

## **AGENDA**

### **REGULAR CITY COUNCIL MEETING**

**SEPTEMBER 18, 2017**

1. City Council Meeting Agenda

Documents:

[CITY COUNCIL MEETING AGENDA 2017-09-18.PDF](#)

2. City Council Agenda And Packet

Documents:

[CITY COUNCIL MEETING AGENDA AND PACKET 2017-09-18.PDF](#)

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

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

**AGENDA**  
**REGULAR CITY COUNCIL MEETING**  
**SEPTEMBER 18, 2017**

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

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

**ANNOUNCEMENTS:**

**RECOGNITIONS:**

“Arts in the Chamber”, Burundi Drummers Batimbo United

**SPECIAL MEETING:**

**Special Meeting of the Corporator of the Portland Fish Exchange –  
Sponsored by Mayor Ethan K. Strimling.**

A special meeting of the Corporator of the Portland Fish Exchange will be held by the City Council on September 18, 2017 at 5:30 p.m. in City Council Chambers to amend the Fish Exchange By-Laws.

**Order 50-17/18  
(Tab 1)**

**Order Amending the Portland Fish Exchange By-Laws – Sponsored  
by Councilor Nicholas M. Mavodones.**

The Board of Directors of the Portland Fish Exchange, a nonprofit corporation that runs the Fish Exchange on Commercial Street, a City of Portland property, is requesting that the residency requirement for one of its two Class C board members be widened from the City of Portland to the State of Maine. This would allow the board to recruit and retain qualified Class C board members from a wider pool of candidates. The Board of Directors of the Portland Fish Exchange met on August 24, 2017 and voted 3-0 in favor of the proposed amendment. The amendment requires final approval by the Portland City Council, acting as Corporator of the Portland Fish Exchange.

Five affirmative votes are required for passage after public comment.

## **APPROVAL OF MINUTES OF PREVIOUS MEETING:**

(Tab 2)                      **September 6, 2017 Regular City Council Meeting Minutes**

## **PROCLAMATIONS:**

**Proc 7-17/18**                      **Proclamation Recognizing Greater Portland Walk to End Alzheimer's**  
**(Tab 3)**                              **Disease – Sponsored by Mayor Ethan K. Strimling.**

**Proc 8-17/18**                      **Proclamation Recognizing Pain Awareness & National Recovery**  
**(Tab 4)**                              **Month - Sponsored by Mayor Ethan K. Strimling.**

**Proc 9-17/18**                      **Proclamation Honoring Kristen Dow, Health and Human Services**  
**(Tab 5)**                              **Department, Public Health Division, as Employee of the Month for**  
**August 2017 – Sponsored by Mayor Ethan K. Strimling.**

## **APPOINTMENTS:**

**Order 51-17/18**                      **Order Confirming the Appointment of James Kennerley as Municipal**  
**(Tab 6)**                              **Organist – Sponsored by Mayor Ethan K. Strimling.**

This order will appoint Mr. James Kennerley as Portland's Municipal Organist effective January 1, 2018. This position is hired and paid by the Friends of the Kotschmar Organ but requires City Council approval. Mr. Kennerley will replace Ray Cornils who is retiring after 27 years.

Five affirmative votes are required for passage after public comment.

**Order 52-17/18**                      **Order Appointing Kyle McIlwaine, Killian Kondrup and Joshua**  
**(Tab 7)**                              **Partridge as Constables for 2017 Re: Department of Public Safety -**  
**Sponsored by Jon P. Jennings, City Manager.**

This order appoints Police Cadets Kyle McIlwaine, Killian Kondrup, and Joshua Partridge as Constables for the calendar year 2017.

Portland Downtown supports the cadet program which is supervised by the Community Policing Division of the Police Department. Several cadets are assigned to the downtown area to enforce municipal ordinances, address quality of life issues, and develop positive relationships with the public and local business owners.

None are allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests, or issue parking tickets.

Staff is requesting that this appointment be passed as an emergency in order to make it effective immediately and allow the Constables to begin work. Emergency enactment requires seven affirmative votes after public comment.

## **CONSENT ITEMS:**

### **LICENSES:**

**Order 53-17/18 (Tab 8)      Order Granting Municipal Officers' Approval of Black Tie Inc. DBA The Black Tie Company at the PMA Café. Application for a Class I FSE with Entertainment without Dance at 7 Congress Street – Sponsored by Michael Russell, Permitting and Inspections Director.**

Application was filed on 8/25/2017. New City and State applications. Location was formerly Aurora Provisions at the Museum.

Five affirmative votes are required for passage after public comment.

**Order 54-17/18 (Tab 9)      Order Granting Municipal Officers' Approval of The Lizotte Group DBA The Drink Exchange. Application for a Class A Lounge with Outdoor Dining on Public Property at 43 Wharf Street – Sponsored by Michael Russell, Permitting and Inspections Director.**

Application filed on 8/29/2017. New City and State Applications. New ownership of an existing business.

Five affirmative votes are required for passage after public comment.

## **BUDGET ITEMS:**

### **COMMUNICATIONS:**

### **RESOLUTIONS:**

**Resolve 2-17/18 (Tab 10)      Resolution Authorizing the City of Portland to Join a Lawsuit Against Opiate Drug Companies – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

The opioid epidemic has been and continues to be a crisis in the United States, in Maine, and more particularly in the City of Portland.

The City has suffered massive damages as it, along with municipalities across the United States, bears the brunt of abating the crisis.

This Resolve authorizes Corporation Counsel to engage the services of two firms, Napoli Shkolnik, PLLC and Trafton, Matzen, Belleau & Frenette, LLP to prosecute the City's legal claims against manufacturers and distributors of opioids arising out of the manufacturers' and distributors' fraudulent and negligent marketing and distribution of opioids.

Five affirmative votes are required for passage after public comment.



**Resolve 3-17/18  
(Tab 11)**

**Resolution Recognizing Indigenous Peoples' Day on the Second Monday in October – Sponsored by Councilor Pious Ali, Councilor Jill C. Duson, Councilor Belinda Ray, Councilor Brian Batson, Councilor Spencer Thibodeau, and Mayor Ethan K. Strimling.**

A desire to acknowledge the contributions and cultures of indigenous peoples around the world has only grown stronger over the past decades. The City Council of Portland, by this resolve, acknowledges the particular people who lived in the area that became, under colonial settlement, first Falmouth and then Portland, who were known as the Aucocisco. Under Councilor Ali's sponsorship, this resolve recognizes the second Monday in October, also known as Columbus Day, for the explorer who was among the first to arrive here from Europe, as Indigenous Peoples' Day, to honor the Aucocisco and all the indigenous peoples of the Americas who lived here for thousands of years.

The idea of the day itself was first proposed in 1977 by a delegation of Native Nations to the International Conference on Discrimination Against Indigenous Populations in the Americas. In 2010, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration"), which Declaration recognizes that "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources."

Five affirmative votes are required for passage.

**UNFINISHED BUSINESS:**

**Order 15 – 17/18  
(Tab 12)**

**Order Approving Agreement Between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Brighton-Deering-Falmouth Intersection Roundabout – Sponsored by Jon P. Jennings, City Manager**

This agreement will start property negotiations and make progress toward the design of a traffic roundabout at the intersection of Deering and Brighton Avenues and Falmouth Street, as well as the process of obtaining the federal funding participation for the project.

The project design utilizes a combination of University of Southern Maine infrastructure contribution funds and City Capital Improvement Program accounts. The project is anticipated to begin in the 2018 construction season.

On July 24 the City Council postponed this Order 15-17/18 to this meeting. A property exchange agreement between the City and the University System must be approved by the Council before or at the same time as the three-party agreement is approved between MaineDOT and PACTS, but it is not yet final.

Staff is recommending that this order be postponed to October  
2. The property exchange agreement and final documents are scheduled to be complete at that time.

**Order 29-17/18  
(Tab 13)**

**Amendment to Portland City Code Chapter 6, Buildings and Building Regulations, Re: Disorderly Houses That Are Also Short Term Rentals – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

The Housing Committee met on July 12, 2017 voted (3-0) to forward this item to the City Council with a recommendation for passage.

In March 2017, the City Council adopted residential rental registration requirements for short term rentals. Subsequent to the adoption of the short term rental registration requirements, the Housing Committee sought additional information so that the Committee could determine if additional changes needed to be made to strengthen and clarify the enforcement provisions of the ordinance as it relates to short term rentals that receive a disorderly house designation.

The proposed language would, at the discretion of the City Manager or his designee, prohibit a short term rental property that has received a second designation as a disorderly house from operating as a short term rental.

This item must be read on two separate days. It was given a first reading on August 21. On September 6 the City Council postponed Order 29-17/18 to this meeting. Five affirmative votes are required for passage after public comment.

**Order 30-17/18  
(Tab 14)**

**Amendment to Portland City Code Chapter 5 Re: Wild and Exotic Animal Ordinance – Sponsored by the Health and Human Services Committee, Councilor Belinda Ray, Chair.**

The Health and Human Services Committee reviewed this Amendment at its June 13, 2017 meeting and voted 3-0 to forward the revised ordinance to the full City Council with a recommendation for passage.

This ordinance would prohibit the display of wild and exotic animals in performances at circuses or similar entertainments in the City of Portland. Circuses and other popular entertainments have included wild and exotic animals in their performances for centuries, but acceptance of this practice is shifting, and those performances are now often viewed as acts of cruelty to the captive animals involved.

Animal rights supporters have encouraged the City to adopt the ordinance under consideration, which is similar to those adopted by other cities and states around the country. Evidence that animal trainers use cruel methods and that circuses routinely abuse the animals in their possession is strong.

By prohibiting the display of wild animals at circuses, supporters hope to stop this kind of animal cruelty throughout the country.

This item must be read on two separate days. On August 21 the City Council postponed Order 30-17/18 to this meeting. Five affirmative votes are required for passage after public comment.

**Order 32-17/18  
(Tab15)**

**Amendment to Chapter 12 of the Portland City Code Re: Recycling Carts – Sponsored by Jon P. Jennings, City Manager.**

In order to fully implement the City’s goal of adopting a cart-based recycling program so that litter is reduced and recycling is increased throughout the City, it is necessary to make a minor revision to Chapter 12 of the Portland City Code.

This order accomplishes this revision by updating the definition of a suitable recycling container. Chapter 12 of the Portland City Code currently defines a suitable recycling container to include the recycling bins. These bins are being replaced by recycling carts. The revised code language now specifies that a suitable recycling container is a lidded, rolling plastic cart distributed by Public Works.

This is the last step in the process of ensuring that the City’s recycling program goal is met.

This item must be read on two separate days. It was given a first reading on August 21, 2017. On September 6<sup>th</sup> the City Council postponed Order 32-17/18 to this meeting. Five affirmative votes are required for passage after public comment.

**Order 48-17/18  
(Tab 16)**

**Order Approving Municipal Partnership Initiative Agreement between Portland and Maine Department of Transportation Re: Washington Avenue Paving between Allen and Ocean Avenues - Sponsored by Jon P. Jennings, City Manager.**

This order approves an agreement between the Maine Department of Transportation and the City of Portland to undertake paving of Washington Avenue between Allen Avenue and Ocean Avenue and pay 50% of the total project cost. The estimated total project cost is \$1,000,000. The City’s 50% share would be \$500,000.

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

**Order 49-17/18  
(Tab 17)**

**Amendment to Portland City Code Re: India Street Amendments – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

The Planning Board met on August 8, 2017 and voted unanimously to forward this item to the City Council with a recommendation for passage.

Amendments are being proposed to Division 15.2 Section 14-275 India Street Form-based Code zone to clarify intent, revise some dimensional standards, add a waiver provision and revise and better define the extent of the boundary of the Urban Transition sub-district between Franklin and Hampshire streets.

The intent of the India Street Form-Based Code (IS-FBC) text and map amendments is to address three issues:

- Items in the code where there is a need for clarity of interpretation to meet the original intent;
- Adding content that addresses oversights or omissions in the original zoning; and
- Adding some flexibility by revising dimensional requirements that are too difficult to meet or are inappropriate and adding a partial waiver option

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

### **ORDERS:**

#### **Order 55-17/18 (Tab 18)**

#### **Order Referring Earned Paid Sick Time for Workers to the Health and Human Services Committee – Sponsored by Mayor Ethan K. Strimling.**

Healthy and safe workplaces are critical to ensure Portland's viability. An ordinance ensuring that all employees working in Portland accrue a minimum of one hour of sick time for every 30 hours worked (up to a maximum of 6 days per year) would help create those workplaces. If an employer already provides at least this amount of paid sick time or personal time off, this provision would not impact them.

This order refers a draft ordinance requiring paid sick time to the Health & Human Committee for further research and deliberation.

Five affirmative votes are required for passage after public comment.

#### **Order 56-17/18 (Tab 19)**

#### **Order Referring a Bike System Ordinance to the Sustainability and Transportation Committee – Sponsored by Jon P. Jennings, City Manager.**

The City completed a feasibility study for the creation of a bike sharing system for the Portland region in 2013. That study recommended a not-for-profit model for a system, and a not-for-profit called "Portland Bikeshare" has been formed. In the meantime, technology has advanced; and staff is

now receiving inquiries from private bikeshare systems that do not use docks and are, therefore, less expensive and more feasible in the short term.

Such inquiries represent interesting opportunities but also create potential issues that are best addressed through an ordinance governing such systems, as well as more traditional dock-based bike share systems. The draft ordinance would outline basic parameters governing systems and authorize the City Manager to promulgate regulations to implement the policy framework in the ordinance.

This order refers the draft ordinance to the Sustainability and Transportation Committee for further research and deliberation.

Five affirmative votes are required for passage after public comment.

**Order 57-17/18  
(Tab 20)**

**Order Approving Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades – Sponsored by Jon P. Jennings, City Manager.**

City staff has reached a tentative three (3) year contract agreement with AFSCME Labor & Trades which is within guidance received from the City Council on June 20, 2016. AFSCME Labor and Trades represents approximately 158 Trades, Maintenance and Custodial Workers who work for the City of Portland.

The parties have tentatively agreed to a three (3) year contract with general wage increases of 2% effective July 3, 2016 (75% retroactive pay), 2% effective July 2, 2017, and 2% effective July 1, 2018.

The parties have also agreed to other economic provisions outlined in the term sheet included in the agenda backup.

The contract term is July 3, 2016 through June 30, 2019. The total direct costs of the general wage increases and other economic updates are \$530,000.00.

The tentative agreement, cost sheet, pay plan and revised contract are included the agenda backup.

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

**AMENDMENTS:**

**Order 58-17/18  
(Tab 21)**

**Amendment to Portland City Code Chapter 17. Re: Second Extension of Moratorium on Retail Marijuana Establishment and Social Clubs – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

A second 180-day moratorium on licenses for recreational marijuana retail shops and social clubs was approved by the City Council by Order 222-16/17 on May 1, 2017, and will expire on November 3, 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 are not expected to be released until the beginning of 2018. City staff is developing draft ordinances to regulate the sale of recreational marijuana, including licensing requirements, zoning restrictions, and safety rules, among other things.

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

**EXECUTIVE SESSION:**

**Executive Session Re: Bargaining Guidance for AFSCME Local 481-07 Supervisors Pursuant to 1 M.R.S. Section 405(6)(D) – Sponsored by Jon P. Jennings, City Manager.**

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

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

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

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**SEPTEMBER 18, 2017**

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**PLEDGE OF ALLEGIANCE:**

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**ANNOUNCEMENTS:**

**RECOGNITIONS:**

“Arts in the Chamber”, Burundi Drummers Batimbo United

**SPECIAL MEETING:**

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Sponsored by Mayor Ethan K. Strimling.**

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**Order 50-17/18  
(Tab 1)**

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by Councilor Nicholas M. Mavodones.**

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Five affirmative votes are required for passage after public comment.

## **APPROVAL OF MINUTES OF PREVIOUS MEETING:**

(Tab 2)                      **September 6, 2017 Regular City Council Meeting Minutes**

## **PROCLAMATIONS:**

**Proc 7-17/18**                      **Proclamation Recognizing Greater Portland Walk to End Alzheimer's**  
**(Tab 3)**                              **Disease – Sponsored by Mayor Ethan K. Strimling.**

**Proc 8-17/18**                      **Proclamation Recognizing Pain Awareness & National Recovery**  
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**(Tab 5)**                              **Department, Public Health Division, as Employee of the Month for**  
**August 2017 – Sponsored by Mayor Ethan K. Strimling.**

## **APPOINTMENTS:**

**Order 51-17/18**                      **Order Confirming the Appointment of James Kennerley as Municipal**  
**(Tab 6)**                              **Organist – Sponsored by Mayor Ethan K. Strimling.**

This order will appoint Mr. James Kennerley as Portland's Municipal Organist effective January 1, 2018. This position is hired and paid by the Friends of the Kotschmar Organ but requires City Council approval. Mr. Kennerley will replace Ray Cornils who is retiring after 27 years.

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**Order 52-17/18**                      **Order Appointing Kyle McIlwaine, Killian Kondrup and Joshua**  
**(Tab 7)**                              **Partridge as Constables for 2017 Re: Department of Public Safety -**  
**Sponsored by Jon P. Jennings, City Manager.**

This order appoints Police Cadets Kyle McIlwaine, Killian Kondrup, and Joshua Partridge as Constables for the calendar year 2017.

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Staff is requesting that this appointment be passed as an emergency in order to make it effective immediately and allow the Constables to begin work. Emergency enactment requires seven affirmative votes after public comment.



## **CONSENT ITEMS:**

### **LICENSES:**

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Application was filed on 8/25/2017. New City and State applications. Location was formerly Aurora Provisions at the Museum.

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## **BUDGET ITEMS:**

### **COMMUNICATIONS:**

### **RESOLUTIONS:**

**Resolve 2-17/18 (Tab 10)      Resolution Authorizing the City of Portland to Join a Lawsuit Against Opiate Drug Companies – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

The opioid epidemic has been and continues to be a crisis in the United States, in Maine, and more particularly in the City of Portland.

The City has suffered massive damages as it, along with municipalities across the United States, bears the brunt of abating the crisis.

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**Resolve 3-17/18  
(Tab 11)**

**Resolution Recognizing Indigenous Peoples' Day on the Second Monday in October – Sponsored by Councilor Pious Ali, Councilor Jill C. Duson, Councilor Belinda Ray, Councilor Brian Batson, Councilor Spencer Thibodeau, and Mayor Ethan K. Strimling.**

A desire to acknowledge the contributions and cultures of indigenous peoples around the world has only grown stronger over the past decades. The City Council of Portland, by this resolve, acknowledges the particular people who lived in the area that became, under colonial settlement, first Falmouth and then Portland, who were known as the Aucocisco. Under Councilor Ali's sponsorship, this resolve recognizes the second Monday in October, also known as Columbus Day, for the explorer who was among the first to arrive here from Europe, as Indigenous Peoples' Day, to honor the Aucocisco and all the indigenous peoples of the Americas who lived here for thousands of years.

The idea of the day itself was first proposed in 1977 by a delegation of Native Nations to the International Conference on Discrimination Against Indigenous Populations in the Americas. In 2010, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration"), which Declaration recognizes that "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources."

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**UNFINISHED BUSINESS:**

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(Tab 12)**

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This agreement will start property negotiations and make progress toward the design of a traffic roundabout at the intersection of Deering and Brighton Avenues and Falmouth Street, as well as the process of obtaining the federal funding participation for the project.

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**Order 32-17/18  
(Tab15)**

**Amendment to Chapter 12 of the Portland City Code Re: Recycling Carts – Sponsored by Jon P. Jennings, City Manager.**

In order to fully implement the City’s goal of adopting a cart-based recycling program so that litter is reduced and recycling is increased throughout the City, it is necessary to make a minor revision to Chapter 12 of the Portland City Code.

This order accomplishes this revision by updating the definition of a suitable recycling container. Chapter 12 of the Portland City Code currently defines a suitable recycling container to include the recycling bins. These bins are being replaced by recycling carts. The revised code language now specifies that a suitable recycling container is a lidded, rolling plastic cart distributed by Public Works.

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**Amendment to Portland City Code Re: India Street Amendments – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

The Planning Board met on August 8, 2017 and voted unanimously to forward this item to the City Council with a recommendation for passage.

Amendments are being proposed to Division 15.2 Section 14-275 India Street Form-based Code zone to clarify intent, revise some dimensional standards, add a waiver provision and revise and better define the extent of the boundary of the Urban Transition sub-district between Franklin and Hampshire streets.

The intent of the India Street Form-Based Code (IS-FBC) text and map amendments is to address three issues:

- Items in the code where there is a need for clarity of interpretation to meet the original intent;
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This order refers a draft ordinance requiring paid sick time to the Health & Human Committee for further research and deliberation.

Five affirmative votes are required for passage after public comment.

#### **Order 56-17/18 (Tab 19)**

#### **Order Referring a Bike System Ordinance to the Sustainability and Transportation Committee – Sponsored by Jon P. Jennings, City Manager.**

The City completed a feasibility study for the creation of a bike sharing system for the Portland region in 2013. That study recommended a not-for-profit model for a system, and a not-for-profit called "Portland Bikeshare" has been formed. In the meantime, technology has advanced; and staff is

now receiving inquiries from private bikeshare systems that do not use docks and are, therefore, less expensive and more feasible in the short term.

Such inquiries represent interesting opportunities but also create potential issues that are best addressed through an ordinance governing such systems, as well as more traditional dock-based bike share systems. The draft ordinance would outline basic parameters governing systems and authorize the City Manager to promulgate regulations to implement the policy framework in the ordinance.

This order refers the draft ordinance to the Sustainability and Transportation Committee for further research and deliberation.

