet with designated representatives of **MMC**. For purposes of this requirement, the Maine Medical Center Neighborhood Council shall consist of two representatives of the Parkside Neighborhood Association, , two representatives of the Western Prom Neighborhood Association, and two representatives of the Gilman/Valley Streets neighborhood. The neighborhood organizations shall designate the persons who shall serve on the Maine Medical Center Neighborhood Council. In the event there is no formal neighborhood organization, the City Council District Councilor shall designate the persons to serve on the Maine Medical Center Neighborhood Council.

11. **MMC**, prior to occupancy of the Charles Street Addition, shall relocate the sewer serving 31 Crescent Street, as depicted on the Site Plan (Exhibit B). In addition, **MMC** shall provide two off-street parking spaces for use by the tenants of 31 Crescent Street for so long as 31 Crescent Street serves as a residential structure.

12. **MMC** agrees that it will make the parking garage contemplated within this Agreement available for use by the public for snow ban purposes in a fashion similar to that

required in its Congress Street/Forest Street parking garage. In addition, **MMC** shall require all of its vendors, contractors and subcontractors to utilize a parking garage or other approved parking area/facility for vehicles and truck parking during construction.

13. **MMC** agrees to divest itself of ownership of the following existing structures owned by **MMC** according to the following schedule:

Prior to the issuance of a certificate of occupancy for the Charles Street Addition:

15 Crescent Street (Map 53, Block F, Lot 6)
25 Crescent Street (Map 53, Block E, Lot 5)
25 Ellsworth Street (Map 53, Block H, Lot 2)
32 Ellsworth Street (Map 54, Block C, Lot 5)
20 Hill Street (Map 54, Block C, Lot 1)

No later than January 1, 2010 or the issuance of a certificate of occupancy for any of the future expansions described in Section 6(b) above, whichever is earlier:

19 Bramhall Street (Map 63, Block A, Lot 4)
23 Bramhall Street (Map 63, Block A, Lot 3)
25 Bramhall Street (Map 63, Block A, Lot 2)
31 Bramhall Street (Map 63, Block A, Lot 1)

The deadline for divestiture of any of such property may be extended by the Planning Authority if **MMC** demonstrates that reasonable good faith efforts to market the property instituted at least 6 months prior to the deadline have failed to produce a bona fide offer at or above fair market value and on commercially reasonable terms.

14 **MMC** agrees that it will remove the existing building located at 261-269 Valley Street (formerly the "Eagles Club") within 12 months after the effective date of this Agreement and that the site of the removed building will be loamed and seeded unless and until otherwise developed pursuant to an approved site plan.

15 **MMC** shall provide landscaping of the area surrounding its Vaughn Street parking lot as shown on the landscaping plan attached hereto as Exhibit G and shall construct, maintain and continue to own the "pocket park" located at Ellsworth and Charles Streets as shown on the Site Plan (Exhibit B). The improvements to the Vaughn Street parking lot shall be completed within 12 months of the effective date of this Agreement.

16. **MMC** agrees to allow public pedestrian access between its campus and Congress Street through a new enclosed stairway to be constructed adjacent to the New Parking Garage, as depicted on Exhibit B.

17.. **MMC** shall contribute \$800,000 to the **CITY** to use for public improvements in the general vicinity of Maine Medical Center.

18.. MMC agrees that it will encourage its employees and visitors to use alternatives to single-occupant automobiles when traveling to and from the **PROPERTY**. In its application under the Site Plan Ordinance, MMC agrees to include among its written statements an Alternative Transportation Plan. The Alternative Transportation Plan will propose strategies to reduce single-occupant automobile trips to the **PROPERTY**. Such strategies shall include, but not be limited to, subsidies and other incentives for employees and visitors to use local and regional mass transportation, share rides (carpools and vanpools), ride bicycles and walk. The Planning Board will include the Alternative Transportation Plan in its consideration of sections 14-526(a)(1) and (2) of the City Code. In addition, an analysis of effectiveness and functioning of the Alternative Transportation Plan shall be provided to the City Council's Transportation Committee on an annual basis.

20.. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **MMC**, its successors and assigns, and any party in possession or occupancy of the **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. Within 30 days of approval of this Agreement by the City Council, **MMC** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the book and page of the deeds to the property underlying said **PROPERTY**. Unless otherwise stated within this Agreement, this Agreement governs only the **PROPERTY** expressly covered by this Agreement and applies only within the boundaries of the rezoned area as shown on the map. Nothing in this Agreement shall have any effect on or be construed as having any bearing on the use or development of any other properties owned by **MMC** or its affiliates, all of which shall continue to be governed by the applicable provisions of the Portland Land Use Code, without regard to this Agreement.

21.. If any restriction, provision, condition, or portion thereof, set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination and shall not affect the validity of the remaining portions hereof.

22.. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

23.. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A MRSA 4452) and **CITY** Ordinance. No alleged violation of this rezoning Agreement may be prosecuted, however, until the **CITY** has delivered written notice of the alleged violation(s) to the owner or operator of the **PROPERTY** and given the owner or operator an opportunity to cure the violation(s) within thirty (30) days of receipt of the notice. Following any determination of a zoning violation by the Court, and in addition to any penalties authorized by law and imposed by the Court, either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

24.. In the case of any issue related to the **PROPERTY** which is specifically addressed by this Agreement, neither **MMC** nor their successors may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant, if the effect of such relief would be to alter the terms of this Agreement. In cases that fall outside of the above parameters (i.e., alleged violations of any provisions of Portland's Land Use Code, including, but not limited to, the Site Plan Ordinance, which were neither modified nor superceded by this Agreement), the enforcement provisions of the Land Use Code, including, but not limited to, the right to appeal orders of the Planning Authority, Building Authority and Zoning Administrator shall apply. Nothing herein, however, shall bar the issuance of stop work orders.

WITNESS

MAINE MEDICAL CENTER

By:
Its:

STATE OF MAINE
CUMBERLAND, ss.

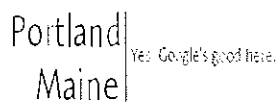
Date: _____, 2005

Personally appeared before me the above-named _____, in his capacity as _____ of Maine Medical Center, and acknowledged the foregoing instrument to be his free act and deed in his said capacities and the free act and deed of Maine Medical Center.

Before me,

*

Notary Public/Attorney at Law



James Dealaman <jdealaman@portlandmaine.gov>

Fwd: PB hearing on IOZ new ordinance

1 message

Jean Fraser <jf@portlandmaine.gov>

Tue, Mar 28, 2017 at 2:18 PM

To: James Dealaman <jdealaman@portlandmaine.gov>

This is PC 22 and the one I have already copied (paper copies) for the Board meeting- just needs to go into your other system. thanks, Jean

----- Forwarded message -----

From: **moses sabina** <mosessabina@yahoo.com>

Date: Tue, Mar 28, 2017 at 1:16 PM

Subject: Re: PB hearing on IOZ new ordinance

To: Jean Fraser <jf@portlandmaine.gov>

Jean,

Here are some comments for the planning board meeting:

Portland Planning Board,

My name is Moses Sabina, I am an owner/resident of 4 Gilman St. I have the unique perspective of participating in the MMC Neighborhood Council since its inception, longer than any other neighbor or MMC staff. I am concerned that the language in the IOZ regarding neighborhood engagement is too vague. The IOZ calls for a plan for neighborhood engagement. Who decides what is acceptable? What is the mechanism for institutional accountability?

Here are some examples of instances when MMC has either exploited a loophole in the CRA or attempted to with little to no accountability.

1. The Retail Space: The current CRA required MMC to create a retail space as part of the new visitor garage on Congress St. The retail space was called for by neighbors and the planning board. After sitting vacant and completely undeveloped (it has a dirt floor to this day), I made it a point to check in on the progress of finding a tenant for it nearly every quarterly meeting. MMC reported that they had many interested parties over the years, but no lease was ever signed. MMC conducted a survey of their staff asking what type of business would be beneficial. One meeting their real estate listing agent, Mark Malone, told us that the asking price was too high. After many years of updates on the retail space, neighbors and I finally had the opportunity to ask Rich Peterson about it; he informed us that MMC had no intention of leasing the space, and never had. In this case, MMC fulfilled their obligation in the CRA by creating the space, but ignored the intentions of the community and opportunity to house a neighborhood business.