Five affirmative votes are required for passage after public comment.

**Order 57-17/18  
(Tab 20)**

**Order Approving Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades – Sponsored by Jon P. Jennings, City Manager.**

City staff has reached a tentative three (3) year contract agreement with AFSCME Labor & Trades which is within guidance received from the City Council on June 20, 2016. AFSCME Labor and Trades represents approximately 158 Trades, Maintenance and Custodial Workers who work for the City of Portland.

The parties have tentatively agreed to a three (3) year contract with general wage increases of 2% effective July 3, 2016 (75% retroactive pay), 2% effective July 2, 2017, and 2% effective July 1, 2018.

The parties have also agreed to other economic provisions outlined in the term sheet included in the agenda backup.

The contract term is July 3, 2016 through June 30, 2019. The total direct costs of the general wage increases and other economic updates are \$530,000.00.

The tentative agreement, cost sheet, pay plan and revised contract are included the agenda backup.

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

**AMENDMENTS:**

**Order 58-17/18  
(Tab 21)**

**Amendment to Portland City Code Chapter 17. Re: Second Extension of Moratorium on Retail Marijuana Establishment and Social Clubs – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

A second 180-day moratorium on licenses for recreational marijuana retail shops and social clubs was approved by the City Council by Order 222-16/17 on May 1, 2017, and will expire on November 3, 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 are not expected to be released until the beginning of 2018. City staff is developing draft ordinances to regulate the sale of recreational marijuana, including licensing requirements, zoning restrictions, and safety rules, among other things.

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

**EXECUTIVE SESSION:**

**Executive Session Re: Bargaining Guidance for AFSCME Local 481-07 Supervisors Pursuant to 1 M.R.S. Section 405(6)(D) – Sponsored by Jon P. Jennings, City Manager.**

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

Order 50-17/18  
Tab 1 9-18-17

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

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

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

**ORDER AMENDING THE PORTLAND FISH EXCHANGE BY-LAWS**

**ORDERED,** that the Portland City Council, acting in its capacity as sole Corporator of the Portland Fish Exchange, hereby amends the By-laws of the Portland Fish Exchange in the substantially the form attached hereto.



**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Portland Fish Exchange

**DATE:** August 29, 2017

**SUBJECT:** Fish Exchange By-laws

**SPONSOR:** Councilor Mavodones

(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:**

1<sup>st</sup> reading \_\_\_\_\_ Final Action \_\_\_\_\_ September 18, 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) A short presentation by a Fish Exchange representative

**I. One sentence summary**

This is a change in the residency requirement in the by-laws for public members of the Board of Directors of the Portland Fish Exchange and would allow one (1) Class C Director to be a resident of the State of Maine.

**II. AGENDA DESCRIPTION**

The Board of Directors of the Portland Fish Exchange, a nonprofit corporation that runs the Fish Exchange on Commercial Street, a City of Portland property, is requesting that the residency requirement for one of its two Class C board members be widened from the City of Portland to the State of Maine. This would allow the board to recruit and retain qualified Class C board members from a wider pool of candidates. The Board of Directors of the Portland Fish Exchange met on August 24, 2017 and voted 3-0 in favor of the proposed amendment. The amendment requires final approval by the Portland City Council, acting as Corporator of the Portland Fish Exchange.

**III. BACKGROUND** This change would require that one public member of the Board must be a Portland resident and one must be a Maine resident.

**IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED** Support the recruitment and retention of qualified public Board members.

**V. FINANCIAL IMPACT** No financial impact to the City.

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

**VII. RECOMMENDATION**

Corporation Counsel approves of this by-law amendment as to form.

**VIII. LIST ATTACHMENTS**

Order Amending the Bylaws of the Portland Fish Exchange.

Prepared by: Tom Valteau, President, Portland Fish Exchange Board of Directors  
Date: 8/29/2017

Bean/agendarequestmemo/rev 11/2015

# BYLAWS OF PORTLAND FISH EXCHANGE<sup>1</sup>

## ARTICLE I

### Name

Section 1. Name. The name of this corporation is the Portland Fish Exchange.

## ARTICLE II

### Principal Office

Section 1. Principal Office. The principal office for the conduct of the activities of the corporation will be located at the premises leased by the corporation on the Portland Fish Pier, Portland, Maine.

## ARTICLE III

### Meetings of Corporator

Section 1. Annual Meeting. The Annual Meeting of the Corporator will be held at the principal office of the corporation on the third Monday of October in each year. The Secretary will cause a notice of the Annual Meeting (i) to be posted at some conspicuous place at the principal office of the corporation; and (ii) to be mailed to the Clerk of the City of Portland, in each case not less than 30 days before the date fixed for the meeting. The Board of Directors as well as members of the public will be entitled and encouraged to attend the

Annual Meeting and will be entitled, subject to the direction of the chairperson of the meeting, to ask questions and state their views.

Section 2. Special Meetings. Special Meetings of the Corporator may be called by the President, by the Board of Directors or by the Corporator itself to be held at such time and place as may be fixed in the call for the meeting. If no such place is fixed, the Special Meeting will be held at the principal office of the corporation. Notice of Special Meetings will be given in the same manner as the notice of the Annual Meeting, and the Board of Directors and members of the public will have the same right to attend, to ask questions and to state their views as in the case of the Annual Meeting.

Section 3. Proxies. The Corporator may vote at any Annual or Special meeting of the Corporator by a proxy or proxies, executed in writing by the Corporator and authorized by its City Council. The Corporator may, but is not required to, appoint any one or more or all, of its City Councilors as its proxy agents to represent it at any Annual or Special Meeting of the Corporator.

Section 4. Action in Writing. Notwithstanding any other provision of these Bylaws to the contrary, any action required or permitted by law or otherwise to be taken at a meeting of the

Corporator may be taken without a meeting, if a written consent, setting forth the action so taken, is signed by the Corporator by authority of its City Council and filed with the Secretary of the corporation as part of the corporate records. Such written consent will have the same effect as a unanimous vote by the Corporator and may be described as such in any certificate or document required or permitted to be filed with the Secretary of State as well as in any certificate or document prepared or certified by any officer of the corporation for any purpose.

#### ARTICLE IV

##### Board of Directors

Section 1. Powers; Eligibility. The activities of the corporation will be managed by a Board of Directors which will have the powers and duties set forth in the Articles of Incorporation, these Bylaws and the Corporation's own Rules and Regulations. Directors may not be employees of the State of Maine, but they shall be residents of the State of Maine.

Section 2. Qualification of Directors. The Board of Directors will be divided into four classes, as follows:

Class A Directors. There will be two Class A Directors who will be either 1) an individual engaged primarily in the business of fishing or harvesting fish, either for their own account or as a partner or employee, and whose vessel

is home ported in the State of Maine, or 2) a registered Seller Representative in good standing with the Exchange. No person will be eligible to be appointed as a Class A Director unless he or she has transacted business with the corporation during the 12 months immediately preceding his or her appointment. At least one Class A Director shall either be a resident of the City of Portland or be employed or contracted and, during his or her term remain employed or contracted, by a vessel whose home port is the City of Portland.

Class B Directors. There shall be two Class B Directors who will be individuals engaged primarily in the business of processing or purchasing fish or fish products either for their own account or as partners or employees of others. No person will be eligible to be appointed as a Class B Director unless he or she has transacted business with the Corporation during the 12 months immediately preceding his or her appointment. At least one Class B Director shall be either a resident of the City of Portland or be employed and, during his or her term remain employed, by a business engaged in the processing or purchasing of fish or fish products, the principal location of which is in the City of Portland.

Class C Directors. There shall be two Class C Directors from the public at large, one of whom shall be a resident of the City of Portland, and the other of whom shall be a resident of the State of Maine. ~~and be residents of the City of Portland.~~

In all cases, the decision of the Corporator as to whether or not individuals either qualify as, or are eligible to be appointed as, Class A, Class B or Class C Directors will be binding and conclusive, and not be open to question by anyone.

Class D Director. There shall be one Class D Director. Notwithstanding any provision contained in these Bylaws to the contrary, such person: (i) need not be a resident of the City of Portland; (ii) may, but need not be, a member of the City Council of the City of Portland; and (iii) may, but need not be, an employee of the City of Portland. The provisions of Article IV of these Bylaws, Section 3, regarding public advertisement; Section 4, regarding term of office; and Section 5, regarding opportunity to make recommendations, will not apply to the Class D Director. References to classes of Directors in Section 4 will not apply to the Class D Director.

Class E Director. There will be one Class E Director who

will be nominated by the City Manager. The provisions of Article IV of these Bylaws, Section 3, regarding public advertisement; Section 4, regarding term of office; and Section 5, regarding opportunity to make recommendations, will not apply to the Class E Director. References to classes of Directors in Section 5 will not apply to the Class E Director.

Section 3. Nomination of Directors. In determining those persons who will be appointed as Directors at the Annual Meeting of the Corporation, the Corporation, acting through its City Manager or an appropriate committee, will receive nominations for each class of Director. Nominations for Directors of the Corporation in classes A through C will be solicited by public advertisement.

Before electing any nominees as Class A, Class B or Class C Directors, the Corporation will advise the Board of Directors, then in office, of the names of all nominees and provide the Board with an opportunity to make its own recommendations in regard to them.

Section 4. Term of Office. Directors in each of the five Classes of Directors will be elected by the Corporation to serve as such for terms of two years, beginning on November 1, and expiring on October 31. However, all Directors will continue to



serve until their successors have been duly elected and qualified. In the event of an off-schedule election of a Director, such Director's term will expire on October 31 in the second year of service, regardless of election date.

Section 5. Vacancies. Vacancies which may occur in any Class of the Board of Directors for any reason will be filled for the unexpired term by the Corporator who will appoint an individual who is qualified and eligible for such Class. Before filling any such vacancy, the Corporator will receive nominations and provide the Board of Directors with an opportunity to make its own recommendations with respect to any nominee as provided in Section 3.

Section 6. Resignations. Any Director may resign his or her office by delivering a written resignation to the President. A resignation will become effective upon the date or condition stated therein.

## ARTICLE V

### Meetings of Board of Directors

Section 1. Annual Meeting. The Annual Meeting of the Board of Directors will be held without call at the first Regular Meeting following the Annual Meeting of the Corporator either at the principal office of the corporation or at some other place fixed by the President.

Section 2. Regular Meetings. Other Regular Meetings of the Board of Directors may be held without call at such place, date and time as may be fixed, from time to time, by resolution of the Board of Directors.

Section 3. Special Meetings. Special Meetings of the Board of Directors may be called by the President, any two (2) Directors or by other persons who are authorized by law to call Special Meetings. The place, date and time of Special Meetings will be fixed in the call therefore.

Section 4. Notice of Meetings. Notices of Annual, Regular, or Special Meetings of the Board of Directors will be given either by the person or persons calling the same or by the President or Secretary, and will be posted in a conspicuous place on the premises leased by the corporation at the Portland Fish Pier at least five (5) days before the meeting and also provided to the directors at least five (5) days in advance.

Neither the business to be transacted thereat nor the purpose of any Annual, Regular or Special Meeting of the Board of Directors is required to be specified in the notice except when required by law.

Section 5. Public Participation. Members of the public may attend any meeting of the Board of Directors and will be entitled, subject to the direction of the chairperson of the

meeting, to ask questions and state their views, provided that the Board of Directors may go into executive session and determine matters therein when, having a quorum, a majority of them deem it appropriate to do so.

Section 6. Quorum. Four Directors will constitute a quorum for the transaction of business at meetings of the Board of Directors. The act of a majority of the Directors, present at a meeting of the Board at which a quorum is present, will be deemed to be the act of the Board of Directors. Directors may be present at the meeting of the Board and fully participate via teleconference.

Section 7. Indemnification. The corporation will in all cases indemnify any person who either was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. §714, and acts additional thereto and supplementary thereof, to which reference

is made.

## ARTICLE VI

### Officers

Section 1. Officers. The officers of the corporation will be chosen annually at the Annual Meeting of the Board of Directors, and will consist of a President, Vice President, Treasurer and Secretary. A single individual may serve in more than one office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 2. Term. Officers will be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors have been duly elected and qualified. Officers may succeed themselves for any period of years.

Section 3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby.

Section 4. Vacancies. A vacancy in any office may be filled by the Board of Directors with a current Board member.

Section 5. President. The President is required to be a Director. He or she will preside at all meetings of the Board of Directors.

Section 6. Vice President. The Vice President will preside at all Meetings of the Board of Directors in the absence of the President and will perform such other duties as may be assigned

by the President.

Section 7. Secretary. The Secretary will attend all meetings of the Corporator and the Board of Directors and keep minutes of all meetings of the Corporator and the Board of Directors in a book or books kept for that purpose. The Secretary will also perform such other duties as may be prescribed by either the Board of Directors or the President. The Secretary, will have authority to affix the corporate seal to any instrument which requires it; and, when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Section 8. Treasurer. The Treasurer will have the responsibility for monitoring all corporate funds and securities, and will have access to financial records at all times. He or she will work with the Exchange Manager to ensure appropriate and timely financial reports are made available to the Board; manage the Board's review of and action related to its financial responsibilities; and ensure an annual audit is performed. The Treasurer will also perform such other duties as may be prescribed either by the Board of Directors or the President.

Section 9. Exchange Manager. The Exchange Manager will have superintendence of the marketing activities of the corporation, including, without limitation, all auction sales held on the premises of the corporation and such other powers and duties as

may be set forth in the Rules and Regulations. The Exchange Manager may be an individual, corporation or partnership, and will be selected by the Board of Directors which will determine the compensation of the Exchange Manager. The Exchange Manager, as such, may not be an officer of the corporation or a member of the Board of Directors. Section 10. Other Employees. Other employees of the corporation will be appointed, supervised by, and serve at the pleasure of the Exchange Manager.

#### ARTICLE VII

##### Corporate Seal

The corporate seal will be circular in form and will bear the words and figures "Portland Fish Exchange," the word "Maine" and the year of the corporation's incorporation. The form of such seal may be altered from time to time by the Board of Directors.

#### ARTICLE VIII

##### Rules and Regulations

Section 1. Rules and Regulations. The Rules and Regulations of this corporation will be developed and adopted by the Board of Directors for the administration and operation of the fish exchange and will not be considered Bylaws of the corporation. The Rules and Regulations may not conflict with the Articles of Incorporation or with these Bylaws.

Section 2. Amendment. The Secretary will report any

amendment of the Rules and Regulations, as adopted by the Board of Directors, to the President, Treasurer, Secretary or Clerk of the Portland Fish Pier Authority, a Maine corporation, within five (5) days after adoption, so that it may take action with respect thereto in accordance with Exhibit B of the Articles of Incorporation, as amended by order of the City Council of the City of Portland, acting as sole incorporator, on June 1, 1989.

#### ARTICLE IX

##### Adoption and Amendment of Bylaws

Section 1. Adoption. The initial Bylaws of this corporation were adopted by the incorporators.

Section 2. Amendments. The power to amend, alter or repeal the Bylaws is vested in the Corporator.



- 1) Executive Session to discuss the City's legal rights and duties re: the Nova Scotia Ferry Service, pursuant to 1 M.R.S. section 405(6)(E)

*Sal 2 9-18/17*

**IN COUNCIL SPECIAL MEETING SEPTEMBER 6, 2017 VOL. 133 PAGE 129**

**ROLL CALL:** Mayor Strimling called the meeting to order at 5:00 P.M. (All Councilors Present).

**ANNOUNCEMENTS:**

**RECOGNITIONS:**

**APPROVAL OF MINUTES OF PREVIOUS MEETING:**

Motion was made by Councilor Thibodeau and seconded by Councilor Duson to approve the minutes of August 21, 2017 Special City Council Meeting Minutes, afternoon session, and August 21, 2017 Special City Council Meeting Minutes, evening session. Passage 9-0.

**PROCLAMATIONS:**

**Proc 6-17/18 Proclamation Recognizing September as Childhood Cancer Awareness Month – Sponsored by Mayor Ethan K. Strimling.**

**APPOINTMENTS:**

**Order 42-17/18 Order Confirming the Appointment of Jennifer L. Thompson as Associate Corporation Counsel – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

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

**CONSENT ITEMS:**

**Order 43-17/18 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Jacquil Turner – Sponsored by Jon P. Jennings, City Manager.**

**Order 44-17/18 Order Declaring November 11, 2017 as the Veterans Day Parade Festival – Sponsored by Jon P. Jennings, City Manager.**

**Order 45-17/18 Order Declaring October 1, 2017 as the 26<sup>th</sup> Annual Maine Marathon, Half Marathon & Relay Festival – Sponsored by Jon P. Jennings, City Manager.**

**Order 46-17/18 Order Declaring November 4, 2017 the University of Maine vs. Delaware Football Game Tailgate Party Festival – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Duson and seconded by Councilor Costa for passage of the Consent items. Passage 9-0.

**LICENSES:**

**Order 47-17/18      Order Granting Municipal Officers' Approval of Maine Craft, LLC dba Maine Craft Distilling. Application for a Class XI Restaurant/Lounge with Entertainment with Dance and Outdoor Dining on Private Property at 123 Washington Avenue – Sponsored by Michael Russell, Permitting and Inspections Director.**

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

**BUDGET ITEMS:**

**COMMUNICATIONS:**

**RESOLUTIONS:**

**UNFINISHED BUSINESS:**

**Order 27-17/18      Order Approving Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Allen Avenue Pavement Preservation - Sponsored by Jon P. Jennings, City Manager.**

It was given a first reading on August 21<sup>st</sup>.

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

**Order 28-17/18      Order Approving Airport Improvement Program Grant for a Solar Power Array at the Portland Jetport – Sponsored by Jon P. Jennings, City Manager.**

It was given a first reading on August 21<sup>st</sup>.

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

**Order 29-17/18      Amendment to Portland City Code Chapter 6, Buildings and Building Regulations, Re: Disorderly Houses That Are Also Short Term Rentals – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

It was given a first reading on August 21<sup>st</sup>.

Motion was made by Councilor Ray and seconded by Councilor Costa to postpone Order 29 to the September 18, 2017 City Council meeting. Passage 9-0.

**Order 31-17/18      Amendment to Portland City Code Chapter 14 Re: Affordable Housing - Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

It was given a first reading on August 21<sup>st</sup>.

Motion was made by Councilor Batson and seconded by Councilor Thibodeau

Motion was made by Councilor Costa and seconded by Councilor Mavodones to bifurcate subsection D. Passage 5-4 (Ali, Thibodeau, Batson, Strimling).

Motion was made by Councilor Batson and seconded by Councilor Thibodeau as amended. Passage 9-0.

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

Councilor Duson disclosed that she revisited Portland Housing Authority to review the concept design for the new development.

Motion was made by Councilor Duson and seconded by Councilor Costa to amend Order 31 subsection D by adding "the Planning Board's Design Manual, design standards and guidelines with respect to Planned Residential Unit Developments shall apply in full to PRUD's utilizing this section". Passage 9-0.

Motion was made by Councilor Costa and seconded by Councilor Ray for passage as amended. Passage 8-1 (Costa).

**Order 32-17/18      Amendment to Chapter 12 of the Portland City Code Re: Recycling Carts – Sponsored by Jon P. Jennings, City Manager.**

It was given a first reading on August 21<sup>st</sup>.

Motion was made by Councilor Thibodeau and seconded by Councilor Batson to postpone Order 32 to the September 18, 2017 City Council meeting. Passage 9-0 .

**Order 33-17/18      Amendment to Portland City Code Chapter 14 Re: Waterfront Port Development Zone – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

It was given a first reading on August 21<sup>st</sup>

Councilor Thibodeau disclosed that his employer has done and is working with the developers on this project and there is no conflict with this and will be voting on it.

Councilor Mavodones disclosed that he wrote a letter of support for Phinneas Spreague for a Maritime Grant.

Motion was made by Councilor Batson and seconded by Councilor Thibodeau for passage. Passage 8-1 (Thibodeau).

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

Public Comment was taken on Orders 35, 36, 37

Motion was made by Councilor Ray and seconded by Councilor Duson to n table Order 35, 36, and 37 until after the public comment on Order, 39, 40, and 41. Passage 9-0.

**Order 35-17/18**

**Order Setting Election Date on Citizen Initiative Amendment to Chapter 14 of the Portland City Code Re: Strengthen Zoning Protection by Allowing Resident Participation in Proposed Zoning Changes – Sponsored by Katherine L. Jones, City Clerk.**

This item was postponed on August 21, 2017.

Motion was made by Councilor Mavodones and seconded by Councilor Duson .

Motion was made by Councilor Mavodones and seconded by Councilor Costa to amend Order 35 by adding the entire language of the Citizen Initiative, Strengthen Zoning Protection by Allowing Resident Participation in Proposed Zoning Changes on the ballot. Passage 8-1 (Strimling).

Motion was made by Councilor Brenerman and seconded by Councilor Costa to Amend Order 35 by changing the summary to read “This proposed ordinance adds a section to the city land use code that allows registered voters who reside and /or own property within 500 feet of a proposed zone change to object to that change. If 25 % of those individuals sign a document objecting no change can occur unless the applicant for the change files a document signed by a majority of those individuals, within 1,000 feet of the proposed zone change, stating they agree with the change. If approved this amendment will be effective retroactively to May 15, 2017. Passage 9-0.

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

**Order 36-17/18      Order Enacting Citizen Initiative Amendment to Chapter 14 of the Portland City Code Re: Strengthen Zoning Protection by Allowing Resident Participation in Proposed Zoning Changes – Sponsored by Katherine L. Jones, City Clerk**

It was given a first reading on August 21, 2017.

Motion was made by Councilor Costa and seconded by Councilor Ray to postponed Order 36 indefinitely. Passage 9-0.

**Order 37-17/18      Order Setting Election Date on Amendment to Chapter 14 of the Portland City Code Re: Strengthen Zoning Protection by Allowing Resident Participation in Proposed Zoning Changes and Sending a Competing Measure to the Voters – Sponsored by Katherine L. Jones, City Clerk.**

This item was postponed on August 21, 2017.

Motion was made by Councilor Ray and seconded by Councilor Costa to postpone Order 37 indefinitely. Passage 9-0.

**Order 39-17/18      Order Setting Election Date on Citizen Initiative Amendment to Chapter 6 of the Portland City Code Re: Rent Stabilization and Protection of Tenants' Rights - Sponsored by Katherine L. Jones, City Clerk.**

This order was postponed on August 21, 2017.

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

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend Order 39 by adding "the full text of the Citizen Initiative for Rent Stabilization and Protection of Tenants' Rights. Passage 8-1 (Strimling).

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend Order 39 by changing the summary to the following:

1. Places limitation on terminating a tenancy;
  2. Set limitation on rent increases; and
  3. Creates a seven (7) member board appointed by the City Council.
- Passage 9-0.

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

**Order 40-17/18      Order Enacting Citizen Initiative Amendment to Chapter 6 of the Portland City Code Re: Rent Stabilization and Protection of Tenants' Rights Sponsored by Katherine L. Jones, City Clerk**

It was given a first reading on August 21, 2017.

Motion was made by Councilor Costa and seconded by Councilor Mavodones to postpone Order 40 indefinitely. Passage 9-0.

**Order 41-17/18      Order Setting Election Date on Amendment to Chapter 6 of the Portland City Code Re: Rent Stabilization and Protection of Tenants' Rights and Sending a Competing Measure to Voters – Sponsored by Katherine L. Jones, City Clerk.**

This item was postponed on August 21, 2017.

Motion was made by Councilor Mavodones and seconded by Councilor Costa to postpone Order 41 indefinitely. Passage 9-0.

**ORDERS:**

**Order 48-17/18      Order Approving Municipal Partnership Initiative Agreement between Portland and Maine Department of Transportation Re: Washington Avenue Paving between Allen and Ocean Avenues - Sponsored by Jon P. Jennings, City Manager.**

This is its first reading.

**AMENDMENTS**

**Order 49-17/18      Amendment to Portland City Code Re: India Street Amendments – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

This is its first reading.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to adjourn. Passage 9-0, 12:30 A.M.

A TRUE COPY.

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Katherine L. Jones, City Clerk

*Doc 7-57/18  
Tab 3 9-18-17*

## PROCLAMATION

### RECOGNIZING

### GREATER PORTLAND WALK TO END ALZHEIMER'S DISEASE

\*\*\*\*\*

**WHEREAS**, Alzheimer's disease continues to be a major health concern – with over 69,000 family caregivers providing \$988,000,000 in unpaid care for the 27,000 people living with Alzheimer's disease in Maine this year alone; and

**WHEREAS**, The rise of Alzheimer's disease requires a committed community lead effort to increase communication, education, and united action to stop or deter the number of Alzheimer's cases; and

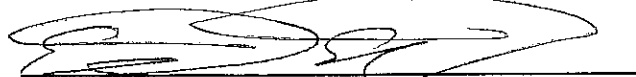
**WHEREAS**, Each Fall, the Alzheimer's Association, Maine Chapter organizes the Greater Portland Walk to End Alzheimer's to honor those who face daily challenges of living with Alzheimer's, to remember those taken by the disease, and to support those actively fighting to end the disease by encouraging citizens of Greater Portland to raise awareness and funds in the fight against Alzheimer's disease by participating; and

**WHEREAS**, the City of Portland acknowledges the mission of the Alzheimer's Association to eliminate Alzheimer's disease through the advancement of research; to provide and enhance care and support for all affected; and to reduce the risk of dementia through the promotion of brain health; and

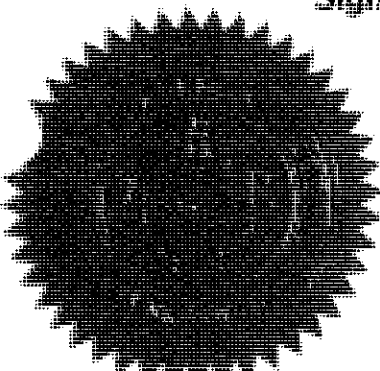
**WHEREAS**, the City of Portland is proud to support and host the Greater Portland Walk to End Alzheimer's on September 23rd, 2017.

**NOW, THEREFORE, BE IT RESOLVED, THAT I** Ethan K. Strimling, Mayor of the City of Portland, and members of the City Council, do hereby proclaim September 23rd, 2017 to be the Greater Portland Walk to End Alzheimer's day of recognition, and urge our citizens to take part on this day and acknowledge and encourage all those around who are affected by Alzheimer's.

**Signed and sealed this 18th day of September, 2017**



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





Doc 8-17/18  
Tab 4 9-18-17

**PROCLAMATION**  
**RECOGNIZING**  
**PAIN AWARENESS & NATIONAL RECOVERY MONTH**

\*\*\*\*\*

**WHEREAS:** Chronic Pain and Substance Use Disorders (SUDs) are two of the nation's most serious health concerns and are both multifaceted health conditions impacting almost every single American, and often require multimodal and inter professional treatment; and

**WHEREAS:** Chronic Pain and SUDs afflict nearly every aspect of a person's life, impact the entire family, and because of their economic and social implications, affect us all; and

**WHEREAS:** An estimated one in three Americans are affected, and a total of between 75 to 159 million Americans are experiencing some type of chronic pain on a daily basis; and

**WHEREAS:** Presently, 20.2 million adults are living with SUDs, more than 90,000 Americans die from drugs and alcohol yearly, and between 25,000 and 30,000 Mainers want treatment but don't have access to it; and

**WHEREAS:** There are 23 million Americans living in long-term recovery, and according to results from the 1st annual Life in Recovery Survey, a shift from active use to active recovery is good for individuals, families, communities and the nation's economy; and

**WHEREAS:** The Chronic Pain Support Group of Southern Maine has, since 1993, provided a safe support for people with pain and has taught the coping skills necessary to survive; has worked with a multidisciplinary group of chronic pain advocates comprised of students, staff, faculty and community members, along with healthcare professions, to improve the quality of life of people living in pain;

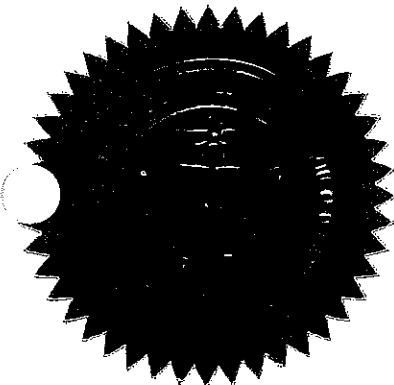
**WHEREAS:** Penobscot Community Health Care (PCHC), in combination with the University of New England, the University of Southern Maine, the US Pain Foundation and chapters of Young People in Recovery, seek to raise awareness regarding chronic pain and SUDs in the State of Maine, to empower individuals and reduce barriers to care by educating, advocating and conducting research, while partnering with the community to improve the quality of life for those living with these conditions.

**NOW, THEREFORE, BE IT RESOLVED, THAT I** Ethan K. Strimling, Mayor of the City of Portland and members of the City Council to hereby recognize September, 2017 as Pain Awareness & National Recovery Month throughout the State of Maine and urge all citizens to recognize this observance.

**Signed and sealed this 18th day of September, 2017**



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



*Proe 9-17/18  
Tab 5 9-18-17*

**PROCLAMATION**

**Honoring**

**Kristen Dow**

**Employee of the Month**

**August 2017**

**WHEREAS:** **Kristen Dow** of the Health and Human Services Department, Public Health Division, has been named the City of Portland Employee of the Month by a committee of her peers and selected for this distinct honor from a workforce of over 1,300; and

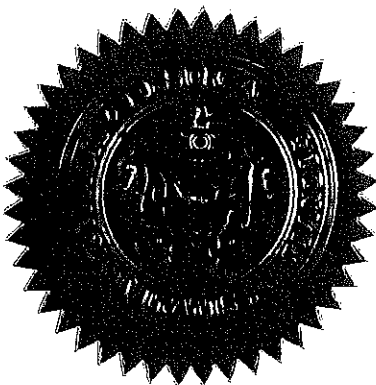
**WHEREAS:** This award is presented in recognition of **Kristen's** work as a Program Manager in the Public Health Division. **Kristen** took on this position over a year ago and is recognized for seamlessly transitioning to a true leader; and

**WHEREAS:** **Kristen** genuinely embodies the essence of a public servant. **Kristen** is knowledgeable, dedicated, supportive, respected and respectful. **Kristen** encourages her staff to go above and beyond because she cares greatly for the communities we serve; and

**WHEREAS:** While the Public Health Division recently searched for a new director, **Kristen** gracefully and competently fulfilled her duties and took on additional management duties as well. **Kristen** truly is an asset to the Health and Human Services Department and to the City.

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

**Signed and Sealed this 18<sup>th</sup> day of September, 2017**



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

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

*Order 51-17/18  
Tab 6 9-18-17*

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 CONFIRMING THE APPOINTMENT OF JAMES KENNERLEY AS  
MUNICIPAL ORGANIST**

**ORDERED,** that James Kennerley is hereby appointed as Municipal Organist.

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Peter S. Plumb (Friends of the Kotzschmar Organ, Inc.) . . . . .

**DATE:** August 25, 2017

**SUBJECT:** Appointment of New Municipal Organist

**SPONSOR:**

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

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading \_\_\_\_\_ Final Action   X  

Can action be taken at a later date: \_\_\_\_ Yes \_\_\_\_   X   No (If no why not?) Organist will be present (from New York City)

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

**I. ONE SENTENCE SUMMARY** – Appointment of new Municipal Organist, effective January 1, 2018. (Hired and paid by Friends of the Kotzschmar Organ)

Presenter = Peter S. Plumb (estimated time 3 minutes)

**II. AGENDA DESCRIPTION**

**III. BACKGROUND**

**IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED** - Appointment

**V. FINANCIAL IMPACT** - \$0.00

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

**VII. RECOMMENDATION**

**VIII. LIST ATTACHMENTS**

**PLEASE REMEMBER THAT BACKUP ITEMS HAVE TO BE SINGLE SIDED.**

Prepared by:

Date:

FOKO  
New Municipal Organist PR  
Draft 3

**FOR IMMEDIATE RELEASE**

**Date:** 15 September 2017

**Contact:** Brooke Hubner  
Executive Director  
Friends of the Kotschmar Organ

**Email:** [info@foko.org](mailto:info@foko.org)

**Phone:** (207) 553-4363

**The Tradition Lives On: James Kennerley – Portland's 11th Municipal Organist**

**Portland, ME** — Municipal Organist is a phrase that symbolizes a strong relationship between government and the arts – a relationship that is becoming more scarce each year. It's a title so rare, only two cities in the U.S. have such a position: San Diego, California and our own Portland, Maine. This year, the City of Portland renews its commitment to continuing the legacy of the Municipal Organist with the appointment of James Kennerley. Mr. Kennerley will be the City's 11<sup>th</sup> Municipal Organist following the retirement of Ray Cornils, the longest-serving Municipal Organist since the position was created in 1912.

Mr. Kennerley comes to us by way of Essex in the United Kingdom where he fell in love with the organ as a young cathedral chorister.

"I thought the organ was the coolest thing ever," Mr. Kennerley explains, "When I was eight I began playing the piano and wanted to transition to the organ as quickly as possible. My teacher at the time, Gram Elliott, told me I had to get to a certain level on piano before trying the organ. I began practicing constantly to get to that point. When I was 14 I was really chomping at the bit to start playing the organ, and when I finally got the chance I never looked back."

This drive to master the organ has led Mr. Kennerley to performing at Carnegie Hall, touring across the globe, and earning millions of views from fans on YouTube. He will now fulfill another musical goal of his, performing on the Kotschmar Organ in concert.

"The organ world is very intimate, even internationally. Back in the UK, I remember reading an article about the Kotschmar Organ when I was a kid and I thought, 'Wow, imagine if I could play that one day.' Over the years, I heard stories of people performing on the Kotschmar, so it was always present in my mind. Then I saw on Facebook that the position was open, which was thrilling."

Of the seventeen organists who applied to the position from all over the world, six were invited to an audition. Mr. Kennerley explains how he chose his audition pieces.

"I chose the William Tell overture by Rossini because it is a piece that would have been played frequently at the time the Kotschmar was built – it tied into the history of the organ. The Bach Prelude and Fugue in A minor is a classic piece in organ repertoire. Variations on a Noel by Marcel Dupré is one of the most challenging pieces for organ – a great piece to show technical proficiency. I also performed a theater organ arrangement of the Brazilian standard Tico Tico."

FOKO  
New Municipal Organist PR  
Draft 3

Mr. Kennerley has big shoes to fill with the retirement of Ray Cornils. Mr. Cornils was a leading figure in the musical culture of Southern Maine. His 27-year tenure as Municipal Organist reflected a deep connection to music education and appreciation. Mr. Kennerley had the following to say about how he will approach his new position.

"In the past, you didn't have to do as much to get people to attend a concert. But now, more and more people are listening to music online rather than going to see a live concert. I believe people will always need live music and there are ways to get people interested in attending a music performance."

"First, we have to have the highest levels of integrity when it comes to performing. People respond when they sense a high level of musicianship. We also have to make efforts to explain why music, and in my case organ music, is important. It's also essential to get people into the seats of Merrill Auditorium who may have no idea what they are going to hear."

"Organ music is not just for old fuddy duddies – it can be hip and trendy. The trick is to show people this."

Though Mr. Kennerley acknowledges the challenges of the position, they are issues he plans to tackle whole heartedly to continue spreading awareness of the wonder that is the Kotschmar Organ.

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#### About FOKO:

Founded in 1981, the **Friends of the Kotschmar Organ (FOKO)**, a non-profit organization, supports the Kotschmar Organ. Each year, the organization presents concerts throughout the year, engaging renowned organists and guest artists from around the world. FOKO is responsible for the care and maintenance of the organ and provides funds to produce and promote concerts, maintain, repair and enhance the organ, sponsor lectures and organ demonstrations and tours and supports a growing education program to bring awareness and understanding of this musical gem of Portland.

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*Order 52-17/18  
Tab 7 9-18-17*

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 MCILWAINE, KILLIAN KONDRUP AND  
JOSHUA PARTRIDGE AS CONSTABLES FOR 2017  
RE: DEPARTMENT OF PUBLIC SAFETY**

**ORDERED,** that Kyle McIlwaine, Killian Kondrup and Joshua Partridge, Department of Public Safety, are hereby appointed as constables 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 these appointments are made pursuant to Sections 20-19 and 20-19.5, Portland City Code, and Kyle McIlwaine, Killian Kondrup and Joshua Partridge are not allowed to carry a firearm, concealed or unconcealed, in the performance of duties, or to make arrests or issue parking tickets; and

**BE IT FURTHER ORDERED,** that this appointment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and allow the constables to begin work.

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Richard Bianculli, Police Department

**DATE:** September 1, 2017

**SUBJECT:** Constable Status for Cadets

**SPONSOR:**

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

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading \_\_\_\_\_ Final Action   X  

Can action be taken at a later date: \_\_\_\_ Yes      X   No (If no why not?) Time is of the essence as cadets will be enforcing ordinances throughout the City.

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

**I. ONE SENTENCE SUMMARY**

The Police Department requests the swearing in of three (3) cadets as constables for the City of Portland.

**II. AGENDA DESCRIPTION**

The Police Department requests the swearing in of three (3) cadets as constables for the City of Portland. The cadets are Kyle McIlwaine, Killian Kondrup, and Joshua Partridge.

**III. BACKGROUND**

Portland Downtown supports the cadet program which is supervised by the Community Policing Division of the Police Department. Several cadets are assigned to the Downtown area to enforce municipal ordinances, address quality of life issues, and develop positive relationships with the public and local business owners.

**IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

Cadets are assigned to enforce municipal ordinances and address quality of life issues.



**V. FINANCIAL IMPACT**

There is no financial impact.

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

N/A

**VII. RECOMMENDATION**

The Police Department recommends that cadets Kyle McIlwaine, Killian Kondrup, and Joshua Partridge be sworn as constable for the City of Portland.

**VIII. LIST ATTACHMENTS**

**PLEASE REMEMBER THAT BACKUP ITEMS HAVE TO BE SINGLE SIDED.**

Prepared by: Richard Bianculli, Neighborhood Prosecutor

Date: September 1, 2017

Bean/agendarequestmemo/rev 1/23/2017

*Order 53-17/18  
Tab 8 9-18-17*

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:**

**Black Tie Inc. DBA The Black Tie Company at the PMA Café. Application for a Class I  
FSE with Entertainment without Dance at 7 Congress Square.**

the  
black tie  
company

August 25, 2017

Dear Sirs or Madams,

This is to serve as a letter of intent that The Black Tie Company of Portland, Maine intends to contract with The Portland Museum of Art to provide food and service at The Portland Museum of Art Café effective October 1, 2017.

Thank you very much for your consideration.

Sincerely,

7.761.6665  
info@theblacktieco.com  
One Union Wharf  
Portland, ME 04101  
www.theblacktieco.com



Christine Weber  
President



Amy Collins  
Vice President

simply  
REMARKABLE

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department  
 Michael A. Russell, MS, Director  
 389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557  
[www.portlandmaine.gov](http://www.portlandmaine.gov)

Application for Food Service Establishment with Alcoholic Beverages License

|                                             |                                                                                                                                |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Business Information                        |                                                                                                                                |
| Business Name (d/b/a):                      | The BLACKTIE COMPANY AT THE <span style="float: right;">Phone: 207 <del>761-6665</del></span>                                  |
| Location Address:                           | <del>7 CONGRESS SQUARE</del> <sup>L.P.M.A. CAFE</sup> <span style="float: right;">Zip: 04101</span>                            |
| If new, what was formerly at this location: | <del>NEW</del> EXISTING BUSINESS                                                                                               |
| Mailing Address:                            | 275 MAIN STREET YARMOUTH ME <span style="float: right;">Zip: 04096</span>                                                      |
| Contact Person:                             | AMY COLLINS <span style="float: right;">Phone: 207 761-6665</span>                                                             |
| Contact Person Email:                       | AMYCOLLINS@THEBLACKTIECO.COM                                                                                                   |
| Manager of Establishment:                   | AMY COLLINS - <span style="float: right;">Date of Birth: 5.12.81</span> <span style="float: right;">Phone: 207 761-6665</span> |
| Owner of Premises (Landlord):               | PORTLAND MUSEUM OF ART                                                                                                         |
| Address of Premises Owner:                  | 7 CONGRESS SQUARE PORTLAND ME <span style="float: right;">Zip: 04101</span>                                                    |

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

| Name of Owner(s) | Date of Birth | Residence Address |
|------------------|---------------|-------------------|
|                  |               |                   |
|                  |               |                   |

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

| Corporate Name BLACK TIE INC |             | Corporate Mailing Address                                                 |                                  |
|------------------------------|-------------|---------------------------------------------------------------------------|----------------------------------|
| BLACK TIE INC                |             | 275 MAIN STREET YARMOUTH ME <span style="float: right;">Zip: 04096</span> |                                  |
| Contact Person:              | AMY COLLINS | Phone:                                                                    | 207 761-6665                     |
| Principal Officers           | Title       | Date of Birth                                                             | Residence Address                |
| Christine Weber              | Pres        | 5.20.54                                                                   | 84 South Freeport Rd Freeport ME |
| Amy Collins                  | VP          | 5.12.81                                                                   | 275 MAIN STREET YARMOUTH ME      |
|                              |             |                                                                           |                                  |
|                              |             |                                                                           |                                  |

# About Your Establishment

|                                        |                                                          |                                    |
|----------------------------------------|----------------------------------------------------------|------------------------------------|
| Class of Liquor License:               | <del>Class A</del> <u>Class F FSE</u>                    |                                    |
| Type of food served:                   | <u>CASUAL LIGHT SOUP/SALAD/SANDWICH</u>                  |                                    |
| Please circle all that will be served: | <u>Beer</u> <u>Wine</u> <u>Liquor</u>                    |                                    |
| Projected percentage of sales:         | Generated from Food: <u>80%</u>                          | Generated from Alcohol: <u>20%</u> |
| Hours & days of operation:             | <u>M-W 10-6</u><br><u>Th-F 10-8</u><br><u>S/Sun 10-6</u> |                                    |

| QUESTIONS                                                                                                                                                      | Y/N         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?                            | <u>N</u>    |
| If No, please explain: <u>TAKE OUT CONTAINERS WILL BE USED AS WELL</u>                                                                                         |             |
| Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?                                            | <u>Y(N)</u> |
| If yes, give the distance:                                                                                                                                     |             |
| Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)                                     | <u>Y(N)</u> |
| Will you permit dancing on the premises?                                                                                                                       | <u>Y(N)</u> |
| Will you permit dancing after 1:00 a.m.?                                                                                                                       | <u>Y(N)</u> |
| Will you have outside dining? (If yes, an Outdoor Dining Application is required)                                                                              | <u>N</u>    |
| If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one). <u>N/A</u>                                                                      | <u>N/A</u>  |
| Will you have any amusement devices (pinball, video games, juke box)?                                                                                          | <u>Y(N)</u> |
| If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____                                                               |             |
| What is your targeted opening date? <u>OCTOBER 1, 2017</u>                                                                                                     |             |
| Does the issuance of this license directly or indirectly benefit any City employee(s)?                                                                         | <u>Y(N)</u> |
| 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?                                 | <u>Y(N)</u> |
| If Yes, please list business name(s) and location(s): <u>BLACK TIE CATERING/156 STATE STREET PORTLAND</u> <u>UNION KITCHEN/ONE UNION WHARF</u> <u>PORTLAND</u> |             |
| Is any principal officer under the age of 21?                                                                                                                  | <u>Y(N)</u> |
| Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?                               | <u>Y(N)</u> |
| If Yes, please explain:                                                                                                                                        |             |

I Chinsne Webb 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 President Date 8/24/17

For more information about Liquor Licenses, see Portland City Code Chapter 15 at [www.portlandmaine.gov](http://www.portlandmaine.gov) and M.R.S.A. Title 28-A at [www.maine.gov](http://www.maine.gov).