2. Snow Ban Parking: MMC is required by the city to provide snow ban parking in both the new visitors garage and the Forest St Garage. The record as to how many spaces they are required to provide is unclear, yet MMC has manufactured their own number. MMC has closed a nearly empty Forest St garage during parking bans, prohibiting neighbors from parking there. This is an issue we thought we had worked out in the quarterly meetings, but it occurred again this winter. To their credit, after phone calls were made, the garage was re-opened.

3. Sports man's Lot: Though the CRA prohibits MMC from expanding their footprint, they attempted to buy the lot across the street from the employee garage, formerly the site of the Sportsmans restaurant. This decision was announced to the Neighborhood Council in a meeting. After reviewing the CRA, I brought the issue to Penny Littell, who at that time was on the Portland City legal department. MMC was disallowed from purchasing the property. They claimed that they didn't understand the CRA. It's pretty clear. It draws a line which says, across this you do not! [chapter 1, page 5]. The fact that they made the attempt speaks volumes to the need for regulation and enforcement. If I had not raised the issue, I'm not sure whether anyone else would have. Where today stands a thriving neighborhood restaurant in Salvage BBQ, could be another MMC owned building, another dune in the urban desert, which contributes nothing to the neighborhood street scape.

4. The Current Proposed Expansion Project: The IOZ calls for neighborhood engagement, and one shape that could take is a quarterly meeting like the one I have been engaged in with MMC for roughly ten years. That's a lot of my time donated to hospital neighborhood relations; time that I would like to think has not been wasted. It's hard to think that

when I hear Jeff Sanders from MMC state that they've been working on the current proposed expansion project for a year and a half; that six quarterly meetings that nary a whisper of this project was uttered in meetings which are required by the CRA for the express purpose of "surrounding residential areas apprised of future development plans" [CRA chapter 10, page 11]. They have an urgent need for single occupancy rooms, there is no denying that. I want my local hospital to be the best it can be, who doesn't? It is, however, hard to hear the cries for urgency in the city planning process when they ignored the opportunity for neighborhood feedback in mandated meetings with neighbors who they know and have been engaging with regularly for years. Somewhere, in the IOZ or not, there needs to be very specific language regarding neighborhood engagement, and oversight of the engagement, otherwise we will continue the pattern of wasted time and missed opportunity. We now hear MMC is looking at some alternative to the proposed project; how much time and money was wasted getting to that decision? Whether they wanted to hear it from us or not, neighbors and MMC could have had that discussion a year and a half ago.

5. TDM Reports: The CRA [chapter 18, page 13] calls for annual TDM reports to be submitted to the city. We haven't had any discussion of TDM in our quarterly meetings in a long time.

Please consider making the IOZ more specific with regard to neighborhood engagement.

Respectfully,

Moses Sabina

From: Jean Fraser <jf@portlandmaine.gov>
To: "Fraser, Jean" <jf@portlandmaine.gov>
Sent: Thursday, March 23, 2017 2:29 PM
Subject: PB hearing on IOZ new ordinance

Hello

Further to my e-mail on March 13 (which advised about the postponement of this hearing to March 28th because of the storm) I am writing to advise you:

- the PB hearing will be at **4:30pm on Tuesday March 28th**;
- the agenda is attached for information;
- and that a very slightly revised text of the IOZ will be presented to the Board for consideration on Tuesday, and the final version will be placed on the City's website tomorrow by the end of the day at the following link:

https://me-portland.civicplus.com/AgendaCenter/ViewFile/Agenda/_03282017-2001?html=true

[Please note that we have not yet received any further MMC submissions, and I will let you know when that specific project will next be discussed at a Planning Board meeting.]

Thank you - and please do not hesitate to contact me if you have any questions.

Jean

--
Jean Fraser, Planner
City of Portland
874 8728

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

3/28/2017

City of Portland Mail - Fwd: PB hearing on IOZ new ordinance

--
Jean Fraser, Planner
City of Portland
874 8728

SUMMARY OF DISCUSSIONS AT THE FOUR IOZ PLANNING BOARD WORKSHOPS

- *November 15, 2016:* The November 15 workshop introduced the concept of an IOZ, with the components of an IDP and Regulatory Framework, outlined in general terms.
- *December 13, 2016:* The December 13 workshop presented a more detailed outline of the IOZ. The Planning Board offered a number of suggestions for the IDP/Regulatory Framework, including the need for:
 - Clear boundaries and the locations of the institution's property;
 - Indication of future phases/potential long term development;
 - Regulations that are less specific and less prescriptive than traditional zoning;
 - Focus on transitions with neighboring areas; and
 - Long-term perspective on traffic and TDM and adaptive reuse of buildings/parking areas.

Comments on the IOZ zoning text included:

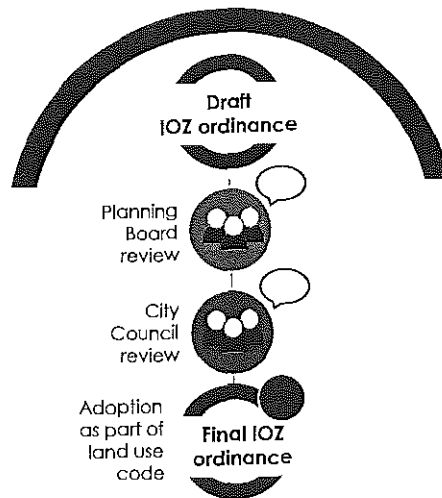
- Encourage transparency;
 - Address property acquisition;
 - Include requirements for healthy neighborhood engagement; and
 - Allow for flexibility.
- *January 10, 2017:* The January 10 workshop presented detailed text for all sections of the IOZ ordinance, except for the IDP content section, which was under development with reviewers and other departments at the time. Examples of five other IOZ ordinances that illustrated slightly different approaches were attached to the Planning Board memo. Key issues were identified in the memo and discussed by the Board, including which institutions should be eligible for IOZ designation, how and whether the IDP should address properties geographically distinct from the institutions' main campuses, how to manage amendments or changes to the IDP and IOZ, how to address public engagement in the IDP, the planning horizon for the IDP and what level of detail to require in the IDP itself.

The Board discussion included the following comments:

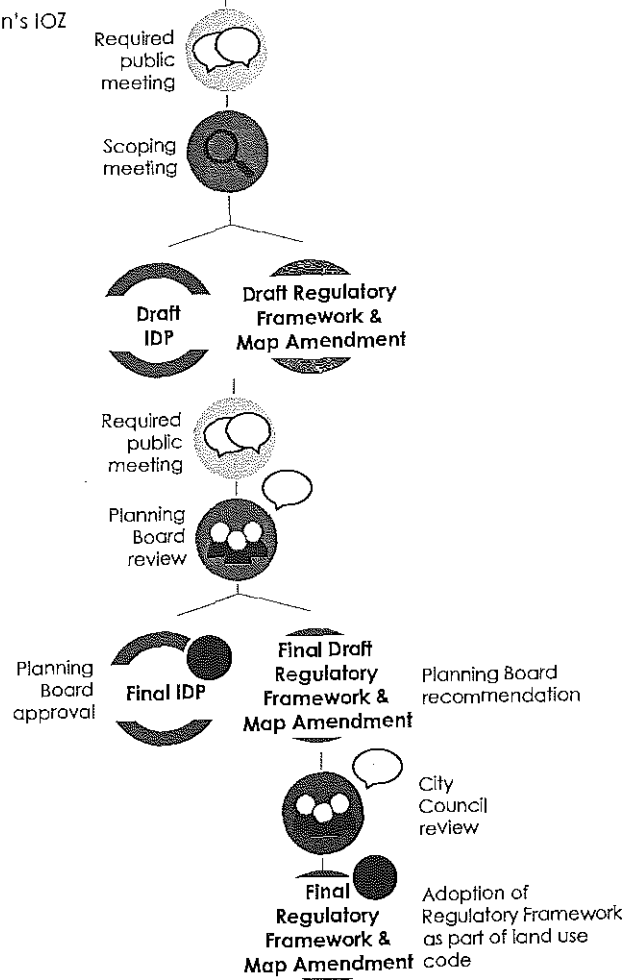
- Transition zones should be both within and abutting the institutional property and IOZ boundary and be guided by design standards;
 - All institutional property should be listed in the IDP;
 - Need both shorter-term and longer-term outlook (with some discussion on extent of "longer-term");
 - IDP reviews, including updates should be required (though there was not a consensus on whether these should be on a regular basis or in response to triggers, maybe identified by the institution);
 - Neighborhood engagement should follow best practice (and may need separate guidelines); and
 - Scoping meeting a useful concept.
- *February 14, 2017:* The Planning Board memo workshop focused on a revised draft IOZ text that aimed to address the public's, institution's, and Planning Board's comments raised at the December and January meetings.

New issues were discussed, including whether designation of an IOZ should be required for institutions and whether the designation would confer some certainty for the institution similar to "pending proceeding status" under the city's ordinance provisions for Master Development Plans. [Note: These were further addressed in the subsequent communication circulated to the Board (and placed on the city's website) on February 28th (*Attachment 4 to the Report*).] The discussion also covered other questions, such as the planning horizon for the IDP and the requirements for IDP reviews/updates.

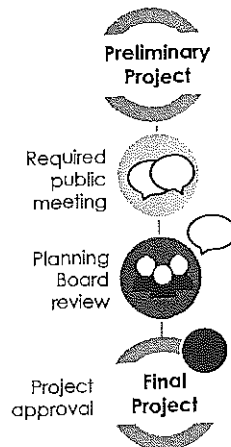
Institutional
Overlay Zone
(IOZ) Enabling
Legislation
Review



Eligible Institution's IOZ
Review



Site Plan Review



Denotes opportunity for public involvement

Order 222-16/17
Tab 28 4-24-17

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 17. RE: EXTENSION OF MORATORIUM
ON RETAIL MARIJUANA ESTABLISHMENTS AND SOCIAL CLUBS**

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

1. *That Chapter 17, Article IX, Section 17-122 of the
Portland City Code is hereby amended as follows:*

**ARTICLE IX. MORATORIUM ON RETAIL MARIJUANA ESTABLISHMENTS AND
RETAIL MARIJUANA SOCIAL CLUBS**

...

Sec. 17-122. Term.

This moratorium shall ~~continue be effective for 180 days~~
~~from the date of passage, through May 6~~ November 3, 2017. It may
be extended for additional 180 day periods by the City of
Portland, in accordance with 30-A M.R.S. § 4356(2).

AND BE IT FURTHER ORDERED, that this amendment is enacted as an
Emergency, pursuant to Article II, Section 11 of the
Portland City Charter, to make it effective
immediately in order to protect the public safety and
welfare of the City of Portland.

MEMORANDUM
City Council Agenda Item

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

FROM: Anne Torregrossa, Office of Corporation Counsel

DATE: April 3, 2017

SUBJECT: Extension of Marijuana Retail and Social Club Licensing Moratorium

SPONSOR: Danielle West-Chuhta, Corporation Counsel

(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 4/24/2017 Final Action 5/1/2017

Can action be taken at a later date: X Yes No (If no why not?); The Marijuana Retail and Social Club Licensing Moratorium will expire on May 7, 2017. However, staff recommends that the Moratorium remain in place without interruption to allow local ordinances to be drafted once state rules are promulgated.

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

I. ONE SENTENCE SUMMARY

The Marijuana Retail and Social Club Licensing Moratorium, which was approved by the City Council in Order 84-16/17 on November 21, 2016, and which applied retroactively to November 8, 2016, will expire on May 7, 2017. The Moratorium should be extended an additional 180 days, to November 3, 2017, to allow local ordinances to be drafted in accordance with state rules once they are promulgated.

II. AGENDA DESCRIPTION

A 180-day moratorium on licenses for recreational marijuana retail shops and social clubs was approved by the City Council by Order 84-16/17 on November 21, 2016. It applied retroactively to November 8, 2016, and will expire on May 7, 2017. The Moratorium should be extended, in accordance with 30-A M.R.S. § 4356(2), to allow local licensing, zoning, and other ordinances to be drafted in accordance with state rules, which are still being developed.

On November 8, 2016, Maine voters approved the Marijuana Legalization Act (the "Act"), allowing the consumption, distribution and business development of and for marijuana products. The Act allows municipalities to regulate retail marijuana establishments, including

stores, cultivation facilities, retail testing facilities, and also marijuana social clubs. The extension of the Moratorium on these businesses will allow the City of Portland to ensure that its ordinances are consistent with the State of Maine rules, which have not yet been released. City staff are developing draft ordinances to regulate the sale of recreational marijuana, including licensing requirements, zoning restrictions, and safety rules, among other things.

Staff is requesting emergency enactment in order to make the extended Moratorium effective on May 7, 2017.

III. BACKGROUND

The November 8, 2016 election included a referendum on the legalization of recreational marijuana. The full language of the Marijuana Legalization Act, allows municipalities to regulate retail marijuana establishments, including stores, cultivation facilities, and social clubs. 7 M.R.S. § 2449). The state is currently in the process of drafting rules, and the legislature is also considering changes to the Act.

State regulations and potential safety concerns will be better understood as this Act becomes implemented by the state. The City requires time to consider any changes to the statute, and any rules promulgated by the state, before enacting its own regulatory scheme. Additional time allows better coordination, as well as understanding of the state regulations and the implementation of such regulations.

All of these issues have led many towns and cities in the State of Maine to approve similar moratoriums, including Bangor, Brewer, Gray, Kennebunk, New Gloucester and Westbrook, among others. The need for the moratorium still exists because the state has still not finalized its rules. City staff would like to wait to understand the state rules that will be adopted.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

City staff request additional time to consider zoning implications and neighborhood needs in connection with the licensing of retail marijuana stores, cultivation facilities, retail testing facilities, and also marijuana social clubs, in order to draft any necessary rules and ordinances.

V. FINANCIAL IMPACT

No financial impact should result from enactment of this moratorium other than the staff time necessary to create rules and regulations addressing the Act for the City of Portland.

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

The Moratorium is approved as to form by Corporation Counsel.

VII. RECOMMENDATION

The Director of Planning and Urban Development, the Police Chief, the City Manager, the Director of Permitting and Inspections, and Corporation Counsel recommend approval of this Moratorium.

VIII. LIST ATTACHMENTS

Amendment of Portland City Code Chapter 17 re: Extension of Moratorium on Marijuana Establishments and Social Clubs

Prepared by: Nancy English

Date: April 3, 2017

Bean/agendarequestmemo/rev 11/2015

Order 155-16/17
Tab 29 4-24-17

Order 155-16/17

Public Hearing held March 20, 2017

Failed: 6-3 (Mavodones, Duson, Ray) on 3/20/2017

Motion to postpone to April 5, 2017: 9-0 on 3/27/2017

Motion to amend to add paragraph 24 re bond referendum tiebreaker: 9-0 on 4/5/2017

Motion to postpone to April 24, 2017: 9-0 on 4/5/2017

ETHAN K. STRIMLING (MAYOR)
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**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 SUBJECT TO THE
CONDITIONS CONTAINED IN THIS ORDER**

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, subject to the conditions contained in this Order:

There be and hereby is authorized and approved the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary schools 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 Elementary School Projects.

BE IT FURTHER ORDERED, subject to the conditions contained in this Order:

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.

24. If this Order is submitted to voter referendum election at the same time that either or both of Order 193-16/17 and Order 196-16/17 (the "Alternate School Orders") are also submitted to voter referendum election, pursuant to Article VII, Section 16 of the City Charter, this Order shall be submitted subject to the following conditions:

- a. In the event this Order is approved by a majority of voters voting at the referendum election, and neither of the Alternate School Orders is approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall be approved and shall be effective and issuance of the Bonds and BANs described herein shall be authorized as provided in this Order.
- b. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received more votes for this Order as compared to votes for each of the Alternate School Orders.
- c. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election and this Order and one or more of the Alternate School Orders shall have received the same number of favorable votes, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received fewer votes against this Order as compared to votes against the Alternate School Order(s) that received the same number of favorable votes.
- d. Even if the total number of votes cast for and against this Order should be less than ten (10) percent of the registered voters of the City, the second sentence of Article VII, Section 16(d) of the City Charter shall not be applicable to this Order, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless the foregoing conditions in this paragraph, as applicable, are met.

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

**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 SUBJECT TO THE
CONDITIONS CONTAINED IN THIS ORDER**

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, subject to the conditions contained in this Order:

There be and hereby is authorized and approved the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary schools with total project costs not to exceed \$64,260,000 (the "Elementary School Projects"), as follows:

Longfellow Elementary	\$15,388,000
Lyseth Elementary	17,998,000
Presumpscot Elementary	13,628,000
Reiche Elementary	17,246,000
Total	\$64,260,000

and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed \$64,260,000 to finance the costs of such Elementary School Projects.

BE IT FURTHER ORDERED, subject to the conditions contained in this Order:

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.