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department

Michael A. Russell, MS, Director

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

[www.portlandmaine.gov](http://www.portlandmaine.gov)

### Supplemental Application for Dancing and Entertainment License

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

|                                                                          |                                                            |                                                                |
|--------------------------------------------------------------------------|------------------------------------------------------------|----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Entertainment without Dancing: \$281 | <input type="checkbox"/> Entertainment with Dancing: \$504 | <input type="checkbox"/> After-Hours (1 a.m. to 3 a.m.): \$567 |
|--------------------------------------------------------------------------|------------------------------------------------------------|----------------------------------------------------------------|

|                        |                                       |
|------------------------|---------------------------------------|
| Business Information   |                                       |
| Business Name (d/b/a): | The BLACK TIE COMPANY AT THE PMA CAFE |
| Location Address:      | 7 Congress Sq. Portland ME 04101      |

#### About Your Establishment.

|                                                                                                                                                  |                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Describe in detail the type and nature of the business and proposed entertainment:                                                               |                  |
| CAFE and catering - occasional live music + Pandora RADIO                                                                                        |                  |
| Will music be <u>electric</u> , <u>acoustical</u> , or both? (Circle)                                                                            |                  |
| Will amplification be used?                                                                                                                      | Y/N              |
| If yes, where and at what level?                                                                                                                 | MINIMAL          |
| Will music be played (Circle all that apply):                                                                                                    |                  |
| <u>Inside</u> Outside                                                                                                                            |                  |
| Will you permit dancing on the premises?                                                                                                         | Y/N              |
| Will you permit dancing after 1:00 a.m.?                                                                                                         | Y/N              |
| What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? | 200 feet or more |
| What is your targeted opening date?                                                                                                              | OCTOBER 1, 2017  |
| 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):                                                                                           |                  |

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

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

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

Signature [Signature] Title President Date 8/24/17

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at [www.portlandmaine.gov](http://www.portlandmaine.gov)

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

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

NEW application: ☒ Yes ☐ No

PRESENT LICENSE EXPIRES \_\_\_\_\_

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ VINOUS ☒ SPIRITUOUS

INDICATE TYPE OF LICENSE:

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

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

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

|                                                              |                    |                          |                                                              |                    |                          |
|--------------------------------------------------------------|--------------------|--------------------------|--------------------------------------------------------------|--------------------|--------------------------|
| Corporation Name:<br><b>BLACK TIE INC.</b>                   |                    |                          | Business Name (D/B/A)<br><b>The BLACK TIE COMPANY AT PMA</b> |                    |                          |
| APPLICANT(S) -(Sole Proprietor) DOB:                         |                    |                          | Physical Location:<br><b>7 Congress Square</b>               |                    |                          |
| DOB:                                                         |                    |                          | City/Town<br><b>PORTLAND</b>                                 | State<br><b>ME</b> | Zip Code<br><b>04101</b> |
| Address<br><b>275 MAIN STREET</b>                            |                    |                          | Mailing Address<br><b>275 MAIN STREET</b>                    |                    |                          |
| City/Town<br><b>YARMOUTH</b>                                 | State<br><b>ME</b> | Zip Code<br><b>04096</b> | City/Town<br><b>YARMOUTH</b>                                 | State<br><b>ME</b> | Zip Code<br><b>04096</b> |
| Telephone Number<br><b>207-761-6665</b>                      |                    | Fax Number               | Business Telephone Number<br><b>207-761-6665</b>             |                    | Fax Number               |
| Federal ID #<br><b>01-044597</b>                             |                    |                          | Seller Certificate #:<br>or Sales Tax # <b>1186905</b>       |                    |                          |
| Email Address:<br>Please Print <b>info@theblacktieco.com</b> |                    |                          | Website:<br><b>www.theblacktieco.com</b>                     |                    |                          |

If business is NEW or under new ownership, indicate starting date: **OCT 1 2017**

Requested inspection date: **SEPT 26** Business hours: **11-5**

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

4. State amount of gross income from period of last license: ROOMS \$ \_\_\_\_\_ FOOD \$ \_\_\_\_\_ LIQUOR \$ \_\_\_\_\_

5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

If YES, complete Supplementary Questionnaire

6. Do you permit dancing or entertainment on the licensed premises? YES ☒ NO ☐

7. If manager is to be employed, give name: **AMY COLLINS**

9. Business records are located at: **156 STATE STREET PORTLAND MAINE**

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

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

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

| Name in Full (Print Clearly) | DOB     | Place of Birth |
|------------------------------|---------|----------------|
| CHRISTINE D. WEBER           | 5.20.54 | NY / NY        |
| AMY COLLINS                  | 5.12.81 | NY / NY        |

Residence address on all of the above for previous 5 years (Limit answer to city & state)  
SO. FREEPORT MAINE  
YARMOUTH MAINE

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

Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_  
Offense: \_\_\_\_\_ Location: \_\_\_\_\_  
Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes ☐ No ☒ If Yes, give name: \_\_\_\_\_

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

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

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

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES ☐ NO ☐ Applied for: 8/21/17

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1 mile Which of the above is nearest? Church

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

If YES, give details: \_\_\_\_\_

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

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

Dated at: Portland on 8/25, 2017  
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

CHRISTINE D. WEBER  
Print Name

Signature of Applicant or Corporate Officer(s)

Print Name



## NOTICE - SPECIAL ATTENTION

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

THIS APPROVAL EXPIRES IN 60 DAYS.

### FEE SCHEDULE

|                                                                                                                                                                                                                                        |            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| FILING FEE: (must be included on all applications) .....                                                                                                                                                                               | \$ 10.00   |
| Class I Spirituous, Vinous and Malt .....                                                                                                                                                                                              | \$ 900.00  |
| CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.                           |            |
| Class I-A Spirituous, Vinous and Malt, Optional Food (Hotels Only) .....                                                                                                                                                               | \$1,100.00 |
| CLASS I-A: Hotels only that do not serve three meals a day.                                                                                                                                                                            |            |
| Class II Spirituous Only .....                                                                                                                                                                                                         | \$ 550.00  |
| CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.                                               |            |
| Class III Vinous Only .....                                                                                                                                                                                                            | \$ 220.00  |
| CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts. |            |
| Class IV Malt Liquor Only .....                                                                                                                                                                                                        | \$ 220.00  |
| CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.  |            |
| Class V Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts) .....                                                                                                                                                   | \$ 495.00  |
| CLASS V: Clubs without catering privileges.                                                                                                                                                                                            |            |
| Class X Spirituous, Vinous and Malt - Class A Lounge .....                                                                                                                                                                             | \$2,200.00 |
| CLASS X: Class A Lounge                                                                                                                                                                                                                |            |
| Class XI Spirituous, Vinous and Malt - Restaurant Lounge .....                                                                                                                                                                         | \$1,500.00 |
| CLASS XI: Restaurant/Lounge; and OTB.                                                                                                                                                                                                  |            |

UNORGANIZED TERRITORIES \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.

All fees must accompany application, made payable to the Treasurer of Maine. This application must be completed and mailed to Bureau of Alcoholic Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Station, Augusta ME 04333-0008. Payments by check subject to penalty provided by Title 28A, MRS, Section 3-B.



State of Maine  
Division of Alcoholic Beverages and  
Lottery Operations  
Division of Liquor Licensing and Enforcement

Corporate Information Required for  
Business Entities Who Are Licensees

For Office Use Only:

License #: \_\_\_\_\_

SOS Checked: \_\_\_\_\_

100% Yes ☐ No ☐

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

- Exact legal name: BLACK TIE INC.
- Doing Business As, if any: THE BLACK TIE COMPANY AT THE PORTLAND MUSEUM OF ART
- Date of filing with Secretary of State: 1988 State in which you are formed: MAINE
- If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: \_\_\_\_\_
- List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

| NAME            | ADDRESS (5 YEARS)                    | Date of Birth | TITLE | Ownership % |
|-----------------|--------------------------------------|---------------|-------|-------------|
| Christine Weber | Freeport me<br>84 South Freeport Rd. | 5.20.54       | Pres  | 94 %        |
| Amy Collins     | Yarmouth me<br>275 MAIN STREET       | 5.12.81       | VP    | 6/0         |
|                 |                                      |               |       |             |
|                 |                                      |               |       |             |

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

- If Co-Op # of members: \_\_\_\_\_ (list primary officers in the above boxes)

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

Yes ☐ No ☒ If Yes, Name: \_\_\_\_\_ Agency: \_\_\_\_\_

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

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

Name: \_\_\_\_\_

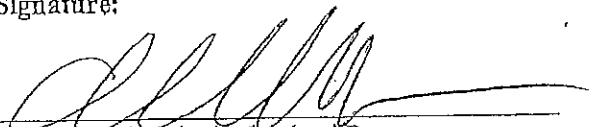
Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_

Location of Conviction: \_\_\_\_\_

Disposition: \_\_\_\_\_

Signature:

  
Signature of Duly Authorized Person

Date

8/24/17

CHRISTINE WEBER  
Print Name of Duly Authorized Person

Submit Completed Forms To:

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

Bureau of Alcoholic Beverages and Lottery Operations  
Division of Liquor Licensing & Enforcement  
8 State House Station, Augusta, ME 04333-0008  
10 Water Street, Hallowell, ME 04347  
Tel: (207) 624-7220 Fax: (207) 287-3434  
Email Inquiries: [MaineLiquor@maine.gov](mailto:MaineLiquor@maine.gov)

| DIVISION USE ONLY        |              |
|--------------------------|--------------|
| <input type="checkbox"/> | Approved     |
| <input type="checkbox"/> | Not Approved |
| BY:                      |              |

### ON PREMISE DIAGRAM

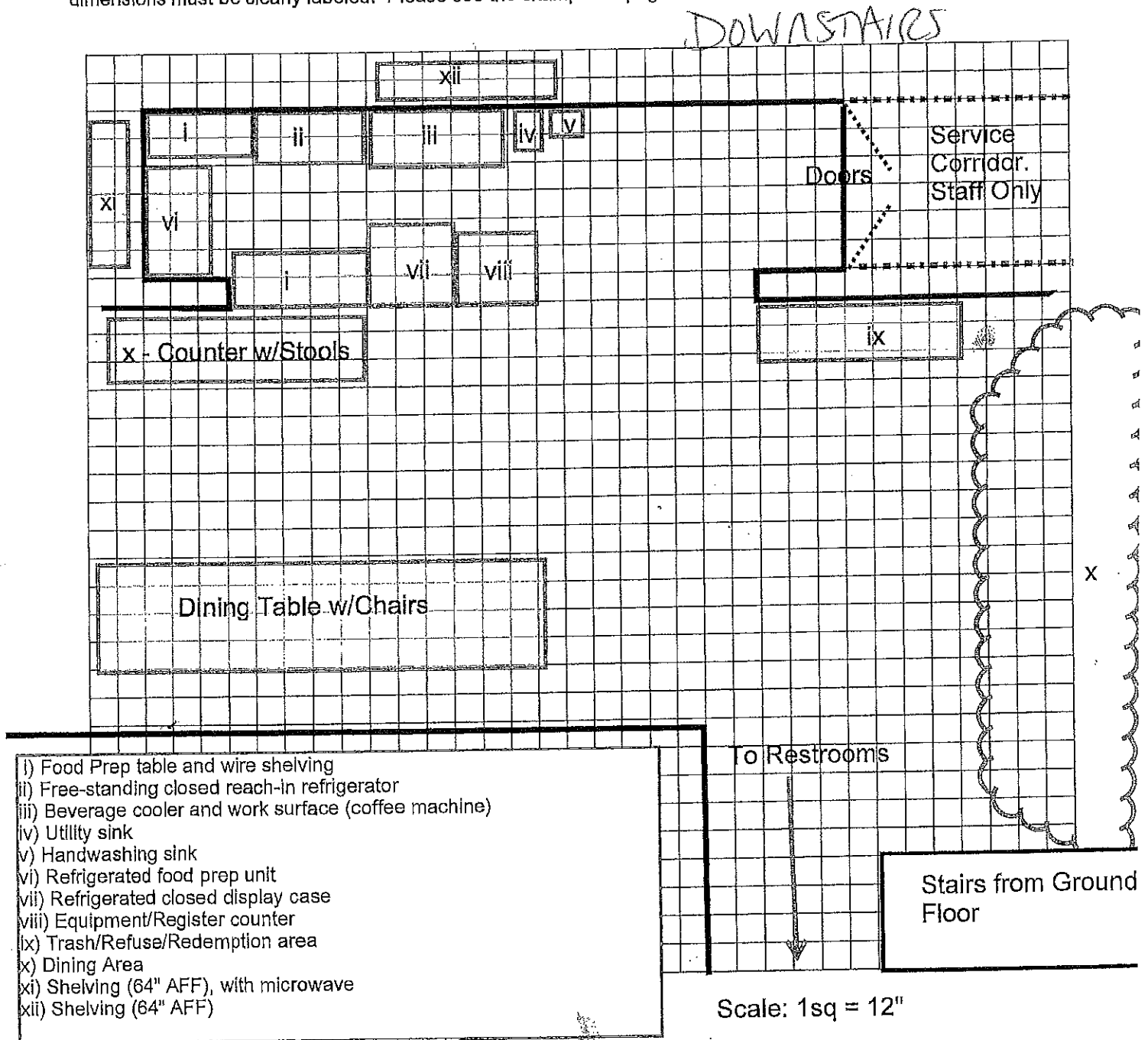
In an effort to clearly define your license premise and the area that consumption and storage of liquor is allowed. The Division requires all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, restrooms, function rooms, decks and all areas that you are requesting approval from the Division for liquor consumption.

See Attached  
DIAGRAMS

## 9. Kitchen or Food Preparation Area Plan:

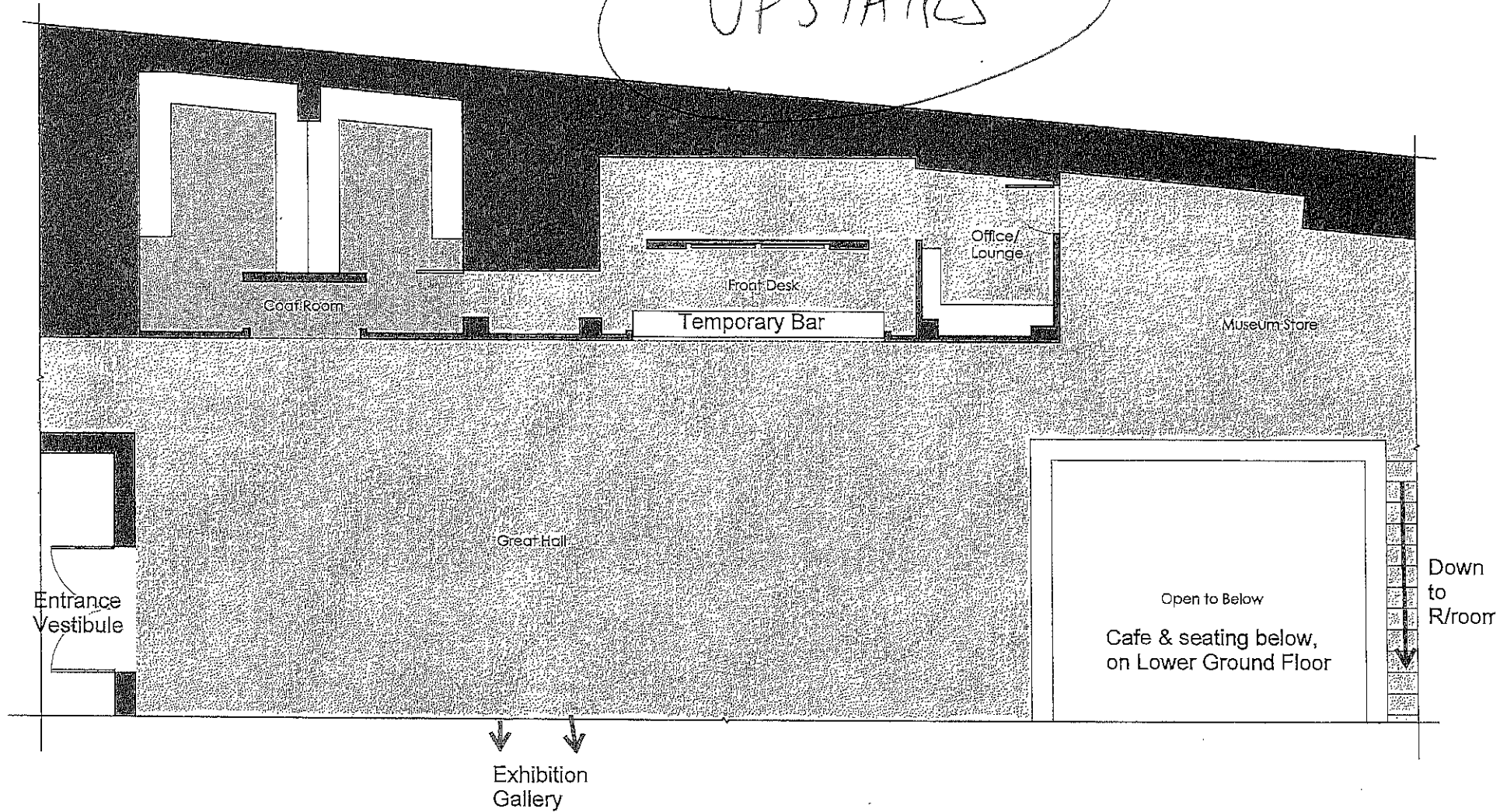
Use this grid or a separate sheet of graph paper to draw a floor plan, or provide a floor plan prepared by a knowledgeable party, for eating place food preparation area(s)/kitchen(s). If the plan is not drawn to scale, the dimensions must be clearly labeled. Please see the example on page 11.



| Sinks:          | Toilet Facilities: | Refrigeration:           | Facilities:                        |
|-----------------|--------------------|--------------------------|------------------------------------|
| 1. Hand Washing | 1. Water Closets   | 1. Walk-in Coolers       | 1. Food Preparation Areas          |
| 2. Ware Washing | 2. Lavatories      | 2. Walk-in Freezers      | 2. Food Storage Areas              |
| 3. Utility      | 3. Urinals         | 3. Freestanding Coolers  | 3. Trash/Refuse/Redemption Areas   |
| 4. Food Prep    | 4. Other           | 4. Freestanding Freezers | 4. Dining Areas                    |
| 5. Dipper Wells |                    | 5. Ice Maker             | 5. Equipment/Counters/Seats/Tables |
| 6. Other        |                    | 6. Other                 | 6. Dry Storage/All Other Storage   |

Portland Museum of Art  
Charles Shipman Payson building  
Ground Floor  
Great Hall

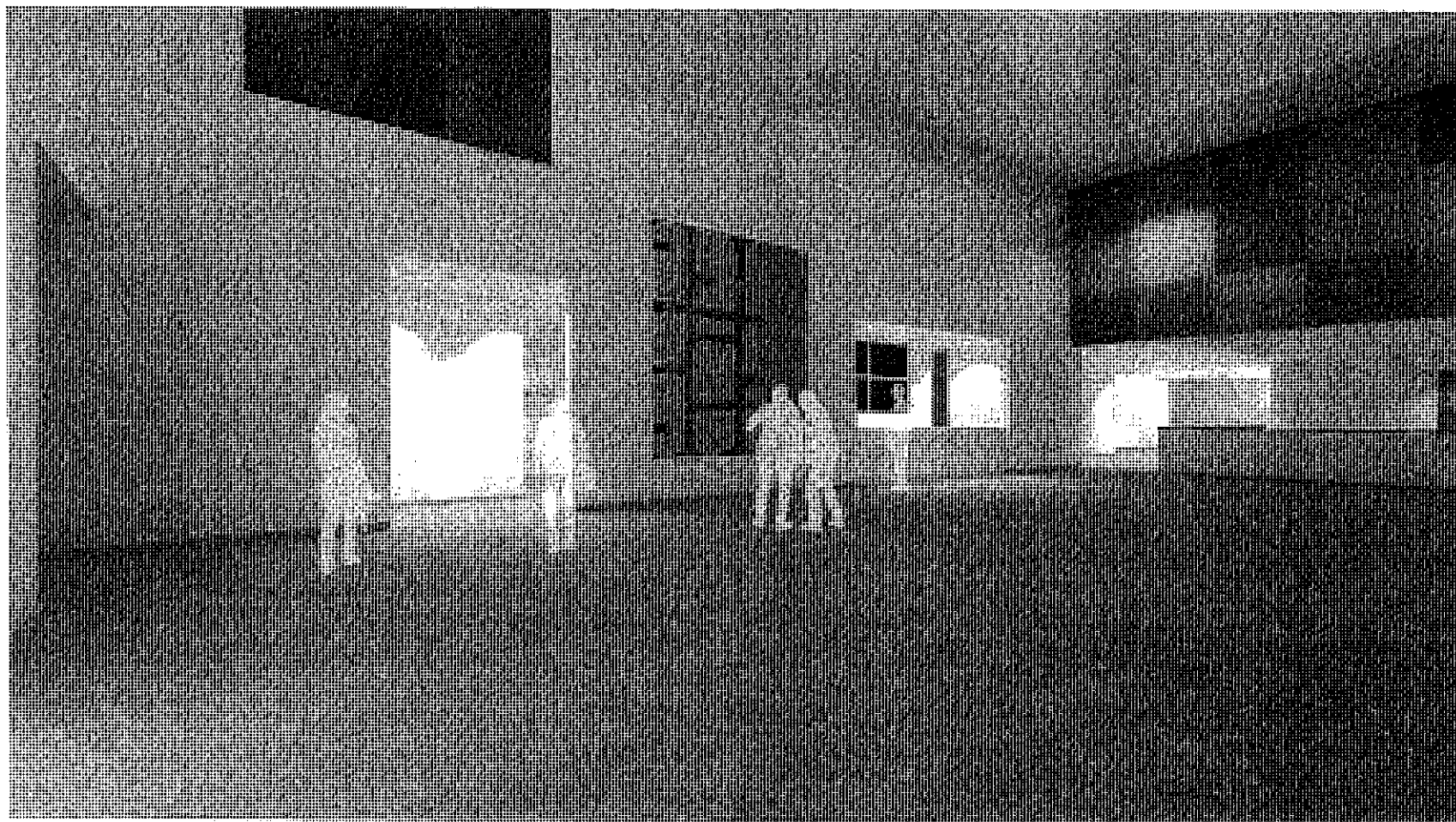
UPSTAIRS



PORTLAND MUSEUM of ART  
Portland, Maine

Scale: 1/4" = 2'