24. If this Order is submitted to voter referendum election at the same time that either or both of Order 193-16/17 and Order 196-16/17 (the "Alternate School Orders") are also

submitted to voter referendum election, pursuant to Article VII, Section 16 of the City Charter, this Order shall be submitted subject to the following conditions:

- a. In the event this Order is approved by a majority of voters voting at the referendum election, and neither of the Alternate School Orders is approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall be approved and shall be effective and issuance of the Bonds and BANs described herein shall be authorized as provided in this Order.
- b. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received more votes for this Order as compared to votes for each of the Alternate School Orders.
- c. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election and this Order and one or more of the Alternate School Orders shall have received the same number of favorable votes, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received fewer votes against this Order as compared to votes against the Alternate School Order(s) that received the same number of favorable votes.
- d. Even if the total number of votes cast for and against this Order should be less than ten (10) percent of the registered voters of the City, the second sentence of Article VII, Section 16(d) of the City Charter shall not be applicable to this Order, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless the foregoing conditions in this paragraph, as applicable, are met.

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)

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, Title I, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. LEED Certified. *Cost: \$17,246,000*

Lyseth: Modularity eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym

and cafeteria created. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: \$17,998,000*

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

The proposal from the School Board did not recommend any specific order / timing of school construction. The proposal does include an estimated timetable for construction from Oak Point Associates with School 1 estimated completion in fall 2020, School 2 in fall 2021, School 3 in fall 2023, and School 4 in fall 2024. The proposal includes beginning design on the first school by the end of 2017 and therefore a 2017 referendum is required. It is important to note that any projects approved during a local referendum would become ineligible for State of Maine Department of Education Major Capital School Construction Funding. Applications for a new round of State funding are due on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the School Department is applying for funding for these four schools. Sixteen projects were completed from the State's current priority list. Had the State continued with the list, Longfellow School and Reiche were #2 and #3. A preliminary priority list from this next funding round is expected in April 2018.

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

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

Article VII, Section 16(a)(1) of the City Charter, states that any orders or resolves "authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement" must be submitted for voter referendum. Based on the City's most recent State Valuation, this limit is approximately \$3.99M and therefore three orders must be approved by City Council in order for this item to move forward. A bond order (requires seven votes for approval), an appropriation order (requires five votes for approval) and an order sending the bond order to referendum (requires five votes for approval).

III. INTENDED RESULT

Achieve substantial renovations at Longfellow, Lyseth, Presumpscot and Reiche.

IV. COUNCIL GOAL ADDRESSED

The City Council has a stated goal of "Question on the ballot regarding elementary school renovations."

V. FINANCIAL IMPACT

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

VI. STAFF ANALYSIS

No staff recommendation has been requested on the proposal.

VII. RECOMMENDATION

None requested

VIII. LIST ATTACHMENTS

- 1) \$64M Bond Recommendation from Finance Committee – Backup Materials for 3-6 and 3-20

\$64M Bond Proposal Backup Materials - Finance Committee questions
from 2/16/17 (updated) and 2/23/17 with responses in italics
PPS Presentation from 2/16 plus 2/23 amendment also attached (F)

1. What would an alternative proposal to address the elementary school needs while not sacrificing our best chances at State funding look like?

Based on the condition assessment recently performed on school facilities by Lavallee Brensinger Architects, the following schools were rated as having the best individual chances at state funding:

1. Reiche (72)
2. Longfellow (69)
3. PATHS (63)**
4. Lyseth (63)
5. Portland High (62)
6. Presumpscot (59)

This preliminary scoring is based only on the portions of the application dealing with the physical condition of the buildings, not those dealing with enrollments and program, which were beyond the scope of the assessment.

Applications for State funding are due to the Department of Education on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the school department is moving forward with applications on all 6 schools.

*If any of the schools are put to referendum **and** approved by the voters, they will no longer be eligible for state funding.*

*The State's proposed timeline for consideration of applications is attached (**Attachment A**). We would be notified of our positions on the State's priority list by April of 2018 and the list will be finalized in the summer. Recent history of priority list rankings is attached (**Attachment A-1**).*

***NOTE – Although no specific score was provided, Lavallee Brensinger recommended that 1) a joint PATHS / Casco Bay application should be submitted for State Funding along with 2) Reiche, 3) Longfellow, 4) Portland High School, 5) Lyseth*

2. Have there been any significant changes in the scoring for the applications in the current ratings cycle that would improve or detract from our chances to move up the State list??

In general there have been no significant changes to the State DOE's criteria for Major Capital School reconstruction. Response from State DOE website FAQ included below noting that only "slight" changes have been made scoring criteria:

<http://www.maine.gov/doe/facilities/construction/faqs2017-18ratingcyclequestionsanswers.html>

"A large volume of interest has been expressed throughout the State for this new rating cycle leading us to believe that there will be an extensive application pool. It is not possible to predict any school's rating on the list until all applications have been received and scored. In each new rating cycle there are always new applicants and some could demonstrate greater or less need than any applicant from a previous rating cycle. Each rating cycle generates its own priority list; previous placement on the list does not dictate one's placement on the new list. However, unless there have been significant changes aligned with the scoring system in a building, repeat applications typically fall within similar scoring ranges on the new proposed priority list compared with their placement on the previous priority list. After the 2010 – 2011 rating cycle slight changes to the scoring system occurred through the major substantive process. Those changes are listed below.

Changes to Scoring on the Major Capital Improvement Application

Eliminated "other" in all categories – no longer in Chapter 61

Priority A: Buildings and Grounds – total possible points from 85 to 90
Obsolete, Insufficient, and/or Unsuitable – 30 to 35 points
Group 1: Program Related Facility Deficiencies and Inefficiencies - 21 to 20 points
Group 2: Mechanical & Building System Deficiencies - 9 to 15 points

Priority B: School Population – total possible points 50 to 45
Overcrowding – 30 to 27 points
Group 1: Instructional Areas – 15 to 14 points
Group 2: Program Scheduling – 15 to 13 points
Enrollment Estimates and Population Shifts – 20 to 18 points
Group 1: Enrollment Estimates – 12 to 10 points
Group 2: Population Shifts – same (8 points)

Priority C: Program and Planning – same possible 65 points”

3. Can we obtain estimates of construction start and completion dates for each of the elementary schools included in the School Board recommendation and also prepare an “apples to apples” comparison of these dates with a two school referendum leaving open the possibility for potential state aid for two of the elementary schools?

Staff reached out to Oak Point for assistance with this request. The first scenario in the attached schedule (**Attachment B**) shows the schedule going forward for Hall School plus the proposed start/end dates for each of the four schools included in the referendum. The schedule was designed so that no more than two schools were in the design-construction cycle at any one time. Although this is not as fast as originally proposed, it is still an ambitious schedule.

Also noted on the schedule, in yellow, is the date for release of the State priority list which would occur during the design process for the first school.

The second scenario is the “apples to apples” comparison of a two school referendum plus waiting to see where the City places on the State DOE priority list. There are no major differences in potential school completion dates when comparing a 2017 four school referendum vs a 2017 two school referendum. The City would be able to retain the same construction timeline for Schools 1 and 2 (Presumpscot and Lyseth as presented by Oak Point) regardless of whether a four school referendum occurs in 2017 or a two school referendum occurs in 2017 with two more schools paid for by the State DOE or via second local referendum. The State DOE timeline has indicated a Summer 2018 release date of the Final Priority List. Under the “four schools in one referendum” scenario, we would not begin third school (Reiche) design until November 2020 and fourth school (Longfellow) design until November 2021. If we took the “wait and see” approach, and if Reiche and/or Longfellow schools are not deemed to be high enough on the new State funding list a second referendum could take place anytime between fall 2018 and spring 2020 and we'd still be on the same schedule as if all four schools had been in a single referendum. If one of the two rated well on the state list, it would also be possible to fund one additional school locally and meet the original schedule for 4 schools.

4. **Question:** Could we have staff prepare details on the financial impact of the bond, i.e what is the total impact to the operating budget / tax levy of the life of the bonds? These calculations should reflect Mayor Strimling's amendments to include everything not currently in the CIP.