Portland Museum of Art  
Charles Shipman Payson building  
Ground Floor  
Great Hall



# **portland museum of art café**

## **sample menu ideas**

### **sweets**

---

raspberry blondies 3

classic cookies 3

chocolate chip walnut • oatmeal raisin • triple chocolate

macarons 3

pumpkin ginger whoopie pies 4

pie of the day 5

homemade toasted pop tarts 4

always black tie cupcakes 3

fresh fruit • chips • homemade granola bars • and more always available

whipped cream and ice cream available for additional 1/2.5

### **beverages**

---

iced nitro brew coffee • iced and hot coffees • teas • full espresso bar provided  
by coffee by design 3-5.5 • maine root handcrafted sodas • green bee sodas •  
poland spring • traditional brand drinks 2-4

full licensed and insured bar service providing locally brewed  
micro beer plus national and global favorites • maine grown and produced  
premier wines plus national and global favorites 6-12

**the  
black tie  
company**

cocktails available for evening events when café is  
operating • local distilleries offered plus  
national and global favorites 6-12



# **portland museum of art café**

sample menu ideas

## **starters and small plates**

---

greek yogurt parfait • house-made granola • greek yogurt • fresh fruit •  
drizzle of mead's honey 6.5

artisan cheese plate • chef choice of 3 cheeses accompanied with fig jam  
• dried fruit • candied nuts • honey • crostini • grilled bread or crackers •  
for one 12.5 • for two 19.5

mediterranean plate • hummus • grilled vegetable tapenade • marinated olives  
• feta • house flatbread • rustic bread • for one 12.5 • for two 19.5

local ricotta • fig jam • crostini 6.5

smoked salmon rillettes • pickled shallots • whole grain mustard • crostini 12.5

## **soups**

---

served with house biscuit or cornbread

yellow and golden gazpacho 4.5/6.5

maine haddock chowder 5.5/6.5

spicy corn and crab chowder 5.5/6.5

chilled lemon basil avocado 5.5/6.5

kale, tomato and white bean 4.5/6.5

the  
**black tie**  
company

# portland museum of art café

sample menu ideas

## grain bowls

---

quinoa bowl • chicken • avocado cream • black beans • corn • pepitas • sour cream •  
tortilla • lime 12.5

teriyaki-scallion salmon wild rice • blended with chopped fresh spinach asparagus  
• red onions • wasabi peas • mint • coriander • lemon vinaigrette 14.5

## salads

---

*served with house biscuit or cornbread*

golden beet salad • citrus • radish • field greens • pine nuts • blue cheese 10

mixed greens salad • apple • cranberry • pepitas • cider vinaigrette 7

classic cobb salad • bacon • corn • avocado • blue cheese • tomato • grilled chicken 10

panzanella salad • grilled crostini • summer tomato • ricotta 8

classic caesar salad 7

with grilled chicken 10

with grilled salmon 13

the  
black tie  
company

# portland museum of art café

sample menu ideas

## sandwiches

---

*served with vintage maine kitchen potato chips*

heirloom blt 7.5 • thick-sliced pecan-smoked bacon • heirloom tomatoes •  
house-made garlic aioli • baby butter lettuce • toasted sourdough bread

pma café chicken salad 8.5 • toasted pecans • green grapes • celery • mayo • red onions •  
lettuce • tomato • brioche bun

smoked pork bahn mi 8.5 • chilled marinated vegetables • cucumber • shredded lettuce •  
fresh herbs • sweet chili mayo • baguette

turkey & melted brie 8.5 • sliced granny smith apples • chipotle mayonnaise • whole grain

white bean hummus veggie wrap 7.5 • tomato • roasted red bell pepper • grilled onions •  
pepitas • smoked gouda • romaine • chipotle tortilla

**look for our daily half sandwich with soup or salad special**

## for kids

---

*served with vintage maine kitchen potato chips*

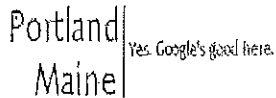
grilled cheese 5

grilled chicken fingers 6

pb&j 5

mac & cheese 6

the  
black tie  
company



Jessica Hanscombe &lt;jhanscombe@portlandmaine.gov&gt;

---

**Re: The Black Tie Company at the PMA Cafe**

---

**Kevin Cashman** <kevindc@portlandmaine.gov>

Mon, Aug 28, 2017 at 2:49 PM

To: Jessica Hanscombe &lt;jhanscombe@portlandmaine.gov&gt;

Cc: David Petruccelli &lt;petruccellid@portlandmaine.gov&gt;, Eric Cobb &lt;ecobb@portlandmaine.gov&gt;, James Sweatt &lt;jjs@portlandmaine.gov&gt;, John Brennan &lt;brennanj@portlandmaine.gov&gt;, Keith Gautreau &lt;kng@portlandmaine.gov&gt;, Laurie Carlson &lt;lac@portlandmaine.gov&gt;, Tom Williams &lt;tw@portlandmaine.gov&gt;, Treasury Division &lt;treasury@portlandmaine.gov&gt;, Vernon Malloch &lt;vwm@portlandmaine.gov&gt;

PD has no issues.

Kevin C.

On Mon, Aug 28, 2017 at 11:16 AM, Jessica Hanscombe &lt;jhanscombe@portlandmaine.gov&gt; wrote:

Good Morning

Please see the attached application for The Black Tie Company at the PMA Cafe, 7 Congress Square. This is for a Class I FSE with Entertainment without Dance. This will be going before Council on 9/18/2017.

This is a change of ownership of an existing business. (Aurora Provisions)

Owner is  
Black Tie IncContact is  
Amy Collins  
207-761-6665  
amycollins@theblacktieco.com

The information has been added to UI for approvals. Thanks Jessica

Jessica Blais Hanscombe  
Licensing and Registration Coordinator  
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)



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

JESSICA HANSCOMBE  
389 CONGRESS STREET  
PORTLAND, ME 04101

Transaction Response #: MIQ99D334529

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2017-08-28 ) :

Inquiries Name(s) CHRISTINE WEBER (1954-05-20)

**NO MATCH WAS FOUND FOR YOUR REQUEST.**



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

JESSICA HANSCOMBE  
389 CONGRESS STREET  
PORTLAND, ME 04101

Transaction Response #: MIQ99D334527

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2017-08-28 ) :

Inquiries Name(s) AMY COLLINS (1981-05-12)

**NO MATCH WAS FOUND FOR YOUR REQUEST.**

Portland, Maine



Yes. Life's good here.

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

August 28, 2017

Black Tie Inc  
275 Main Street  
Yarmouth ME 04096

**Re: Black Tie Inc. DBA The Black Tie Company at the PMA Café. Application for a Class I FSE with Entertainment without Dance at 7 Congress Square.**

Dear Ms. Collins,

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday September 18, 2017 at 5:30 p.m.**, for the review of an application for a Class I FSE with Entertainment without Dance at 7 Congress Square. The meeting will take place in Council Chambers on the 2<sup>nd</sup> 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 item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or [jhanscombe@portlandmaine.gov](mailto:jhanscombe@portlandmaine.gov).

Sincerely,

  
Jessica Hanscombe  
Licensing and Registration Coordinator

## **Legal Advertisement**

### **Notice of Public Hearing City of Portland**

A Public Hearing will be held on September 18th at 5:30 P.M., in City Council Chambers, 389 Congress St., Black Tie Inc. DBA The Black Tie Company at the PMA Café. Application for a Class I FSE with Entertainment without Dance at 7 Congress Square. Sponsored by Michael Russell, Director of Permitting and Inspections.



*Order 54-17/18  
Tab 9 9-18-17*

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

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

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

ORDER  
GRANTING MUNICIPAL OFFICERS'  
APPROVAL OF:

**The Lizotte Group DBA The Drink Exchange. Application for a Class A Lounge with  
Outdoor Dining on Public Property at 43 Wharf Street.**

# THE DRINK EXCHANGE

The Lizotte Group, LLC  
43 Wharf Street  
Portland, Maine 04101

8/28/2017

City of Portland  
389 Congress Street  
Portland, Maine 04101

Dear Mayor Ethan Strimling and Members of the City Council:

I, Mike Lizotte, would like to apply for a liquor license for The Lizotte Group, LLC.

The Lizotte Group, LLC, owned by Mike Lizotte is applying for a liquor license for the property at 43 Wharf Street, currently the Drink Exchange. The intent for the property is to continue to provide a safe venue that showcases a Stock Market themed establishment for the enjoyment of both locals and visitors which will add to the culture and ambience of the City of Portland.

Sincerely,

Mike Lizotte

| Drink      | Price  | Change      | Previous Price | Daily High | Daily Low | Sold |
|------------|--------|-------------|----------------|------------|-----------|------|
| LEMON DROP | \$6.25 | .25 (3.25%) | \$6.50         | \$7.00     | \$1.00    | 429  |
| MOJITO     | \$5.00 | nc (.00%)   | \$5.00         | \$5.00     | \$5.00    | 55   |
| BUDWEISER  | \$5.50 | .25 (4.35%) | \$5.75         | \$7.00     | \$2.00    | 266  |
| COORS LITE | \$3.00 | .25 (9.09%) | \$2.75         | \$7.00     | \$2.00    | 247  |
| BUD LIGHT  | \$2.00 | nc (.00%)   | \$2.00         | \$6.00     | \$2.00    | 219  |
| HEINEKEN   | \$4.50 | .25 (5.26%) | \$4.75         | \$7.00     | \$2.00    | 245  |
| GUINNESS   | \$2.00 | nc (.00%)   | \$2.00         | \$5.25     | \$2.00    | 217  |
| TEQUILA    | \$2.00 | nc (.00%)   | \$2.00         | \$6.00     | \$2.00    | 202  |
| RUM WELL   | \$2.00 | nc (.00%)   | \$2.00         | \$7.00     | \$2.00    | 181  |
| RUM TOP    | \$5.00 | .25 (4.76%) | \$5.25         | \$5.75     | \$3.00    | 132  |
| VODKA WELL | \$4.75 | .25 (5.56%) | \$4.50         | \$6.00     | \$2.00    | 178  |

CHAMPAGNE \$3.25 ▼ 0.25 RUM COKE \$2.00 NC VODKA 25 - 0.50 WINE \$3.75 0.25 JAGER \$3.00 0.25 S&B

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department  
 Michael A. Russell, MS, Director  
 389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557  
[www.portlandmaine.gov](http://www.portlandmaine.gov)

**Application for Food Service Establishment with Alcoholic Beverages License**

|                                             |                                                           |
|---------------------------------------------|-----------------------------------------------------------|
| <b>Business Information</b>                 |                                                           |
| Business Name (d/b/a):                      | the drink exchange Phone: 1877 653-7678                   |
| Location Address:                           | 43 wharf st Portland ME Zip: 04101                        |
| If new, what was formerly at this location: |                                                           |
| Mailing Address:                            | 149 Baker Rd Freeport ME Zip: 04032                       |
| Contact Person:                             | Mike Lizotte Phone: 207-754-7151                          |
| Contact Person Email:                       | Lizotte14@yahoo.com                                       |
| Manager of Establishment:                   | Mike Lizotte Date of Birth: 8/30/1982 Phone: 207-754-7151 |
| Owner of Premises (Landlord):               | Terrapin Properties LLC                                   |
| Address of Premises Owner:                  | 4 milk st Ste 103 Portland ME Zip: 04101                  |

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

| Name of Owner(s) | Date of Birth | Residence Address              |
|------------------|---------------|--------------------------------|
| Mike Lizotte     | 8/30/1982     | 149 Baker Rd Freeport ME 04032 |
|                  |               |                                |

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

|                           |              |                                  |                                |
|---------------------------|--------------|----------------------------------|--------------------------------|
| <b>Corporate Name</b>     |              | <b>Corporate Mailing Address</b> |                                |
| the Lizotte Group         |              | 149 Baker Rd Freeport ME 04032   |                                |
| Contact Person:           | Mike Lizotte | Phone:                           | 207-754-7151                   |
| <b>Principal Officers</b> | <b>Title</b> | <b>Date of Birth</b>             | <b>Residence Address</b>       |
| Mike Lizotte              | CEO          | 8/30/1982                        | 149 Baker Rd Freeport ME 04032 |
|                           |              |                                  |                                |
|                           |              |                                  |                                |
|                           |              |                                  |                                |

### About Your Establishment

|                                        |                                                                                                                              |                             |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Class of Liquor License:               | Class <del>A</del> Large                                                                                                     |                             |
| Type of food served:                   | Bar food                                                                                                                     |                             |
| Please circle all that will be served: | <input checked="" type="checkbox"/> Beer <input checked="" type="checkbox"/> Wine <input checked="" type="checkbox"/> Liquor |                             |
| Projected percentage of sales:         | Generated from Food: 10%                                                                                                     | Generated from Alcohol: 90% |
| Hours & days of operation:             | Thurs, Fri, Sat: 3PM to 1 AM                                                                                                 |                             |

#### QUESTIONS

|                                                                                                                                     |                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open? | Y/N<br><input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N |
| If No, please explain: Bar food / Finger food.                                                                                      |                                                                                    |
| Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?                 | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| If yes, give the distance:                                                                                                          |                                                                                    |
| Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)          | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| Will you permit dancing on the premises?                                                                                            | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| Will you permit dancing after 1:00 a.m.?                                                                                            | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| Will you have outside dining? (If yes, an Outdoor Dining Application is required)                                                   | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> 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)?                                                               | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| If yes, please list: # of pinball machines: 0 # of amusements: 1 # of pool tables: 0                                                |                                                                                    |
| What is your targeted opening date?                                                                                                 |                                                                                    |
| Does the Issuance of this license directly or indirectly benefit any City employee(s)?                                              | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> 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?      | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| If Yes, please list business name(s) and location(s):                                                                               |                                                                                    |
| Is any principal officer under the age of 21?                                                                                       | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?    | <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N        |
| If Yes, please explain:                                                                                                             |                                                                                    |

I, Mike Lizotte 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 Mike Lizotte Title CEO Date 8/28/17

For more information about Liquor Licenses, see Portland City Code Chapter 15 at [www.portlandmaine.gov](http://www.portlandmaine.gov) and  
M.R.S.A. Title 28-A at [www.maine.gov](http://www.maine.gov).

Portland, Maine



Yes. Life's good here.

Permitting and Inspections Department  
 Michael A. Russell, MS, Director  
 389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557  
[www.portlandmaine.gov](http://www.portlandmaine.gov)

**Outdoor Dining Permit on Public Property  
 Supplemental Application**

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License  
 Valid April 1-November 15

|                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Legal Advertisement Deposit \$100.00                                                                           |
| <input type="checkbox"/> Outdoor Dining on Public Property \$80.00 plus \$2.00 per Square foot \$2.00 X <u>144</u> SF = _____           |
| <input type="checkbox"/> Outdoor Dining on Public Property in a City Park \$80.00 plus \$6.00 per Square foot \$6.00 X _____ SF = _____ |

| Business Information          |                                                                                     |
|-------------------------------|-------------------------------------------------------------------------------------|
| Business Name (d/b/a):        | <u>The Drink Exchange</u> Phone: <u>207</u> <u>754-7151</u>                         |
| Location Address:             | <u>43 Wharf St Portland Maine</u> Zip: <u>04101</u>                                 |
| Mailing Address:              | <u>149 Baker Rd Freeport me</u> Zip: <u>04032</u>                                   |
| Contact Person:               | <u>Mike Lizotte</u> Phone: <u>207</u> <u>754-7151</u>                               |
| Contact Person Email:         | <u>Lizotte14@yahoo.com</u>                                                          |
| Manager of Establishment:     | <u>Mike Lizotte</u> Date of Birth: <u>8/30/82</u> Phone: <u>207</u> <u>754-7151</u> |
| Owner of Premises (Landlord): | <u>Terrapin Properties LLC</u>                                                      |
| Address of Premises Owner:    | <u>4 Mills St Ste. 103 Portland me</u> Zip: <u>04101</u>                            |

**Owner Information**

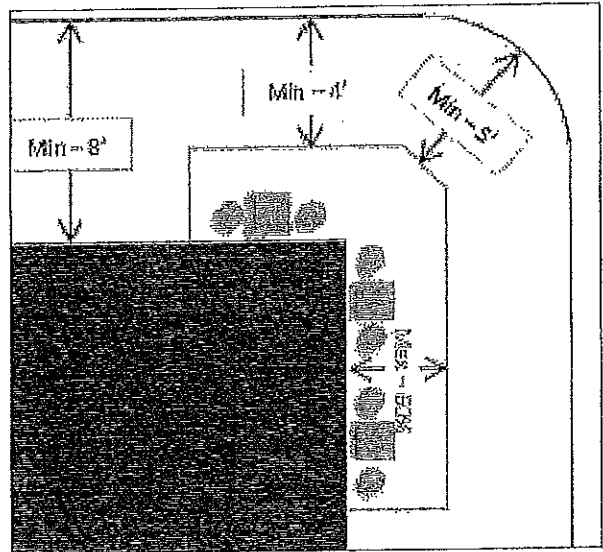
| Corporate Name           |                                 | Corporate Mailing Address |                                       |
|--------------------------|---------------------------------|---------------------------|---------------------------------------|
| <u>The Lizotte Group</u> | <u>149 Baker Rd Freeport me</u> | Zip: <u>04032</u>         |                                       |
| Contact Person:          | <u>Mike Lizotte</u>             | Phone: <u>207</u>         | <u>754-7151</u>                       |
| Principal Officers       | Title                           | Date of Birth             | Residence Address                     |
| <u>Mike Lizotte</u>      | <u>CEO</u>                      | <u>8/30/82</u>            | <u>149 Baker Rd Freeport me 04032</u> |
|                          |                                 |                           |                                       |
|                          |                                 |                           |                                       |
|                          |                                 |                           |                                       |

### About Your Establishment

|                                        |                        |
|----------------------------------------|------------------------|
| Class of License:                      | Class X                |
| Type of food served:                   | Bar Food               |
| Please circle all that will be served: | Beer Wine Liquor       |
| Hours & days of operation:             | Thurs - Sat 3pm - 1 Am |
| Number of Tables                       | 3                      |
| Number of Chairs                       | 12                     |

### Design and Construction

| Existing Sidewalk Width<br>(property line to curb) | Sidewalk Dining Allowed?     |
|----------------------------------------------------|------------------------------|
| < 8'0"                                             | No                           |
| ≥ 8'0"                                             | Yes - up to 60% of sidewalk  |
| Sidewalk Type                                      | Sidewalk Passage Width (Min) |
| Standard sidewalk                                  | 4'0"                         |
| Street corner                                      | 5'0"                         |

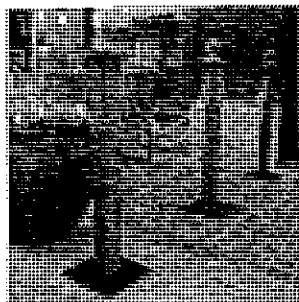
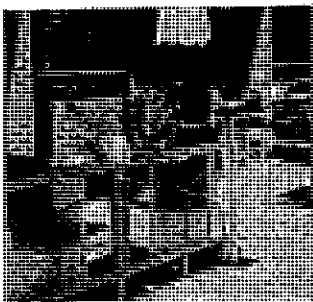


- Outdoor dining area shall not exceed 60% of the sidewalk width.
- A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes to existing straight passage is at the discretion of the City.
- Egress must be maintained free of obstruction.
- Permanent fixtures, such as awnings, require a building permit separate from the Outdoor Dining permit and subject to approval by the Building Authority.
- Umbrellas do not require a permit.
- Umbrellas must be secured and maintain the height clearance for sidewalk passage.

### Barriers

- If barriers are proposed, they must be free-standing. Physical attachments to a building are not allowed.
- Stanchions and ropes are encouraged. Sectional fencing is allowed with a high degree of visual transparency (at least 50% open). Solid or opaque barriers are not allowed.
- Shall not exceed 42" in height and may not include commercial signage.