Cost of a \$64M Bond to fund four schools – Executive Summary from Finance Director

*The bond package (as amended) will rise to \$64M+ after amendments. A \$64 million bond package would increase the mil rate by approximately 69 cents by 2024. Including principal and estimated interest, the total fixed costs added to the overall City tax levy would be approximately \$92 million over the life of the bonds. As a property owner, the estimated impact to your tax bill can most easily be calculated using your property valuation. For every \$100,000 of property you own, your taxes will go up by approximately \$1,128 over the life of the bonds. If you own a \$500,000 home, the impact would be 5x larger, and your taxes would increase by approximately \$5,639 over the life of the bonds. As of early 2017, the average property value within Portland is approximately \$240,000, so for an average homeowner the bond would increase taxes by \$2,707 over the bond life. For complete details please see the attached memo (**Attachment C**) which includes more details of the estimated impact and tax increases by fiscal year.*

5. **Could we get an update on the Pension Obligation Bond?**

*Response from Finance Director: See **Attachment D**, a debt service schedule for our Pension Obligation Bond. The FY18 budget will include \$13.6M of debt service related to the pension obligation bond, and this number increases by approximately \$900M annually until FY26 when our final debt service payments of \$22.3M are due.*

6. **Could we get a high level overview of our debt management policy and applicable State limits?**

*Response from Finance Director: See **Attachment E**, a summary memo from our Bond Adviser detailing our State and local debt limitations. In summary even if we borrowed \$64M to fund four elementary school constructions we wouldn't be at risk of violating any State or local rules around debt limits. Although we are not pushing up against any of our current limits there is a very low likelihood we could ever borrow to capacity due to the detrimental impact on the tax rate. An additional page has been added showing "capacity" before hitting each limit.*

7. **Why is the \$61M School Board recommendation on these four elementary schools not being included along with the City FY18-FY22 Capital Improvement Plan and measured against all of the other capital needs of the entire City?**

Response from Mayor Strimling: The school bond isn't included in the 5-year CIP because it will have to be voted upon by the electorate. Any borrowing for a specific item that is over (approximately \$3-4M) must be sent to the voters. This is the same process as was used in 1993 when \$15M, and then an additional \$1.2M, was allocated to rebuild our Middle Schools. However, all borrowing ultimately comes from the same pot, so City side needs and School side needs should be weighed together. That is why both are in front of the Finance Committee."

8. How much of the \$61M in projects as recommended by the School Board were deemed to be immediate / Year 1-5 needs in the November 2016 "Facilities Assessment of School Buildings" as performed by Sebago Technics and Lavalee/Brensinger? Which other items / schools in the "immediate / Year 0-5" needs are not being included in the proposed School Bond and potentially being "crowded out" of City debt borrowings?

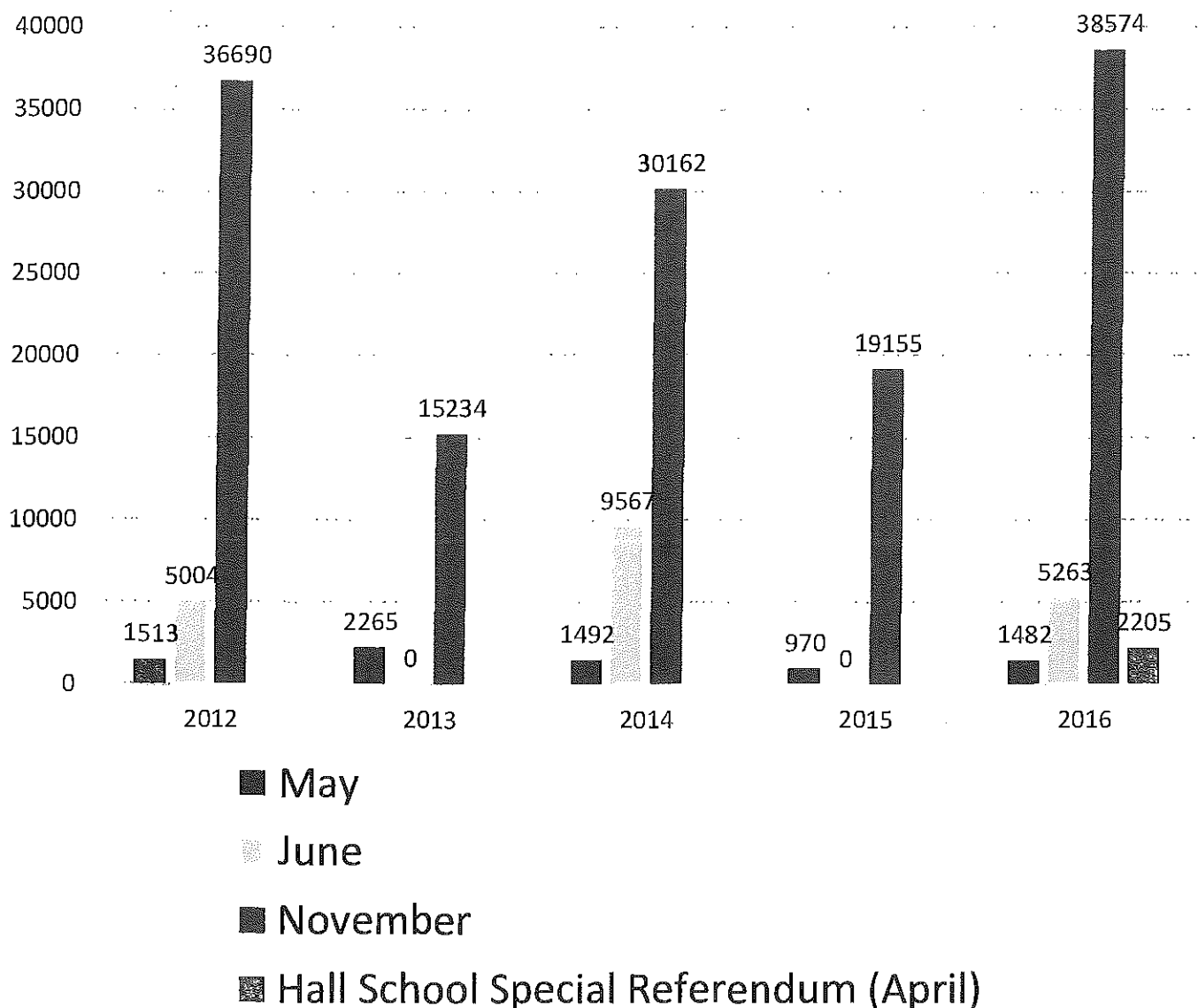
Excerpt from the facilities assessment noting Year 0-5 needs is attached below. As noted by the external engineers, only approximately \$0.89M of work is recommended at Presumpscot in the next five years compared to \$13.63M as proposed by the School Board. Approximately \$1.94M is being recommended by the external engineers at Lyseth over the next five years compared to \$17.98M as proposed by the School Board. For Reiche, \$2.38M is being recommended by the engineers over the next five years compared to \$17.25M as proposed by the School Board. For Longfellow, \$2.92M is being recommended by the engineers over the next five years compared to \$15.39M as proposed by the School Board. Although staff cannot 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
Cliff Island	\$78,260	\$184,923	
East End Community	\$59,600	\$394,626	
Longfellow	\$132,597	\$2,789,969	\$2,922,566
Lyseth	\$6,023	\$1,936,873	\$1,942,896
Ocean Avenue	\$0	\$96,241	
Peaks Island	\$88,795	\$675,474	
Presumpscot	\$755	\$888,701	\$889,456
Reiche	\$33,905	\$2,347,145	\$2,381,050
Riverton	\$940	\$1,215,099	
Elementary Schools Subtotal	\$400,875	\$10,529,051	\$8,135,968
Middle Schools			
King	\$276,125	\$1,377,356	
Lincoln	\$40,859	\$1,824,068	
Moore	\$0	\$1,324,115	
Middle Schools Subtotal	\$316,984	\$4,525,539	
High Schools			
Portland Arts & Technology (PATHS)	\$169,702	\$6,480,694	
Deering	\$93,210	\$3,776,921	
Portland	\$491,480	\$2,882,423	
High Schools Subtotal	\$754,392	\$13,140,038	
Other Buildings			
District Office / Bayside Learning	\$20,000	\$577,336	
Central Kitchen	\$0	\$100,621	
Subtotal	\$20,000	\$677,958	
General District Items			
General District Items (from PPS 5-yr CIP)	\$0	\$6,337,065	
TOTAL	\$1,492,251	\$35,209,651	

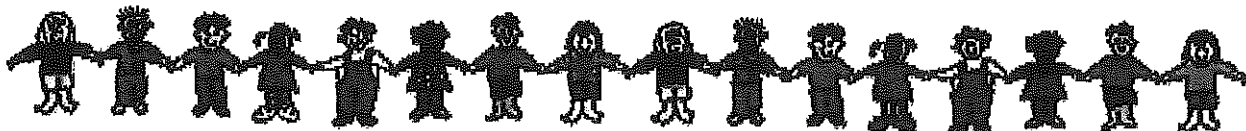
9. Can staff provide details of voter turnout in recent elections (5 year history is fine). Which elections have traditionally produced the highest levels of participation from the community?