### Example barrier types that meet regulation



## Maintenance and Operations

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- Request for the use of adjacent on street parking space for outdoor dining installations requires Parking Office and Building Authority review and approval.

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.

Signature  Title CEO Date 8/29/17

### For Administrative Use Only

|                            |                 |                         |              |
|----------------------------|-----------------|-------------------------|--------------|
| Amount: _____              |                 | Request Date / Approval | Notes: _____ |
| Date Paid: _____           | FD: _____       | _____                   | _____        |
| CC _____ CA _____ CK _____ | Health: _____   | _____                   | _____        |
|                            | PD: _____       | _____                   | _____        |
| Amount: _____              | Treasury: _____ | _____                   | _____        |
| Date Paid: _____           | Zoning: _____   | _____                   | _____        |
| CC _____ CA _____ CK _____ |                 |                         |              |



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

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

NEW application: ☒ Yes ☐ No

PRESENT LICENSE EXPIRES \_\_\_\_\_

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ VINOUS ☒ SPIRITUOUS

**INDICATE TYPE OF LICENSE:**

- |                                                         |                                                           |                                                              |
|---------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------------|
| <input type="checkbox"/> RESTAURANT (Class I,II,III,IV) | <input type="checkbox"/> RESTAURANT/LOUNGE (Class XI)     | <input checked="" type="checkbox"/> CLASS A LOUNGE (Class X) |
| <input type="checkbox"/> HOTEL (Class I,II,III,IV)      | <input type="checkbox"/> HOTEL, FOOD OPTIONAL (Class I-A) | <input type="checkbox"/> BED & BREAKFAST (Class V)           |
| <input type="checkbox"/> CLUB w/o Catering (Class V)    | <input type="checkbox"/> CLUB with CATERING (Class I)     | <input type="checkbox"/> GOLF COURSE (Class I,II,III,IV)     |
| <input type="checkbox"/> TAVERN (Class IV)              | <input type="checkbox"/> QUALIFIED CATERING               | <input type="checkbox"/> OTHER: _____                        |

**REFER TO PAGE 3 FOR FEE SCHEDULE**

**ALL QUESTIONS MUST BE ANSWERED IN FULL**

|                                                           |  |  |                                                    |  |  |
|-----------------------------------------------------------|--|--|----------------------------------------------------|--|--|
| Corporation Name:<br><u>The Lizotte Group LLC 9/30/82</u> |  |  | Business Name (D/B/A)<br><u>the drink exchange</u> |  |  |
| APPLICANT(S) --(Sole Proprietor)<br><u>Mike Lizotte</u>   |  |  | DOB:<br><u>9/30/82</u>                             |  |  |
| Address<br><u>149 Baker Rd</u>                            |  |  | Physical Location:<br><u>43 wharf st</u>           |  |  |
| City/Town<br><u>Freeport</u>                              |  |  | State<br><u>ME</u>                                 |  |  |
| Zip Code<br><u>04032</u>                                  |  |  | City/Town<br><u>Portland</u>                       |  |  |
| Telephone Number<br><u>207-754-7151</u>                   |  |  | Fax Number<br><u>207-754-7151</u>                  |  |  |
| Federal I.D. #<br><u>82-2617924</u>                       |  |  | Seller Certificate #:<br>or Sales Tax #:           |  |  |
| Email Address:<br>Please Print <u>Lizotte4@yahoo.com</u>  |  |  | Website:<br><u>www.thedrinkexchange</u>            |  |  |

If business is NEW or under new ownership, indicate starting date: 10/1/17

Requested inspection date: 9/12/17 Business hours: 8-5

- If premise is a Hotel or Bed & Breakfast, indicate number of rooms available for transient guests: \_\_\_\_\_
- State amount of gross income from period of last license: ROOMS \$ \_\_\_\_\_ FOOD \$ 25000 LIQUOR \$ 25000
- Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐  
If Yes, please complete the Corporate Information required for Business Entities who are licensees.

- Do you own or have any interest in any another Maine Liquor License? ☐ Yes ☒ No  
If yes, please list License Number, Name, and physical location of any other Maine Liquor Licenses.

(Use an additional sheet(s) if necessary.)

| License #         | Name of Business |
|-------------------|------------------|
| Physical Location | City / Town      |

5. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒
6. If manager is to be employed, give name: \_\_\_\_\_
7. Business records are located at: 149 Baker Rd Freeport me 04032
8. Is/are applicant(s) citizens of the United States? YES ☒ NO ☐
9. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐
10. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

| Name in Full (Print Clearly)                                                              | DOB     | Place of Birth |
|-------------------------------------------------------------------------------------------|---------|----------------|
| Mike Lizotte                                                                              | 8/30/52 | Maine          |
|                                                                                           |         |                |
|                                                                                           |         |                |
| Residence address on all of the above for previous 5 years (Limit answer to city & state) |         |                |
| Freeport Maine                                                                            |         |                |
| Portland Maine                                                                            |         |                |
|                                                                                           |         |                |
|                                                                                           |         |                |

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

Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_ Location: \_\_\_\_\_

Disposition: \_\_\_\_\_ (use additional sheet(s) if necessary)

12. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes ☐ No ☒ If Yes, give name: \_\_\_\_\_

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

14. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner:  
Ferran Properties LLC 4 Milk St Suite 103 Portland ME 04101

15. Describe in detail the premises to be licensed: (On Premise Diagram Required) \_\_\_\_\_

16. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES ☒ NO ☐ Applied for: \_\_\_\_\_

17. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 0.5 miles

Which of the above is nearest? School

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

If YES, give details: \_\_\_\_\_

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

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

Dated at: Portland Maine on 8/29/82, 20 12  
Town/City, State Date

[Signature]  
Signature of Applicant or Corporate Officer(s)

**Please sign in blue ink**

[Signature]  
Signature of Applicant or Corporate Officer(s)

Mike Lizotte  
Print Name

[Signature]  
Print Name

### FEE SCHEDULE

|                                                                                                                                                                                                                                                                                  |            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <b>FILING FEE:</b> (must be included on all applications)                                                                                                                                                                                                                        | \$ 10.00   |
| <b>Class I</b> Spirituous, Vinous and Malt<br><b>CLASS I:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.                | \$ 900.00  |
| <b>Class I-A</b> Spirituous, Vinous and Malt, Optional Food (Hotels Only)<br><b>CLASS I-A:</b> Hotels only that do not serve three meals a day.                                                                                                                                  | \$1,100.00 |
| <b>Class II</b> Spirituous Only<br><b>CLASS II:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.                                               | \$ 550.00  |
| <b>Class III</b> Vinous Only<br><b>CLASS III:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.    | \$ 220.00  |
| <b>Class IV</b> Malt Liquor Only<br><b>CLASS IV:</b> Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts. | \$ 220.00  |
| <b>Class V</b> Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)<br><b>CLASS V:</b> Clubs without catering privileges.                                                                                                                                      | \$ 495.00  |
| <b>Class X</b> Spirituous, Vinous and Malt – Class A Lounge<br><b>CLASS X:</b> Class A Lounge                                                                                                                                                                                    | \$2,200.00 |
| <b>Class XI</b> Spirituous, Vinous and Malt – Restaurant Lounge<br><b>CLASS XI:</b> Restaurant/Lounge; and OTB.                                                                                                                                                                  | \$1,500.00 |

**UNORGANIZED TERRITORIES** \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.



**State of Maine**  
**Bureau of Alcoholic Beverages**  
**Division of Liquor Licensing and Enforcement**

**Corporate Information Required for  
Business Entities Who Are Licensees**

**For Office Use Only:**

License #: \_\_\_\_\_

SOS Checked: \_\_\_\_\_

100% Yes ☐ No ☐

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

1. Exact legal name: the Lizotte Group LLC
2. Doing Business As, if any: the Drink exchange
3. Date of filing with Secretary of State: 8/28/17 State in which you are formed: ME
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: \_\_\_\_\_
5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

| NAME         | ADDRESS (5 YEARS)                                                     | Date of Birth | TITLE | Ownership % |
|--------------|-----------------------------------------------------------------------|---------------|-------|-------------|
| Mike Lizotte | 149 Baker Rd Fairfield ME 04032<br>42 Carnegie Lane Portland ME 04106 | 8/30/82       | CEO   | 100         |
|              |                                                                       |               |       |             |
|              |                                                                       |               |       |             |
|              |                                                                       |               |       |             |
|              |                                                                       |               |       |             |

(Ownership must equal 100% for Corporations, LLC's etc.)

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

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

Yes ☐ No ☒ If Yes, Name: \_\_\_\_\_ Agency: \_\_\_\_\_

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

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

Name: \_\_\_\_\_

Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_

Location of Conviction: \_\_\_\_\_

Disposition: \_\_\_\_\_

Signature:



Signature of Duly Authorized Person

8/28/17

Date

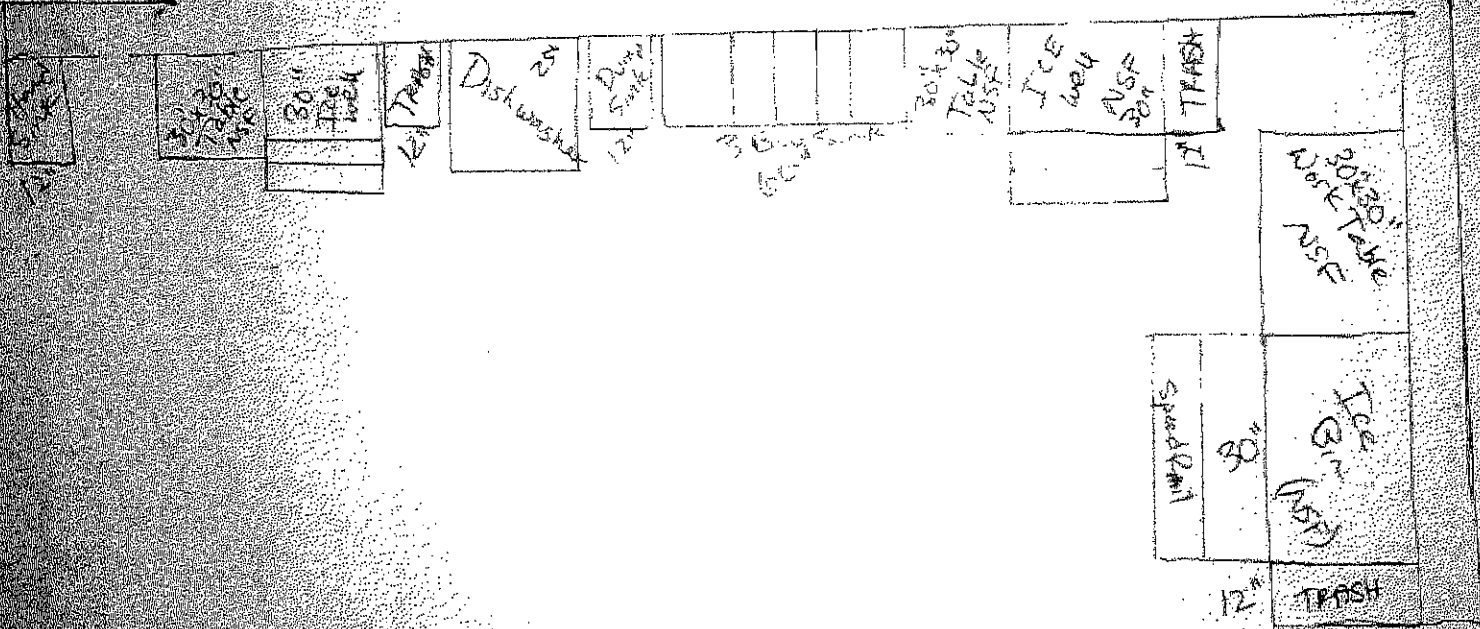
Mike Lizotte

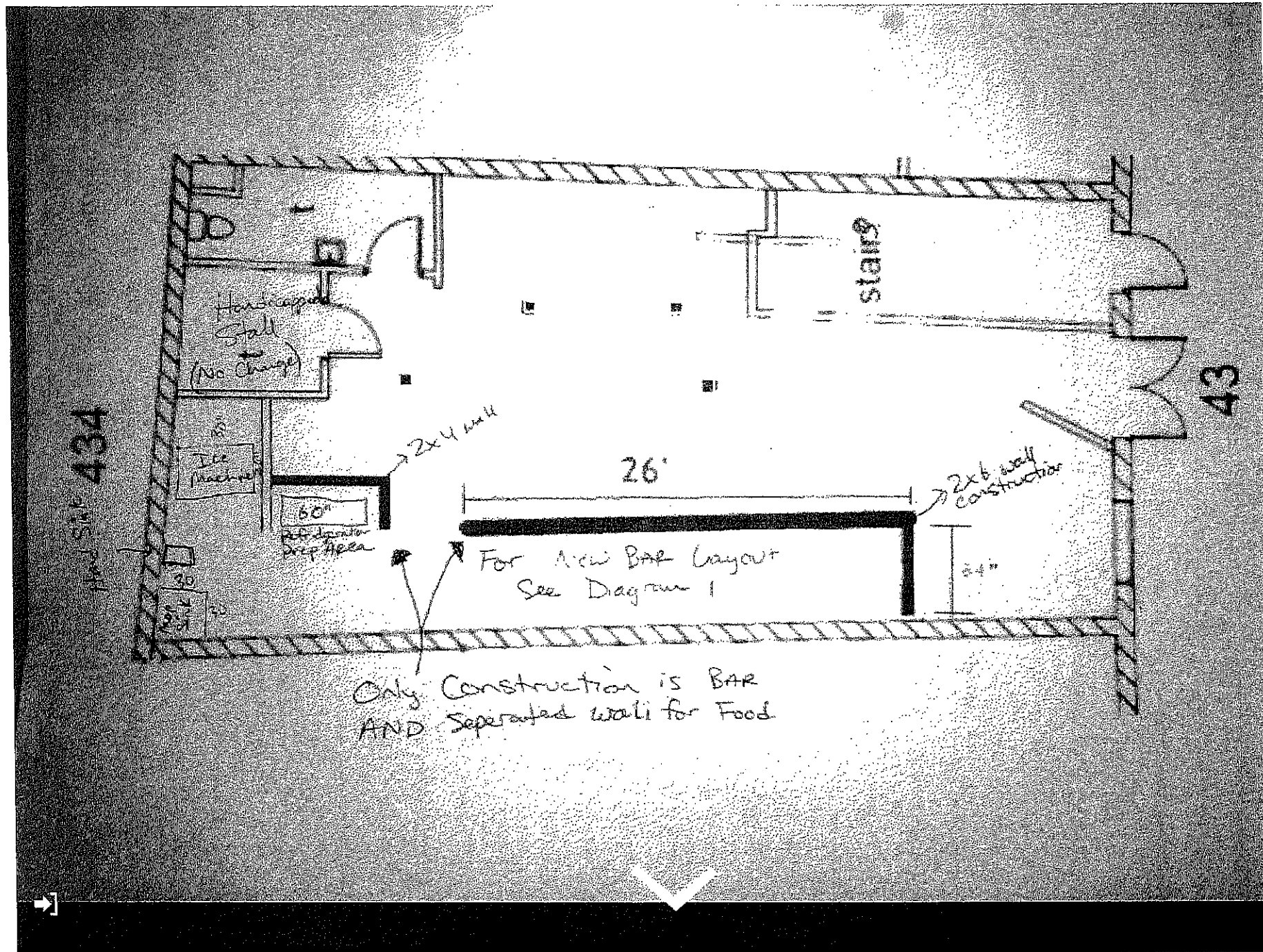
Print Name of Duly Authorized Person

Submit Completed Forms To:

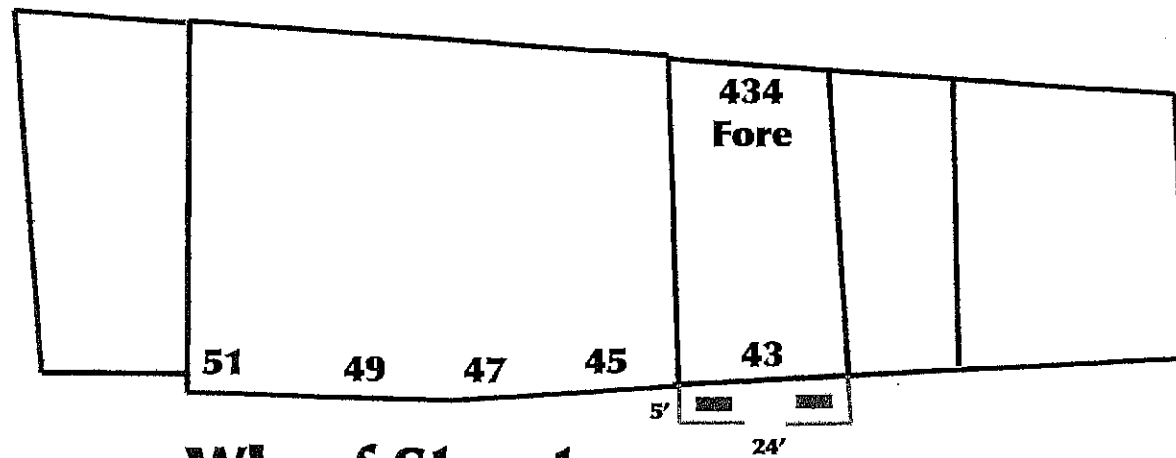
Bureau of Alcoholic Beverages  
Division of Liquor Licensing and Enforcement  
8 State House Station, Augusta, Me 04333-0008 (Regular address)  
10 Water Street, Hallowell, ME 04347 (Overnight address)  
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434  
Email Inquiries: [MaineLiquor@Maine.gov](mailto:MaineLiquor@Maine.gov)

## New BAE Layout





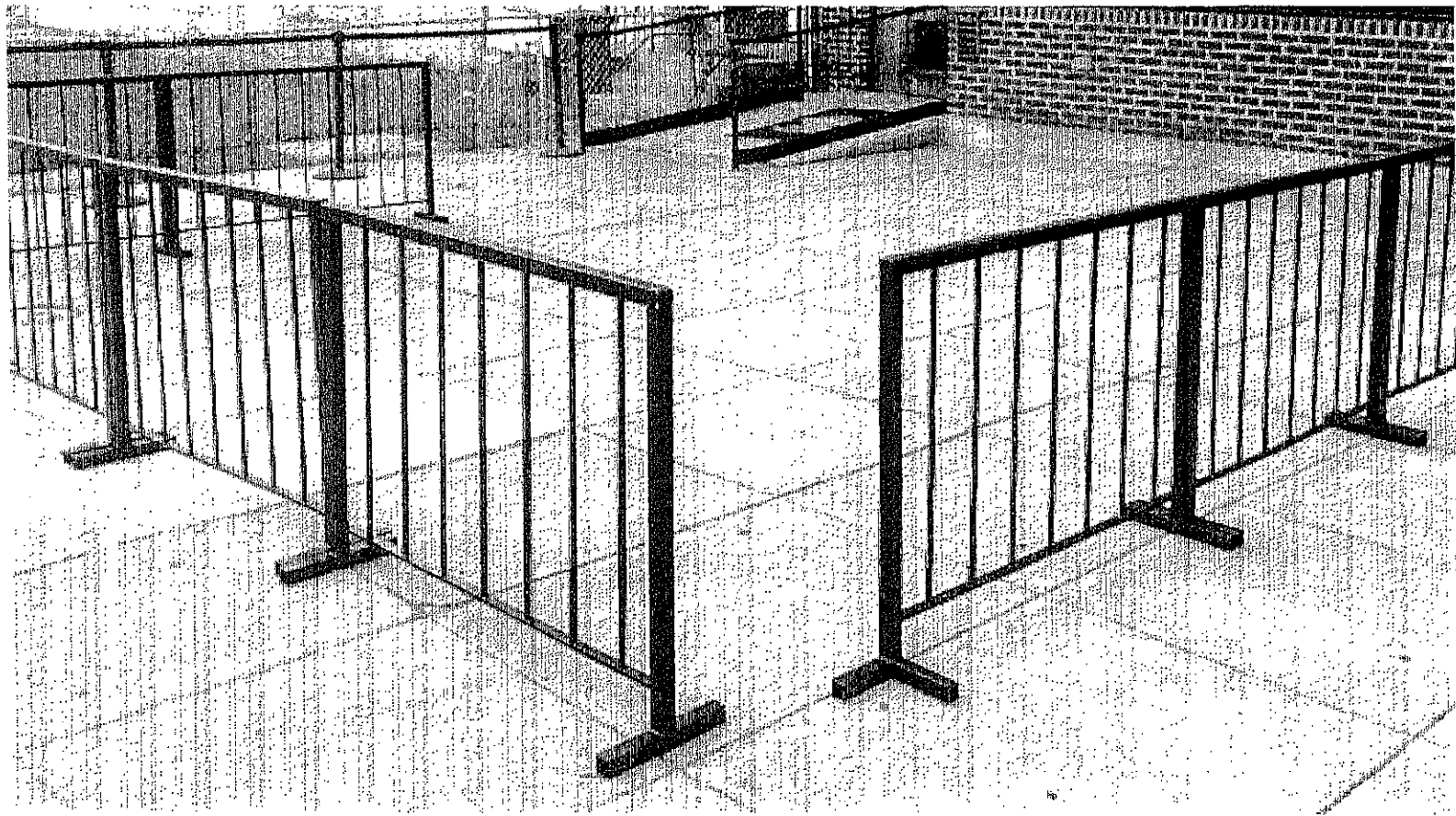
**Fore Street**

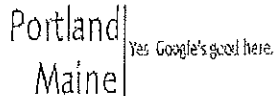


**Wharf Street**









Jessica Hanscombe &lt;jhanscombe@portlandmaine.gov&gt;

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**Re: The Drink Exchange**

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**Kevin Cashman** <kevindc@portlandmaine.gov>

Tue, Aug 29, 2017 at 4:08 PM

To: Jessica Hanscombe &lt;jhanscombe@portlandmaine.gov&gt;

Cc: David Petrucci &lt;petruccid@portlandmaine.gov&gt;, Eric Cobb &lt;ecobb@portlandmaine.gov&gt;, James Sweatt &lt;jjs@portlandmaine.gov&gt;, John Brennan &lt;brennanj@portlandmaine.gov&gt;, Keith Gautreau &lt;kng@portlandmaine.gov&gt;, Laurie Carlson &lt;lac@portlandmaine.gov&gt;, Tom Williams &lt;tw@portlandmaine.gov&gt;, Treasury Division &lt;treasury@portlandmaine.gov&gt;, Vernon Malloch &lt;vwm@portlandmaine.gov&gt;

PD has no objections.

Kevin C.

On Tue, Aug 29, 2017 at 1:52 PM, Jessica Hanscombe &lt;jhanscombe@portlandmaine.gov&gt; wrote:

Good Afternoon

Please see the attached application for The Drink Exchange, 43 Wharf Street for a Class A Lounge with Outdoor Dining on Public Property. This is a change of ownership of an existing business. I am sending them before council on 9/18.

Owner is  
The Lizotte GroupContact is  
Mike Lizotte  
207-754-7151  
lizotte14@yahoo.com

The information has been added to Ui for approvals. Thanks Jessica

Jessica Blais Hanscombe  
Licensing and Registration Coordinator  
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)



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

JESSICA HANSCOMBE  
389 CONGRESS STREET  
PORTLAND, ME 04101

Transaction Response #: MIQ99D337650

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2017-08-30 ) :

Inquiries Name(s) MIKE LIZOTTE (1982-08-30)

**NO MATCH WAS FOUND FOR YOUR REQUEST.**

Portland, Maine



Yes. Life's good here.

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

August 29, 2017

The Lizotte Group  
149 Baker Road  
Freeport ME 04032

**Re: The Lizotte Group DBA The Drink Exchange. Application for a Class A Lounge with Outdoor Dining on Public Property at 43 Wharf Street.**

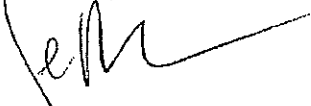
Dear Mr. Lizotte,

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday September 18, 2017 at 5:30 p.m.**, for the review of an application for a Class A Lounge with Outdoor Dining on Public Property at 43 Wharf Street. The meeting will take place in Council Chambers on the 2<sup>nd</sup> 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 item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or [jhanscombe@portlandmaine.gov](mailto:jhanscombe@portlandmaine.gov).

Sincerely,

  
Jessica Hanscombe  
Licensing and Registration Coordinator

## **Legal Advertisement**

### **Notice of Public Hearing City of Portland**

A Public Hearing will be held on September 18th at 5:30 P.M., in City Council Chambers, 389 Congress St., The Lizotte Group DBA The Drink Exchange. Application for a Class A Lounge with Outdoor Dining on Public Property at 43 Wharf Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

*Resolved 2-17/18  
Tab 10 9-18-17*

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 AUTHORIZING THE CITY TO JOIN A LAWSUIT  
AGAINST OPIATE DRUG COMPANIES**

**WHEREAS**, the City Council of Portland, Maine, has learned to its sorrow over the last several years exactly how devastated many of its residents have become because of addictions to painkillers manufactured by drug companies; and

**WHEREAS**, officers working for the Portland Police Department, Fire Department and several other City Departments are required to respond every day to problems that arise because of addiction to painkillers; and

**WHEREAS**, to treat and abate the opioid epidemic, the City has needed to shift resources that could have otherwise been used for various improvements and the general betterment of the City; and

**WHEREAS**, employees in the Social Services Division who manage the City's homeless shelters work with many homeless people who suffer from drug addiction to painkillers and who struggle to care for themselves; and

**WHEREAS**, approximately 80 percent of people who use heroin have been prescribed opiates in the past; and

**WHEREAS**, in 2016, 376 people died in the State of Maine from drug overdoses, and 123 of those deaths were caused by pharmaceutical opioids; and

**WHEREAS**, 42 people died of drug overdoses in the City of Portland in 2016; and

**WHEREAS**, the ease with which these drugs have been obtained, as a result of drug companies' campaign to make them readily prescribed for common aches and pains, has led many people to become addicted; and

**WHEREAS**, opiate drug companies have enjoyed enormous profits with the sales of opiate drugs, promoting them relentlessly among physicians and paying doctors to promote these drugs at conferences, while failing repeatedly to successfully tailor the drugs to make abuse impossible;

**NOW, THEREFORE, BE IT RESOLVED**, that the Portland City Council and Mayor hereby authorize Corporation Counsel Danielle West-Chuhta to engage the services of Napoli Shkolnik, PLLC and Trafton, Matzen, Belleau & Frenette, LLP on behalf of the City of Portland with respect to prosecution of any legal claims against manufacturers and distributors of opioids arising out of the manufacturers' and distributors' fraudulent and negligent marketing and distribution of opioids.



**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Danielle West-Chuhta, Corporation Counsel

**DATE:** August 22, 2017

**SUBJECT:** Resolution Authorizing the City of Portland to Join a Lawsuit Against Opiate Drug Companies

**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:**

1<sup>st</sup> reading \_\_\_9/6/2017\_\_\_ Final Action \_\_\_9/6/2017\_\_\_

Can action be taken at a later date: \_\_\_ Yes \_\_\_ X No (If no why not?) With respect to initiating litigation, time is of the essence.

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

**I. ONE SENTENCE SUMMARY**

Expenses faced by the City of Portland as it deals with drug addiction and its consequences are increasing, and by initiating legal action against drug manufacturers, the City hopes to recoup some of those costs and also reduce the availability of the drugs that can lead to addiction.

**II. AGENDA DESCRIPTION**

The opioid epidemic has been and continues to be a crisis in the United States, in Maine, and more particularly in the City of Portland. The City has suffered massive damages as it, along with municipalities across the United States, bears the brunt of abating the crisis. This resolve authorizes Corporation Counsel to engage the services of two firms, Napoli Shkolnik, PLLC and Trafton, Matzen, Belleau & Frenette, LLP to prosecute the City's legal claims against manufacturers and distributors of opioids arising out of the manufacturers' and distributors' fraudulent and negligent marketing and distribution of opioids.

**III. BACKGROUND**

Drug use and drug addiction have worsened since the development of prescription painkillers based on synthetic opiates. Many believe the drug manufactures share some of the blame for the

growing problem of drug addiction, because these drugs were prescribed with too little caution by doctors at the companies' urging. The drugs' profitability benefitted many in the drug manufacturing world. Governments in charge of caring for addicts with social services programs, homeless shelters, and police enforcement, among many other services, are now seeking to persuade the courts that the drug manufacturers bear some responsibility for these social costs and should help pay for them.

#### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

Two goals are addressed: the reduction in the prescription rate of opiate drugs; and payment of costs associated with drug addiction.

#### **V. FINANCIAL IMPACT**

Ultimately, this action will pursue damages for costs in the city's budget.

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

#### **VII. RECOMMENDATION**

Corporation Counsel recommends approval of the resolve.

#### **VIII. LIST ATTACHMENTS**

Resolution Authorizing the City of Portland to Join a Lawsuit  
Against Opiate Drug Companies

Prepared by: Danielle West-Chuhta  
Date: August 22, 2017

Bean/agendarequestmemo/rev 11/2015

Resolve 3-17/18  
Tab 11 9-18-17

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
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**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**RESOLUTION RECOGNIZING INDIGENOUS PEOPLES' DAY ON  
THE SECOND MONDAY IN OCTOBER**

**WHEREAS**, Indigenous Peoples' Day, honoring the original peoples of many colonized lands, was first proposed in 1977 by a delegation of Native Nations to the International Conference on Discrimination Against Indigenous Populations in the Americas; and

**WHEREAS**, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration") on December 16, 2010, which Declaration recognizes that "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources"; and

**WHEREAS**, the City Council of the City of Portland recognizes that Portland was itself founded and is built upon lands first inhabited by the Indigenous People of this region, known as the Aucocisco; and

**WHEREAS**, the City of Portland recognizes that the Indigenous Peoples of the lands that would later become known as the Americas have occupied these lands since time immemorial; and

**WHEREAS**, a growing number of cities and towns in the United States of America have recognized the second Monday of October as Indigenous Peoples' Day, thereby creating an opportunity to learn about and celebrate indigenous heritage and resiliency;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Portland, Maine hereby recognizes Indigenous Peoples' Day on the second Monday in October, and encourages businesses, organizations and public institutions to also recognize Indigenous People's Day, in order that this City and its residents acknowledge and honor these members of the community, both past and present, without whom the creation of this country would not have been possible.

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Councilor Pious Ali

**DATE:** September 11, 2017

**SUBJECT:** Resolution Recognizing Indigenous Peoples' Day on the Second Monday in October

**SPONSOR:** Councilor Pious Ali

(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:**

1<sup>st</sup> reading \_\_\_\_\_ Final Action 9/18/2017 \_\_\_\_\_

Can action be taken at a later date: \_\_\_\_ Yes \_\_\_\_ X No (If no why not?) We need to make this resolution public early enough that some acknowledgement can be made where appropriate on October 9, 2017.

**PRESENTATION:** (List the presenter(s), type and length of presentation) Comment from Councilor Pious Ali

**I. ONE SENTENCE SUMMARY**

Indigenous Peoples' Day, falling on the same day as Columbus Day, acknowledges that native peoples around the world inhabited many of the places colonized by western Europeans and others, and honors their traditions and cultures, which have contributed to the success of the nations built in their lands.

**II. AGENDA DESCRIPTION**

A desire to acknowledge the contributions and cultures of indigenous peoples around the world has only grown stronger over the past decades. The City Council of Portland, by this resolve, acknowledges the particular people who lived in the area that became, under colonial settlement, first Falmouth and then Portland, who were known as the Aucocisco. Under Councilor Ali's sponsorship, this resolve recognizes the second Monday in October, also known as Columbus Day, for the explorer who was among the first to arrive here from Europe, as Indigenous Peoples' Day, to honor the Aucocisco and all the indigenous peoples of the Americas who lived here for thousands of years.

The idea of the day itself was first proposed in 1977 by a delegation of Native Nations to the International Conference on Discrimination Against Indigenous Populations in the Americas. In 2010, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration"), which Declaration recognizes that "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources."

### **III. BACKGROUND**

The history of the subjugation, disruption, and suffering of the indigenous peoples of the Americas begins almost with their first encounters with Europeans and extends to present day, when poverty and addiction plague many indigenous peoples in North, Central and South America.

### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

This Resolve honors the people who were and are the native peoples in lands around the world.

### **V. FINANCIAL IMPACT**

None

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

Please see the United Nations Declaration on the Rights of Indigenous Peoples in the back up material.

### **VII. RECOMMENDATION**

### **VIII. LIST ATTACHMENTS**

**United Nations Declaration on the Rights of Indigenous Peoples 9.13.2007**

**Resolution Recognizing Indigenous Peoples' Day on the Second Monday in October**

Prepared by: Nancy English

Date: September 11, 2017

Bean/agendarequestmemo/rev 11/2015



## General Assembly

Distr.: General  
2 October 2007

Sixty-first session  
Agenda item 68

### Resolution adopted by the General Assembly on 13 September 2007

[without reference to a Main Committee (A/61/L.67 and Add.1)]

#### **61/295. United Nations Declaration on the Rights of Indigenous Peoples**

*The General Assembly,*

*Taking note* of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,<sup>1</sup> by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

*Recalling* its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

*Adopts* the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting  
13 September 2007*

#### **Annex**

#### **United Nations Declaration on the Rights of Indigenous Peoples**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

<sup>1</sup> See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> and the International Covenant on Civil and Political Rights,<sup>2</sup> as well as the Vienna Declaration and Programme of

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<sup>2</sup> See resolution 2200 A (XXI), annex.

Action,<sup>3</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### *Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>4</sup> and international human rights law.

#### *Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

<sup>3</sup> A/CONF.157/24 (Part I), chap. III.

<sup>4</sup> Resolution 217 A (III).



*Article 3*

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6*

Every indigenous individual has the right to a nationality.

*Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the

community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### *Article 11*

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### *Article 12*

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### *Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

*Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

*Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

*Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

*Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

*Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

*Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

*Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

*Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

*Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

*Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

*Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

*Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

*Article 38*

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



*Tab 12*

Order 15-17/18

Motion to postpone to August 21, 2017: 9-0 on 7/24/2017

Motion to postpone to September 18, 2017: 8-0 (Ray absent) on 8/21/2017

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 APPROVING AGREEMENT BETWEEN PORTLAND, PORTLAND AREA  
COMPREHENSIVE TRANSPORTATION SYSTEM  
AND MAINE DEPARTMENT OF TRANSPORTATION  
RE: BRIGHTON-DEERING-FALMOUTH INTERSECTION ROUNDABOUT**

**ORDERED**, that the three-party agreement between the Maine Department of Transportation (MDOT), the Portland Area Comprehensive Transportation System and the City of Portland, for the design and construction of the Brighton-Deering-Falmouth-Street Intersection Roundabout, with the MDOT identification number of 018624.00, is hereby approved in substantially the form attached hereto; and

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

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Chris Branch PE, Director of Public Works  
Katherine Earley, PE, Engineering Manager/City Engineer  
Jeremiah Bartlett, PE, PTOE, Transportation Systems Engineer

**DATE:** July 10, 2017

**SUBJECT:** Brighton/Deering Falmouth Roundabout Project: Three-Party Agreement with MaineDOT and PACTS

**SPONSOR:** Jon Jennings, City Manager  
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.)

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading July 24, 2017 Final Action July 24, 2017

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

This agreement is vital to MaineDOT's ability to proceed with property negotiations with affected abutters.

**PRESENTATION:** (List the presenter(s), type and length of presentation) N/A

**I. ONE SENTENCE SUMMARY**

*City Council action is necessary to enact the three-party agreement with MaineDOT and PACTS for the Brighton-Deering-Falmouth Intersection (Roundabout) Project to proceed.*

**II. AGENDA DESCRIPTION**

This Agreement will trigger property negotiations to trigger current design goals and kick-off the federal funding participation for the project. Project design is underway, utilizing a combination of USM infrastructure contribution funds and City CIP accounts. The project is anticipated to begin in the 2018 construction season.

**III. BACKGROUND**

The City, in partnership with PACTS conducted a study in 2013 to complete an alternatives analysis for the Brighton-Deering-Falmouth intersection. Following the assessment of several alternatives, a roundabout-based outcome was recommended. This outcome was supported through the public process, and on August 5, 2013, the Portland City Council adopted the study as an Approved Transportation Master Plan.

The approved alternative would accomplish the following:

- 1.) Reconstruct the intersection of Brighton-Deering-Falmouth as a roundabout.
- 2.) Eliminate the leg of Brighton Avenue between Falmouth and Bedford streets.
- 3.) Convert Bedford Street immediately east of Deering Avenue to a two-way street.
- 4.) Reconstruct the intersection of Brighton-Deering-Falmouth as a smaller roundabout.

In addition, the reconstruction of the streets would also be accompanied by utility work, including sewer/stormwater separation, and new gas/water mains.

Beginning in 2015, the City began working with Ransom Consulting, MTJ Roundabout Engineering, and Dubois & King on the design of this project, as well as applying to PACTS for funding of construction. The PACTS application was successful, intended for CY 2017-2018.

In 2016, at the draft Preliminary Design Report stage, it was determined that the cost of the project would exceed the PACTS appropriation amount of \$2,868,809.00. Much of this cost stemmed from the construction of the second roundabout at Bedford Street. For cost control, the second roundabout has been eliminated and a more traditional 'T'-style intersection will be provided at Deering and Bedford streets.

#### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

This project advances the preferred alternative from the Brighton-Deering-Falmouth alternatives study adopted by City Council in 2013 as well as US EPA water quality requirements as part of the City's CSO Program Compliance Order.

#### **V. FINANCIAL IMPACT**

The project is anticipated to cost \$2,868,809, exclusive of utility costs not included in this agreement. The City's Local Share obligations are 25% for the project. Page 2 of the agreement provides the Federal and City shares; the total estimated amount owed by the City is \$717,205.

Funding resources for this project are provided by two previously appropriated FY 2018 CIP funds:

1. C18101: USM Roundabout: \$705,300
2. C18104: Pavement Preservation: \$11,905

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

The three-party agreement currently attached with this Agenda request is a Draft Agreement – a final is expected prior to the Council meeting, as a few items regarding City/State responsibilities require some adjustment. However, the cost shared as specified in the Agreement requiring Council action is not anticipated to change until bid documents are prepared and a two-party agreement is finalized.

## **VII. RECOMMENDATION**

The Department of Public Works strongly recommends authorizing this agreement. This project will leverage 75% non-City funding, and improve safety and aesthetics in the USM area. In addition, utility add-ons to this work will address a major area of concern for our US EPA water quality compliance requirements.

## **VIII. LIST ATTACHMENTS**

- MaineDOT Three-Party Agreement
- Graphic

Prepared by: Jeremiah Bartlett, PE, PTOE

Date: July 10, 2017

O:\PWSHARE\City Council info and Agenda Requests\Agenda Requests\USM Roundabout Project\Agenda request Memo Roundabout Project 3-Party 7-10-17.docx



|                          |                           |
|--------------------------|---------------------------|
| <i>MaineDOT use only</i> |                           |
| TEDOCS #:                | _____                     |
| CT #:                    | _____                     |
| CSN #:                   | _____                     |
| PROGRAM:                 | <u>Bureau of Planning</u> |

**State of Maine**  
**DEPARTMENT OF TRANSPORTATION**  
**COOPERATIVE AGREEMENT**

**Portland, Maine**  
**Brighton-Deering-Falmouth Intersection Project**

|                          |                                          |
|--------------------------|------------------------------------------|
| <i>MaineDOT Use Only</i> |                                          |
| WIN: 018624.00           | Agreement Maximum Amount: \$2,868,809.00 |
| PACTS Vendor Number:     | Agreement Begin Date: (office Use Only)  |
| Municipal Vendor Number: | Agreement End Date:                      |

This Cooperative Agreement ("Agreement") is entered into by and between the Maine Department of Transportation ("MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, the Portland Area Comprehensive Transportation System ("PACTS") located at 970 Baxter Boulevard, Portland Maine, and the City of Portland ("Municipality"), a municipality in the State of Maine with offices located at 389 Congress Street, Portland, Maine, hereinafter referred to as the ("Parties.")

**RECITALS**

- A. The work that is the subject of this Agreement is the design and construction of a traffic roundabout to be located at the intersection of Brighton Avenue, Deering Avenue and Falmouth Street in Portland, Maine (the "Project") described in **Attachment A** and depicted on **Attachment B**, both of which are attached hereto and made a part hereof.
- B. MaineDOT, through its partnership with Maine's Metropolitan Planning Organizations ("MPOs"), is charged with managing and dispersing state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT's MPO partner for the Portland Urbanized Area.
- C. PACTS, with the Municipality's support, has programmed the Project for inclusion in the CY2015-2016-2017 MaineDOT Work Plan, using federal capital improvement funding allocated by MaineDOT
- D. The Municipality, unless otherwise specified in this Agreement, will be responsible for executing all phases of the Project as a locally administered project ("LAP).

- E. The Municipality and PACTS will share in Project costs in accordance with the Financial Provisions section of this Agreement, with PACTS share being an allocation of federal MPO funds disbursed to the Municipality by MaineDOT on PACTS' behalf.
- F. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- G. This Agreement is intended to cover the roles and responsibilities of the Parties during all phases of Project development through construction, and to establish the financial obligations of each Party, including that of full Project development through construction.
- H. Upon completion of the Project's plans, specifications and estimate ("PS&E"), the Parties will assess when the Project will advance to full Project construction, and this Agreement will be modified to reflect updated Project costs. MaineDOT and the Municipality will then enter into a separate Locally Administered Federal-Aid Project Agreement (the "LAP Agreement") to establish responsibilities of MaineDOT and the Municipality through the advertisement, award, construction and construction engineering phases of the Project.