See below for election turnout by month. If letting the voters decide by maximizing voter turnout is a desired outcome, a November 2017 election date should be selected. Spring elections have produced poor turnout amongst Portland voters. As noted previously by Oak Point, the school construction on the first school in the \$64M bond proposal would not begin until February 2018 so there is adequate time for a November 2017 referendum. A June referendum (assuming no State ballot questions) also adds significant unbudgeted costs to the City budget.

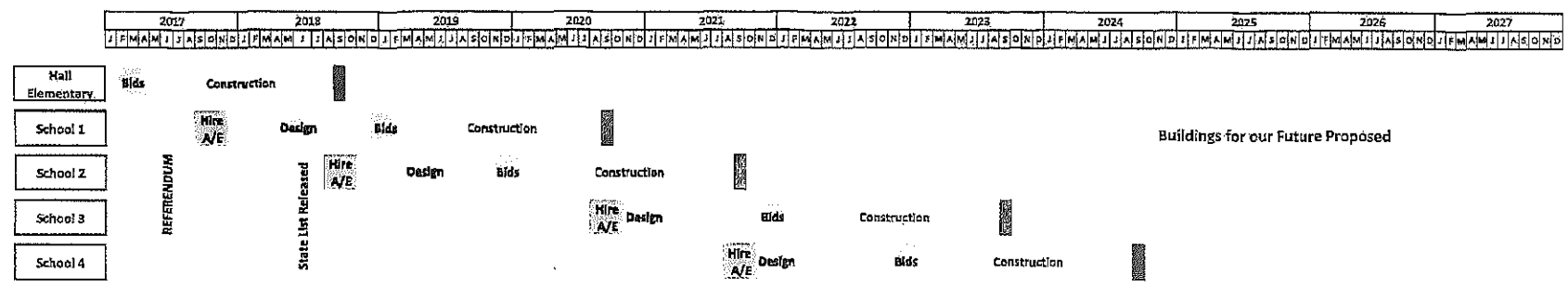
City of Portland Election Turnout 2012 through 2016



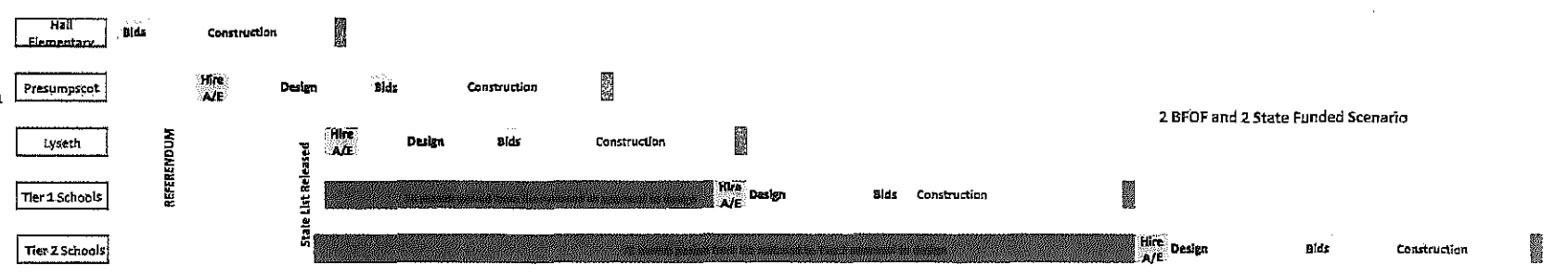
2017-2018 Rating Cycle Proposed Timeline



Scenario #1
All 4 Schools
in single
\$64M local
referendum



Scenario #2
1 Schools, 2 in
\$32M 2017
referendum,
State funds for
other schools
OR 2nd
referendum



The City would be able to retain the same construction timeline for Schools 1 and 2 (Presumpscot and Lyseth as presented by Oak Point) regardless of whether a four school referendum occurs in 2017 or a two school referendum occurs in 2017 with two more schools paid for by the State DOE or via second local referendum. The State DOE timeline has indicated a Summer 2018 release date of the Final Priority List. Under the "four schools in one referendum" scenario, we would not begin third school design until November 2020 and fourth school design until November 2021. If we took the "wait and see" approach, and if Reiche and/or Longfellow schools are not deemed to be high enough on the new State funding list a second referendum could take place anytime between fall 2018 and spring 2020 (a two year period) and we'd still be on the same schedule as if all four schools had been in a single referendum. If one of the two rated well on the state list, it would also be possible to fund one additional school locally and meet the original schedule for 4 schools.

Attachment B

Impact of \$64M Buildings for our Future on Tax Rate (includes proposed amendment from 2/23/17)

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
Valuation (as projected)	7,780,000,000	7,800,000,000	7,830,000,000	7,860,000,000	7,890,000,000	7,920,000,000	7,950,000,000	7,980,000,000
City Tax Levy (as projected)	83,862,689	87,116,012	90,998,732	94,299,153	99,247,580	104,707,427	107,805,150	110,038,220
City Tax Rate (as projected)	\$10.78	\$11.17	\$11.62	\$12.00	\$12.58	\$13.22	\$13.56	\$13.79
Rate Increase		0.39	0.45	0.38	0.58	0.64	0.34	0.23
% Increase		3.6%	4.1%	3.2%	4.8%	5.1%	2.6%	1.7%
School Tax Levy (as projected)	80,331,376	84,516,375	89,774,725	94,947,212	99,517,935	103,530,735	108,914,333	114,577,878
School Tax Rate (as projected)	\$10.33	\$10.84	\$11.47	\$12.08	\$12.61	\$13.07	\$13.70	\$14.36
Rate Increase		0.51	0.63	0.61	0.53	0.46	\$0.63	\$0.66
% Increase		4.9%	5.8%	5.4%	4.4%	3.6%	4.8%	4.8%
Total Tax Rate (as projected)	\$21.11	\$22.00	\$23.09	\$24.08	\$25.19	\$26.29	\$27.26	\$28.15
Rate Increase		0.89	1.08	0.99	1.11	1.10	0.97	0.89
% Increase		4.2%	4.9%	4.3%	4.6%	4.4%	3.7%	3.3%
Cumulative increase related to BFOF	\$ -	\$ -	\$ 0.12	\$ 0.24	\$ 0.36	\$ 0.47	\$ 0.58	\$ 0.69
Cumulative % increase related to BFOF			0.6%	1.1%	1.6%	2.2%	2.7%	3.1%
Increased Annual Taxes per \$100,000 of property value			\$ 12.41	\$ 24.46	\$ 36.14	\$ 47.45	\$ 58.42	\$ 69.02
Estimated Total Amount of Additional Taxes per \$100,000 of property value due to BFOF over life of the bonds								\$ 1,128
(If your home value was \$200,000, the impact to you would be 2x the numbers above. If your home value was \$500k, the impact would be 5x the above)								
Increased Annual Taxes on \$240,000 home (per tax year)			\$ 29.79	\$ 58.70	\$ 86.73	\$ 113.89	\$ 140.20	\$ 165.65
Estimated Total Amount of Additional Taxes on a \$240,000 home due to BFOF over the life of bonds								\$ 2,707

*Assumes no additional borrowing other than the \$64M BFOF project, included to illustrate the tax rate impact of the project

Attachment C

Attachment D

City of Portland, Maine
Multi-Modal Taxable General Obligation Bonds
Debt Service Schedule as of 07/17/2001

Date	Principal	Coupon	Interest	Debt Service	Annual Interest	Annual Debt Service	UAAL	Savings	Balance Outstanding
7/19/01									
12/1/01	-	4.919%	2,016,462	2,016,462	-	-	-	-	111,800,000
6/1/02	-	4.919%	2,749,721	2,749,721	4,766,183	4,766,183	5,717,120	950,937	111,800,000
12/1/02	-	4.664%	2,607,176	2,607,176	-	-	-	-	111,800,000
6/1/03	-	4.664%	2,607,176	2,607,176	5,214,352	5,214,352	6,060,148	845,796	111,800,000
12/1/03	-	4.989%	2,788,851	2,788,851	-	-	-	-	111,800,000
6/1/04	-	4.989%	2,788,851	2,788,851	5,577,702	5,577,702	6,423,756	846,054	111,800,000
12/1/04	-	5.334%	2,981,706	2,981,706	-	-	-	-	111,800,000
6/1/05	-	5.334%	2,981,706	2,981,706	5,963,412	5,963,412	6,809,182	845,770	111,800,000
12/1/05	-	5.610%	3,135,990	3,135,990	-	-	-	-	111,800,000
6/1/06	100,000	5.610%	3,135,990	3,235,990	6,271,980	6,371,980	7,217,732	845,752	111,800,000
12/1/06	-	6.003%	3,352,676	3,352,676	-	-	-	-	111,700,000
6/1/07	100,000	6.003%	3,352,676	3,452,676	6,705,351	6,805,351	7,650,796	845,445	111,700,000
12/1/07	-	6.419%	3,581,802	3,581,802	-	-	-	-	111,600,000
6/1/08	100,000	6.419%	3,581,802	3,681,802	7,163,604	7,263,604	8,109,844	846,240	111,600,000
12/1/08	-	6.862%	3,825,565	3,825,565	-	-	-	-	111,500,000
6/1/09	100,000	6.862%	3,825,565	3,925,565	7,651,130	7,751,130	8,596,436	845,306	111,500,000
12/1/09	-	7.331%	4,083,367	4,083,367	-	-	-	-	111,400,000
6/1/10	100,000	7.331%	4,083,367	4,183,367	8,166,734	8,266,734	9,112,222	845,488	111,400,000
12/1/10	-	7.829%	4,356,839	4,356,839	-	-	-	-	111,300,000
6/1/11	100,000	7.829%	4,356,839	4,456,839	8,713,677	8,813,677	9,658,954	845,277	111,300,000
12/1/11	-	8.357%	4,646,492	4,646,492	-	-	-	-	111,200,000
6/1/12	100,000	8.357%	4,646,492	4,746,492	9,292,984	9,392,984	10,238,492	845,508	111,200,000
12/1/12	-	8.903%	4,945,617	4,945,617	-	-	-	-	111,100,000
6/1/13	115,000	8.903%	4,945,617	5,060,617	9,891,233	10,006,233	10,852,800	846,567	111,100,000
12/1/13	-	8.903%	4,940,497	4,940,497	-	-	-	-	110,985,000
6/1/14	775,000	8.903%	4,940,497	5,715,497	9,880,995	10,655,995	11,503,968	847,973	110,985,000
12/1/14	-	8.903%	4,905,998	4,905,998	-	-	-	-	110,210,000
6/1/15	1,535,000	8.903%	4,905,998	6,440,998	9,811,996	11,346,996	12,194,206	847,210	110,210,000
12/1/15	-	8.903%	4,837,668	4,837,668	-	-	-	-	108,675,000
6/1/16	2,400,000	8.903%	4,837,668	7,237,668	9,675,335	12,075,335	12,925,858	850,523	108,675,000
12/1/16	-	8.903%	4,730,832	4,730,832	-	-	-	-	106,275,000
6/1/17	3,390,000	8.903%	4,730,832	8,120,832	9,461,663	12,851,663	13,701,410	849,747	106,275,000
12/1/17	-	8.903%	4,579,926	4,579,926	-	-	-	-	102,885,000
6/1/18	4,515,000	8.903%	4,579,926	9,094,926	9,159,852	13,674,852	14,523,494	848,642	102,885,000
12/1/18	-	8.903%	4,378,941	4,378,941	-	-	-	-	98,370,000
6/1/19	5,790,000	8.903%	4,378,941	10,168,941	8,757,881	14,547,881	15,394,904	847,023	98,370,000
12/1/19	-	8.903%	4,121,199	4,121,199	-	-	-	-	92,580,000
6/1/20	7,230,000	8.903%	4,121,199	11,351,199	8,242,397	15,472,397	16,318,598	846,201	92,580,000
12/1/20	-	8.903%	3,799,355	3,799,355	-	-	-	-	85,350,000
6/1/21	8,850,000	8.903%	3,799,355	12,649,355	7,598,711	16,448,711	17,297,714	849,004	85,350,000
12/1/21	-	8.903%	3,405,398	3,405,398	-	-	-	-	76,500,000
6/1/22	10,675,000	8.903%	3,405,398	14,080,398	6,810,795	17,485,795	18,335,578	849,783	76,500,000
12/1/22	-	8.903%	2,930,200	2,930,200	-	-	-	-	65,825,000
6/1/23	12,725,000	8.903%	2,930,200	15,655,200	5,860,400	18,585,400	19,435,712	850,312	65,825,000
12/1/23	-	8.903%	2,363,747	2,363,747	-	-	-	-	53,100,000
6/1/24	15,025,000	8.903%	2,363,747	17,388,747	4,727,493	19,752,493	20,601,856	849,363	53,100,000
12/1/24	-	8.903%	1,694,909	1,694,909	-	-	-	-	38,075,000
6/1/25	17,600,000	8.903%	1,694,909	19,294,909	3,389,817	20,989,817	21,837,966	848,149	38,075,000
12/1/25	-	8.903%	911,445	911,445	-	-	-	-	20,475,000
6/1/26	20,475,000	8.903%	911,445	21,386,445	1,822,889	22,397,889	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 mil 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.

School Facilities Ad Hoc Committee Official Proposal 2/16/17

On January 19th, after eight public meetings including tours of all four schools and two public hearings, the School Facilities Ad Hoc Committee (SFC), consisting of the Mayor, three Councillors and four School Board Members, formally endorsed a modified school bond to renovate Presumpscot, Longfellow, Reiche and Lyseth. The proposal addresses significant deferred maintenance at all four schools, creates equity and modernizes learning environments. The vote was 7-1 (Mavodones opposed). On Jan. 31, the school board, after a public hearing, unanimously endorsed the same. The vote was 9-0, plus the three HS reps.

The SFC proposal trims the original package of \$70,967,00 by just over 14% to \$60,958,164. While the specific borrowing schedule will undoubtedly shift, the projected cumulative tax increase from the proposed bond is 3% phased in over six years. On an average (\$225,000) home, the total tax increase would be \$148.11 over the six years, or around \$25 (.5%) per year. For the projected life of the borrowing (27 years), the cost would be \$2,406 or \$89 a year on an average home.

The modified proposal upgrades the four schools in the following ways (highlights):

Presumpscot: Modularity eliminated and over 9,000ft² of classroom space added. Separate gym and lunchrooms created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. Cost: \$13,628,178

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and lunchrooms created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. Cost: \$13,783,644

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintains ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title I, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. Significant deferred maintenance addressed. LEED Certified. Cost: \$17,246,276

2/16/17

Lyseth: Modularity eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and lunchrooms created. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. Cost: \$16,300,065

Proposed Changes From the Original Package

The modifications from the original Buildings for Our Future proposal were developed in concert with school principals to ensure that the schools are maximizing learning environments, while making budget adjustments that did not have an adverse impact on the educational experience for future students. The modifications are:

- Realize savings through bulk purchasing of movable and built-in equipment.
- Reduce gyms to elementary size and remove locker rooms (Lys, Pre, Long).
- Eliminate playground upgrades and outdoor learning improvements.
- Shift some site and electrical work to state application or CIP.
- Add full time Project Coordinator to each school to lead renovation.
- Add operable partitions for collaborative instruction as appropriate.
- Eliminate 2nd floors from Lyseth and Presumpscot (retain ability for future additions).



OAK POINT
ASSOCIATES

architecture
engineering
planning

Buildings for Our Future
Committee Co-Chair Four School Proposal
January 19, 2017

A CONSTRUCTION

	Longfellow	Presumpscot	Reiche	Total
1 Construction Estimate				
Renovation/Reconfiguration				
Structural/Architectural	\$2,347,330	\$1,194,543	\$3,057,232	\$6,599,105
Mechanical/Plumbing/Sprinkler	\$2,162,112	\$883,160	\$3,469,776	\$6,515,048
Electrical	\$1,342,923	\$599,972	\$2,417,891	\$4,360,786
Renovation non-equity model	\$1,639,264	\$424,113	\$2,691,906	\$4,755,283
New Construction/Addition	\$3,232,078	\$7,500,983	\$1,235,621	\$11,968,682
Demolition	\$0	\$0	\$0	\$0
Bulldozing Equipment	\$589,444	\$570,878	\$481,236	\$1,641,558
Site Development	\$1,135,151	\$1,349,435	\$804,796	\$3,289,382
Elevator (CIP Project)	\$0	\$0	\$0	\$0
Subtotal	\$12,558,306	\$12,495,085	\$13,659,317	\$38,712,708

B ADMINISTRATIVE COSTS & RESERVES

	Longfellow	Presumpscot	Reiche	Total
2 Land Purchase and Related Costs	\$0	\$0	\$0	\$0
3 Moveable Equipment	\$1,028,084	\$1,005,626	\$1,180,235	\$3,213,945
4 Advertising and Legal	\$55,000	\$55,000	\$55,000	\$165,000
5 Percent for Art	\$0	\$0	\$0	\$0
6 Project Reserves	\$35,000	\$35,000	\$35,000	\$105,000
7 Project Contingency	\$1,255,531	\$1,249,309	\$1,265,622	\$3,770,462
Subtotal	\$2,373,615	\$2,344,935	\$2,535,857	\$7,254,407

C FEES AND SERVICES

	Longfellow	Presumpscot	Reiche	Total
8 Architect/Engineer Basic Services	\$1,112,237	\$999,319	\$1,293,369	\$3,404,925
9 Architect/Engineer Additional Services	\$10,000	\$10,000	\$10,000	\$30,000
10 Architect/Engineer Reimbursables	\$39,400	\$39,400	\$39,400	\$118,200
11 Site Selection	\$0	\$0	\$0	\$0
12 Permitting & Approvals	\$18,760	\$18,760	\$18,760	\$56,280
13 Survey and Soils	\$39,500	\$39,500	\$39,500	\$118,500
14 Construction Testing	\$15,000	\$15,000	\$15,000	\$45,000
15 PPS/City Project Manager	\$125,000	\$125,000	\$125,000	\$375,000
16 Clerk of the Works	\$84,000	\$84,000	\$84,000	\$252,000
17 Commissioning	\$65,000	\$60,000	\$60,000	\$185,000
18 Other Professional Services	\$0	\$0	\$0	\$0
Subtotal	\$1,583,897	\$1,390,979	\$1,695,329	\$4,670,205

D TOTAL PROJECT COST

	Longfellow	Presumpscot	Reiche	Total
	\$16,441,119	\$16,229,001	\$17,993,533	\$50,663,653

E PROPOSED ADJUSTMENTS FROM BFOF

	Longfellow	Presumpscot	Reiche	Total
19 Proposed adjustments (see individual project budgets)	-\$2,657,474	-\$2,604,512	-\$7,600,822	-\$12,862,808

F PROPOSED TOTAL PROJECT COSTS

	Longfellow	Presumpscot	Reiche	Total
	\$13,783,644	\$13,624,489	\$10,392,711	\$37,799,844

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)

Order 156-16/17
Tab 30 4-25-17

Order 156-16/17

Public Hearing held March 20, 2017

Motion to postpone to March 27, 2017: 9-0 on 3/20/2017

Motion to postpone to April 5, 2017: 9-0 on 3/27/2017

Motion to amend to require satisfaction of necessary condition: 9-0 on 4/5/2017

Motion to postpone to April 24, 2017: 9-0 on 4/5/2017

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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 schools 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 and the satisfaction of any necessary condition) 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.

Amendment to 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 \$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 schools 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 and the satisfaction of any necessary condition) 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)
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 \$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	<u>\$31,626,000</u>

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.

Order 157-16/17
Tab 31 H-24-11

Order 157-16/17

Public Hearing held March 20, 2017

Motion to postpone to March 27, 2017: 9-0 on 3/20/2017

Motion to postpone to April 5, 2017: 9-0 on 3/27/2017

Motion to amend to add the date of second public hearing and new election date: 9-0 on 4/5/2017

Motion to postpone to April 24, 2017: 9-0 on 4/5/2017

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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 \$64,260,136 (the "Elementary School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed \$64,260,136 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 and at a meeting held April 24, 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 6~~November 7, 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 \$64,260,136 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE, SUBJECT TO THE CONDITIONS CONTAINED IN THIS ORDER”, with provisions for early redemption as set forth in said Order be Approved?

Amendment to 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 Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed \$64,260,136 (the "Elementary School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed \$64,260,136 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 and at a meeting held April 27, 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 6~~November 7, 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 \$64,260,136 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE, SUBJECT TO THE CONDITIONS CONTAINED IN THIS ORDER", 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 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 _____, 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.

Exhibit A

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 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 _____, 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 193-16/17
Tab 27 4-5-17
Tab 32 4-24-17

Councilor Ray (new 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 SUBJECT TO THE
CONDITIONS CONTAINED IN THIS ORDER**

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, subject to the conditions contained in this Order:

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 School Projects.

BE IT FURTHER ORDERED, subject to the conditions contained in this Order:

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. If this Order is submitted to voter referendum election at the same time that either or both of Order 155-14/17 and Order 196-16/17 (the "Alternate School Orders") are also submitted to voter referendum election, pursuant to Article VII, Section 16 of the City Charter, this Order shall be submitted subject to the following conditions:

- a. In the event this Order is approved by a majority of voters voting at the referendum election, and neither of the Alternate School Orders is approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall be approved and shall be effective and issuance of the Bonds and BANs described herein shall be authorized as provided in this Order.
- b. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received more votes for this Order as compared to votes for each of the Alternate School Orders.
- c. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election and this Order and one or more of the Alternate School Orders shall have received the same number of favorable votes, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received fewer votes against this Order as compared to votes against the Alternate School Order(s) that received the same number of favorable votes.
- d. Even if the total number of votes cast for and against this Order should be less than ten (10) percent of the registered voters of the City, the second sentence of Article VII, Section 16(d) of the City Charter shall not be applicable to this Order, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless the foregoing conditions in this paragraph, as applicable, are met.

Order 194-16/17
Tab 28 4-5-17
Tab 33 4-24-17

Councilor Ray (new 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 and the satisfaction of any necessary condition) 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.

Order 195-16/17
~~Tab 29 4-5-17~~
~~Tab 34 4-24-17~~

Councilor Ray (new 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 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 April 24, 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 November 7, 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.

Exhibit A

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 SUBJECT TO THE CONDITIONS CONTAINED IN THIS ORDER", with provisions for early redemption as set forth in said Order be Approved?

Order 196-16/17
Tab 30 4-5-17
Tab 35 4-24-17

Councilor Mavodones/Councilor Duson (new 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 SUBJECT TO THE
CONDITIONS CONTAINED IN THIS ORDER**

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, subject to the conditions contained in this Order:

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
	0
Presumpscot Elementary	13,628,000
	<u>\$31,626,000</u>
Total	0

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, subject to the conditions contained in this Order:

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.

24. If this Order is submitted to voter referendum election at the same time that either or both of Order 155-16/17 and Order 193-16/17 (the "Alternate School Orders") are also submitted to voter referendum election, pursuant to Article VII, Section 16 of the City Charter, this Order shall be submitted subject to the following conditions:

- a. In the event this Order is approved by a majority of voters voting at the referendum election, and neither of the Alternate School Orders is approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall be approved and shall be effective and issuance of the Bonds and BANs described herein shall be authorized as provided in this Order.
- b. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received more votes for this Order as compared to votes for each of the Alternate School Orders.
- c. In the event both this Order and either or both of the Alternate School Orders are approved by a majority of voters voting at the referendum election and this Order and one or more of the Alternate School Orders shall have received the same number of favorable votes, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless this Order also shall have received fewer votes against this Order as compared to votes against the Alternate School Order(s) that received the same number of favorable votes.
- d. Even if the total number of votes cast for and against this Order should be less than ten (10) percent of the registered voters of the City, the second sentence of Article VII, Section 16(d) of the City Charter shall not be applicable to this Order, the authority to issue the Bonds and BANs described in this Order shall not be approved and shall not be effective and issuance of the Bonds and BANs described herein shall not be authorized unless the foregoing conditions in this paragraph, as applicable, are met.

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 197-16/17
~~Tab 31-45-17~~
Tab 36 4-24-17

Councilor Mavodones/Councilor Duson (new 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 \$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 and the satisfaction of any necessary condition) 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.

Order 198-16/17
~~Tab 32 4-5-17~~
Tab 37 4-24-17

Councilor Mavodones/Councilor Duson (new 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 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 April 24, 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 November 7, 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 SUBJECT TO THE CONDITIONS CONTAINED IN THIS ORDER", with provisions for early redemption as set forth in said Order be Approved?