### AGREEMENT

**NOW, THEREFORE**, in accordance with the foregoing, the Parties agree as follows:

The following attachments are hereby incorporated into this Agreement:

- Attachment A - Scope of Work
- Attachment B - Concept Design
- Attachment C - Disposition of Impacted University of Maine System Properties

#### **1. Project Cost Sharing and Payment Schedule:**

- a. **Financial Obligations:** The total estimated cost of the Project through all phases is \$2,868,809.00 (the "Project Estimate"), as further set out in the table below. The Parties agree to share in all costs associated with all phases of the Project through construction (the "Total Project Costs") in accordance with the allocations outlined below (the "Party Shares") unless otherwise set out in this Agreement or negotiated by mutual agreement of the Parties.
  - i. **Federal Share** (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of \$2,151,606.75.
  - ii. **Municipal Share** (provided through the Municipality's obligation of funds) - 25% of federally participating costs, which is estimated at \$717,202.25, plus 100% of the following costs exceeding the Project Estimate:

- a. All Project costs exceeding the Project Estimate, unless otherwise agreed to in writing by the Parties through a written modification to this Agreement;
  - b. Any costs deemed ineligible for federal participation;
  - c. All costs incurred by the Municipality associated with acquiring and furnishing any additional Right of Way necessary to construct and maintain the Project;
  - d. All Project costs associated with mitigation activities made necessary by Section 106 of the National Historic Preservation Act ("NHPA");
  - e. All costs associated with combined sewer overflow ("CSO") activities, Bedford Street sewer replacement, and rain gardens for storm water treatment within the limits of the Project.
- b. **Updated Total Project Costs:** When the Project proceeds to full development and construction, the Parties will enter into a modification of this Agreement to reflect the updated Total Project Costs (the "Modification") in accordance with the terms further set out herein.
- i. If the Total Project Costs exceed the Project Estimate the Municipality will consult with PACTS and MaineDOT before such adjustments are approved and implemented. Any approved adjustments will be in writing.
  - ii. If the Total Project costs are less than the Project Estimate, the amounts owed by each Party will be adjusted according to the share percentages set out above.
- c. **MaineDOT Costs:** Costs that MaineDOT incurs for right of way acquisition activities and other services performed for the Project (the "MaineDOT Costs") shall be charged to the Project and applied against the Federal Share and the Municipal Share at the rates set out above. MaineDOT will reconcile these costs upon completion of the Project and resolution of all acquisition claims, and deduct the Municipality's share of the MaineDOT Costs from MaineDOT's final disbursement to the Municipality of PACTS' MPO funds.
- d. **Payment Schedule:** Invoicing and payment schedules will be established in the LAP Agreement that MaineDOT and the Municipality will enter into in accordance with the terms of this Agreement.
2. **Project Milestones:** The Municipality agrees to share information about the Project with the MaineDOT and PACTS at the following milestones:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or engineer's estimate of costs.

### **3. Project Design, Construction Plans and Specifications:**

- a. **MaineDOT services provided to Municipality:** In support of the Municipality's implementation and oversight of the Project, MaineDOT agrees to provide the following services:
  - i. Assignment of a Project Manager to carry out MaineDOT's responsibilities under this Agreement. The MaineDOT Project Manager or a designee will have the authority to request design changes to meet applicable laws and design standards; accept or reject any invoice; review construction activities to ensure compliance with contract documents; and take all other actions necessary to ensure that work performed on the Project is conducted in accordance with the terms of this Agreement.
  - ii. Provision of technical assistance to the Municipality in the preparation of the PDR, design plan impacts, and final PS&E for the Project, which shall require MaineDOT's review and approval prior to advertisement or construction of the Project.
  - iii. Identification of the Project's environmental impacts with regard to the following: Section 106 of the National Historic Preservation Act (NHPA); Section 4(f) of the US Department of Transportation (DOT) Act; Section 7 of the Endangered Species Act; and applicable environmental regulations related to hazardous materials; and preparation of the appropriate level of environmental documentation and necessary supporting technical studies/reports to satisfy the requirements of the National Environmental Protection Act (NEPA).
  - iv. Performance of pavement design using the mechanistic-empirical procedure.
  - v. Oversight of all peer reviews in accordance with MaineDOT's requirements.
- b. **Preliminary Project Development:**



- i. The Municipality shall assign a full-time municipal employee with appropriate qualifications and current Local Project Administration ("LPA") certification from MaineDOT to manage the Project and carry out the Municipality's responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of MaineDOT's *Local Project Administration Manual & Reference Guide* ("LPA Manual.")
- ii. Except as otherwise set out in this Agreement, the Municipality shall prepare, or cause to be prepared, all design exceptions, specifications, estimates and contract documents for the Project in accordance with the appropriate reference publications, including but not limited to MaineDOT's *Engineering Instructions, Highway Design Guide, Standard Specifications* and *Standard Details*, as well as the federal *Manual on Uniform Traffic Control Devices for Streets and Highways* entirely at its cost. The design of the Project shall comply with the Americans with Disabilities Act ("ADA") (the "Project Development Materials").
- iii. As a component of preparing the Project Development Materials, the Municipality shall also:
  1. Identify all utilities impacted by the development of the Project and coordinate any necessary relocation activities associated therewith in accordance with MaineDOT's *Utility Accommodations Policy*.
  2. Perform all necessary permitting and licensing activities required in connection with the Project.
  3. Be responsible for implementing any required mitigation activities identified during the environmental review process and analysis.
  4. Collect 12-hour truck count data by three vehicle types for each Project intersection to estimate heavy truck use and required pavement designs in accordance with a pavement mechanistic design program.
  5. Develop and submit a traffic management plan for MaineDOT approval prior to construction which conforms to the latest edition of the Federal Highway Administration's *Manual of Uniform Traffic Control Devices for Streets and Highways*.

**c. Right of Way Acquisition Activities:**

- i. USM Property. Project implementation will require the Municipality's acquisition of certain property rights currently held by the University of Maine System (the "USM Property"), as further outlined in the Memorandum

of Understanding attached hereto as **Attachment C** and made a part hereof. The Municipality is in the process of negotiating a final and binding agreement with the University of Maine regarding the conveyance of the USM Property (the "USM Agreement") to the Municipality, the execution and approval of which is a mandatory condition to the Project moving forward. The Municipality will perform, or cause to be performed, all necessary right-of-way mapping, title examination, appraisal, appraisal review, negotiation and acquisition activities related to its acquisition of the USM property. Right of Way maps developed by or on behalf of the Municipality shall be provided to MaineDOT in a MicroStation-compatible format. The Right of Way maps must be reviewed and approved by MaineDOT, and shall meet the specifications of MaineDOT's *Right of Way Manual* and show all rights obtained for the Project.

- ii. MaineDOT will perform, or cause to be performed, all right-of-way related mapping, title examination, appraisal, appraisal review, negotiation and acquisition/condemnation activities for any property rights that must be acquired to accommodate the Project, other than those involving the USM Property. MaineDOT shall not initiate any negotiation activities with affected property owners until the USM Agreement has been approved and executed by the Municipality's City Council and the University of Southern Maine's Board of Trustees. Provided that the USM Agreement is approved no later than August 2017, MaineDOT will make its best efforts to meet the Municipality's preferred schedule of advertising the Project for construction by the end of the 2017 calendar year.
- iii. The Municipality shall coordinate with all abutters and others holding vested interests in the Project, and shall designate a representative to accompany MaineDOT during MaineDOT's negotiations with affected property owners to explain Project design and impacts.
- iv. Upon completion of Project construction and prior to final Project close-out, the Municipality shall convey to MaineDOT for permanent public use any municipal property needed to accommodate the Project, including all rights acquired from the University of Maine System for that purpose.
- v. The Municipality shall certify to the Federal Highway Administration that all necessary title interests have been secured prior to the Project being advertised for construction.
- vi. The Parties acknowledge that final Project costs associated with right of way acquisition activities shall not be finalized until Project construction is complete and all acquisitions have been settled or resolved through appropriate appeal channels.

- d. **Contract Administration:** The Municipality shall be the sole administrator of the Project contract(s). The Municipality will pay up front all Project costs, subject to

cost sharing by the Municipality and PACTS as specified in the **Project Cost Sharing and Payment Schedule** set out herein. No Party to this Agreement, nor its contractors, will be required to pay for inspections and permits from the Municipality.

**e. Modification of Project Costs and Subsequent Construction Implementation:**

- i. After the final PS&E package is prepared, the Parties shall enter into the Modification of this Agreement based on updated Project cost estimates.
- ii. MaineDOT and the Municipality will then execute an LAP Agreement covering their obligations regarding Project advertisement, award, construction and construction engineering. Said LAP Agreement will incorporate financial obligations that are consistent with those reflected in the Modification, unless such terms are otherwise negotiated by mutual agreement of the Parties.
- iii. The LAP Agreement shall also require that the Municipality furnish all construction engineering services for the Project with Municipal forces or with a consultant approved by MaineDOT.

**4. Public Involvement:** The Municipality shall be responsible for implementing and leading any and all required public involvement activities and any necessary media coordination associated with the any phases of the Project covered by this Agreement. Upon request of the Municipality, the Parties agree to participate as partners in all such actions, and to publicly support the Project at all public involvement activities associated with this Project. The Municipality shall provide a court reporter to document all public meetings.

**5. Changes to Project Scope:**

- a. The Municipality will consult with PACTS and MaineDOT before implementing any adjustments to the Project scope, and PACTS and MaineDOT will, likewise, notify the Municipality of any proposed changes they wish to implement.
- b. The Municipality, at its election, may cause changes to be made or work added to the Project during final design or construction that benefit the Municipality, provided that the Municipality shall pay one hundred percent (100%) of any additional administrative, design and construction costs associated therewith. All such changes shall conform to MaineDOT's standard design specifications.
- c. MaineDOT may request that changes be made or work added to the Project during final design or construction that benefit MaineDOT, provided that MaineDOT shall pay one hundred percent (100%) of any additional administrative, design and construction costs associated therewith.

**6. Termination:**

- a. The Municipality reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. If the Municipality's termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for reimbursing MaineDOT and PACTS fully for any and all Project costs incurred in reliance on the Municipality's commitment documented in this Agreement. All federal funds returned to MaineDOT by the Municipality, as well as all federal funds remaining in the Project, shall be made available to PACTS for reprogramming once the Project is closed out.
- b. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and PACTS and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of MaineDOT.
- c. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- d. In no event shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- e. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.
- f. With the exception of the provisions so noted, all provisions of this Agreement shall expire upon: 1) the Parties' payment of all Party shares due to the Municipality upon completion of the Project and final disposition of quantities or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later; or 2) until terminated under provisions of this Termination section; or 3) until superseded by a new agreement.

## **7. Miscellaneous Provisions:**

- a. Amendments and Modifications. This Agreement, and all attachments, may only be modified or amended in writing and signed by duly authorized representatives of the Parties.
- b. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the

Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.

- c. Obligation of State Funds. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and the federal government and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- d. Municipal Authority and Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs outlined herein.
- e. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
- f. Assignment. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
- g. Independent Capacity. The Municipality and PACTS, their respective employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
- h. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

- i. Binding Effect. The Parties shall be bound by the terms of this Agreement. This provision shall apply to the Agreement's executors, their successors, administrators and legal representatives.
- j. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT:                      Maine Department of Transportation  
                                         16 State House Station  
                                         Augusta, ME 04333-0016  
                                         Attn.: \_\_\_\_\_, Project Manager  
                                         Phone: \_\_\_\_\_  
                                         Email: \_\_\_\_\_

Municipality:                      City of Portland  
                                         \_\_\_\_\_  
                                         \_\_\_\_\_  
                                         \_\_\_\_\_  
                                         Attn.: \_\_\_\_\_  
                                         Phone: \_\_\_\_\_  
                                         Email: \_\_\_\_\_

PACTS:                                      PACTS  
                                         \_\_\_\_\_  
                                         \_\_\_\_\_  
                                         \_\_\_\_\_  
                                         Attn.: \_\_\_\_\_  
                                         Phone: \_\_\_\_\_  
                                         Email: \_\_\_\_\_

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

Date

John Duncan, Director \*  
Portland Area Comprehensive Transportation System  
Duly authorized

Date

Enter Municipal Name, Enter Title \*  
City of Portland  
Duly authorized

Date

Herb Thomson, Director, Bureau of Planning \*  
Maine Department of Transportation  
Duly authorized

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

## **ATTACHMENT A**

### **Scope of Work**

The proposed scope of work is to:

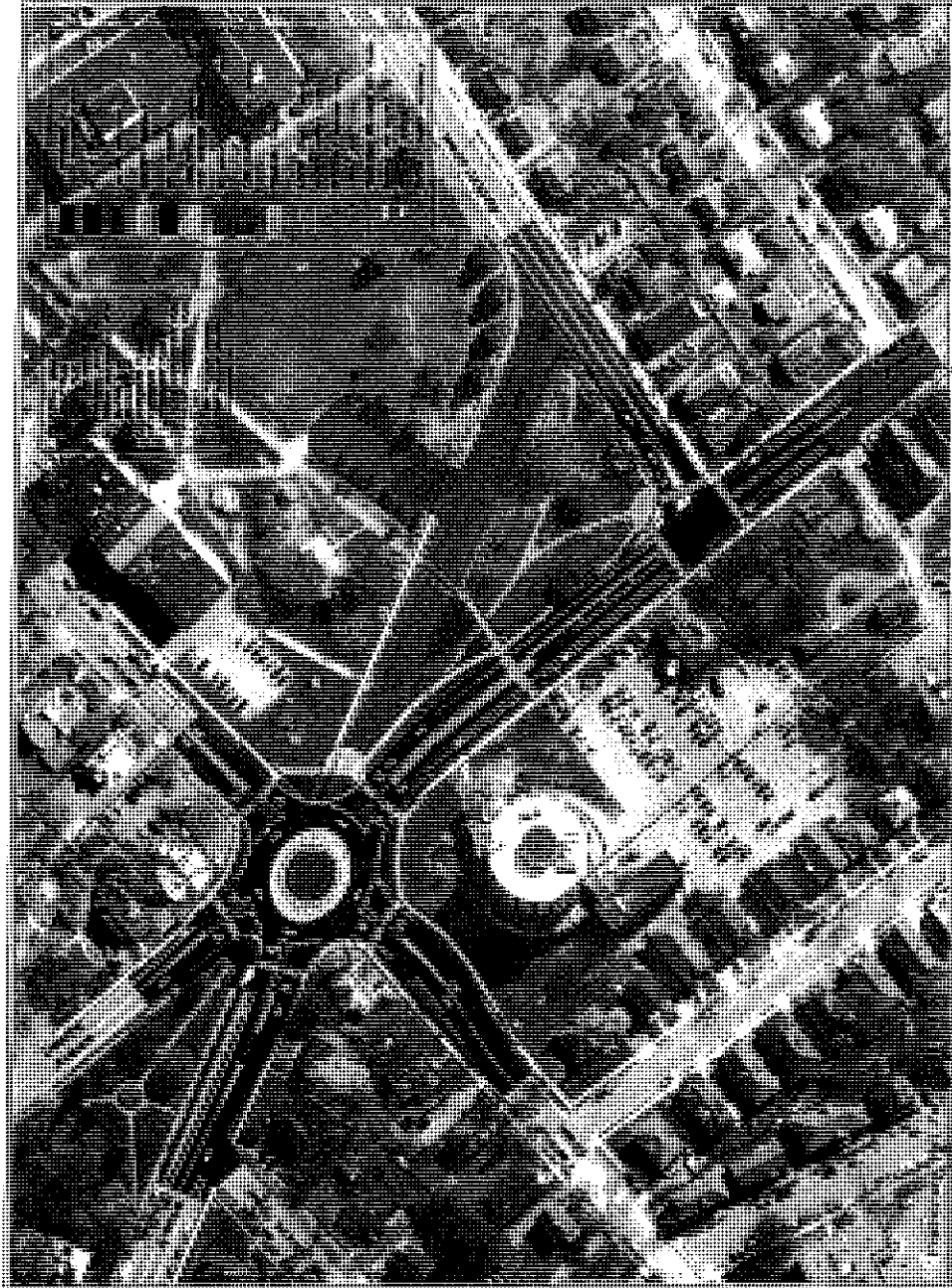
- Widen and adjust the intersection of Brighton Avenue with Deering Avenue and Falmouth Street to facilitate the construction of a single-lane roundabout.
- Reconstruct and realign the approaches to this intersection as necessary to satisfy design requirements for entering geometry and truck movements.
- Abandon the segment of Brighton Avenue between Falmouth Street and Bedford Street, thus resulting in a roundabout design with five approaches, as opposed to six.
- Convert Bedford Street between Deering Avenue and the to-be-abandoned segment of Brighton Avenue to two-way vehicular flow.
- Adjust the geometry of Bedford Street and Deering Avenue to facilitate truck movements. The Bedford Street approach will allow for right turns only.
- Provide high-quality pedestrian facilities throughout, including grading adjustments to enhance crossings at the proposed roundabout.
- Provide street lighting, landscaping, and other amenities to enhance existing park space as well as to provide a gateway treatment for this portion of the City of Portland.
- Provide supporting infrastructure for METRO activities.

## **ATTACHMENT B**



# Concept Design

|                                                                                                                                                  |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                |                                                                                                                                                                      |                                    |                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------------------------------------------------------|
| Brighton-Deering-Falmouth<br>& Deering-Deering<br>Intersections<br>Portland, ME<br>City of Portland<br>300 Congress Street<br>Portland, ME 04102 |  <b>RANSOM</b><br>CONSULTING, INC.<br>1000 Congress Street<br>Portland, ME 04102<br>Tel: 207.625.1234<br>Fax: 207.625.1235<br>www.ransominc.com |  <b>tjd&amp;a</b><br><b>DuBois</b><br><b>Engineering</b><br> |   | <b>DRAFT CONCEPTUAL<br/>DESIGN</b> | DATE: 10-1-2015<br>BY: [Signature]<br>CHECKED: [Signature]<br>APPROVED: [Signature] |
|                                                                                                                                                  |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                |                                                                                                                                                                      |                                    | SHEET NO. 1<br>OF 1                                                                 |



## ATTACHMENT C

# Disposition of Impacted University of Maine System Properties

## MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF PORTLAND AND THE UNIVERSITY OF MAINE SYSTEM

This Memorandum of Understanding ("MOU") is made this 19 day of January, 2017 between the City of Portland, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 ("City"), and the University of Maine System, acting through the University of Southern Maine, with a mailing address of Real Property Contract Administration, 37 University Drive, Robinson Hall, Augusta, Maine 04330 ("University").

Whereas, by Order 26-13/14 dated August 5, 2013, the City approved the Brighton-Deering-Falmouth Intersection Study as a Master Plan in substantially the form included in a certain August 2013 Final Report prepared by Vanasse Hangen Brustlin, Inc. (the "Report"); and

Whereas, as described in the Report, the City desires to construct, operate, and maintain a proposed roundabout at the intersection of Brighton Avenue/Deering Avenue/Falmouth Street, (the "Project") as generally depicted in the diagram attached hereto as Exhibit A (the "Plan"); and

Whereas, the Project will impact a portion of Bedford Park, a triangular parcel of land bordered by Brighton Avenue, Deering Avenue, and Bedford Street, which is a dedicated City park, but is not in the City's Land Bank; and

Whereas, the City's deed to Bedford Park, recorded in the Cumberland County Registry of Deeds in Book 1290, Page 35, permits using the Park for the purposes of widening the adjacent streets; and

Whereas, on July 1, 2015, the City's Parks Commission approved the use of a portion of Bedford Park for street widening as required by the Project; and

Whereas, the Project will also impact portions of several parcels of land owned by the University, which the University must convey to the City to complete the Project; and

Whereas, in exchange for such conveyances, City and University staff desire that the parties enter into Agreements addressing the matters set forth below; and

Whereas, City and University staff both desire to proceed expeditiously with the matters set forth in this MOU in order to achieve a timely and successful outcome of the Project.

**NOW THEREFORE**, provided that the City proceeds with the Project, City and University staff intend to pursue final binding agreements addressing the following matters:

1. The University will convey to the City for the sum of one dollar approximately 3,694 square feet of land that it owns at 246 Deering Avenue, which is located at the area marked 5 on the Plan.
2. The University will convey to the City for the sum of one dollar approximately 884 square feet of land that it owns at the southeast corner of the intersection of Brighton Avenue, Falmouth Street, and Deering Avenue, which is located at the area marked 6 on the Plan.
3. The University will cede its use of a 9,500 square foot parking lot adjacent to Brighton Avenue (marked 13 on the Plan) (the "Brighton Avenue Parking Lot"), resulting in the elimination of 26 parking spaces. The Brighton Avenue Parking Lot will be graded, loamed, and seeded as part of the Project at no cost to the University. Title to this property will remain the University's.
4. Subject to applicable zoning and land use regulations and any other applicable laws, rules and regulations, the City will support the University in its efforts to locate parking spaces to replace the Brighton Avenue Parking Lot on other parcels within the University campus. All costs associated with replacing the Brighton Avenue Parking Lot will be borne by the University.
5. In connection with the Project, City staff intend to pursue the discontinuance of the crosshatched portion of Brighton Avenue between Falmouth Street and Bedford Street marked 10 on the Plan (the "Brighton Avenue Land"). If the City does so, the University will waive its right to any damages resulting from the discontinuance. Unless the City desires to maintain a utility or public easement over the Brighton Avenue Land, the City will release its interest in that land to the University. City and University staff acknowledge that it is the intention of both parties for the University ultimately to be the sole owner the discontinued portion of Brighton Avenue to the extent provided by law and subject to any easements retained by the City as described above.
6. Subject to applicable zoning and land use regulations and any other applicable laws, rules and regulations, the University and the City will work cooperatively to create signage and landscaping for the Project.
7. While the streets are open during construction of the Project, the City will allow the University, at the University's sole expense, to update and replace various utility lines connecting the University's Law School with the core of the University Campus, provided that such work does not delay the Project schedule.
8. In the event that the University decides to demolish its buildings at 222 and 228 Deering Avenue during the Project and desires to have the demolition conducted by the Project contractor, the City will work cooperatively with the University, provided that doing so is consistent with all Project contract documents and does not delay the

Project schedule, and provided that the Project contractor and the University desire to enter into a separate contract for such work.

9. The University and the City will work cooperatively on the Project's construction schedule in order to minimize scheduling conflicts during major University and City events.
10. This MOU is not intended to and does not create any contractual rights or a joint venture between the parties. The Parties acknowledge and agree that the terms of this MOU are not binding upon the parties unless and until they are set forth in greater detail in a future agreement or agreements and approved by the City Council of the City of Portland and the Board of Trustees of the University.
11. Either party may terminate this MOU with or without cause and without liability to the other party by providing written notice of such termination to the other party. Such termination shall be effective upon receipt of such notice by the other party.

**City of Portland**

Witness: *Sonia Bean*

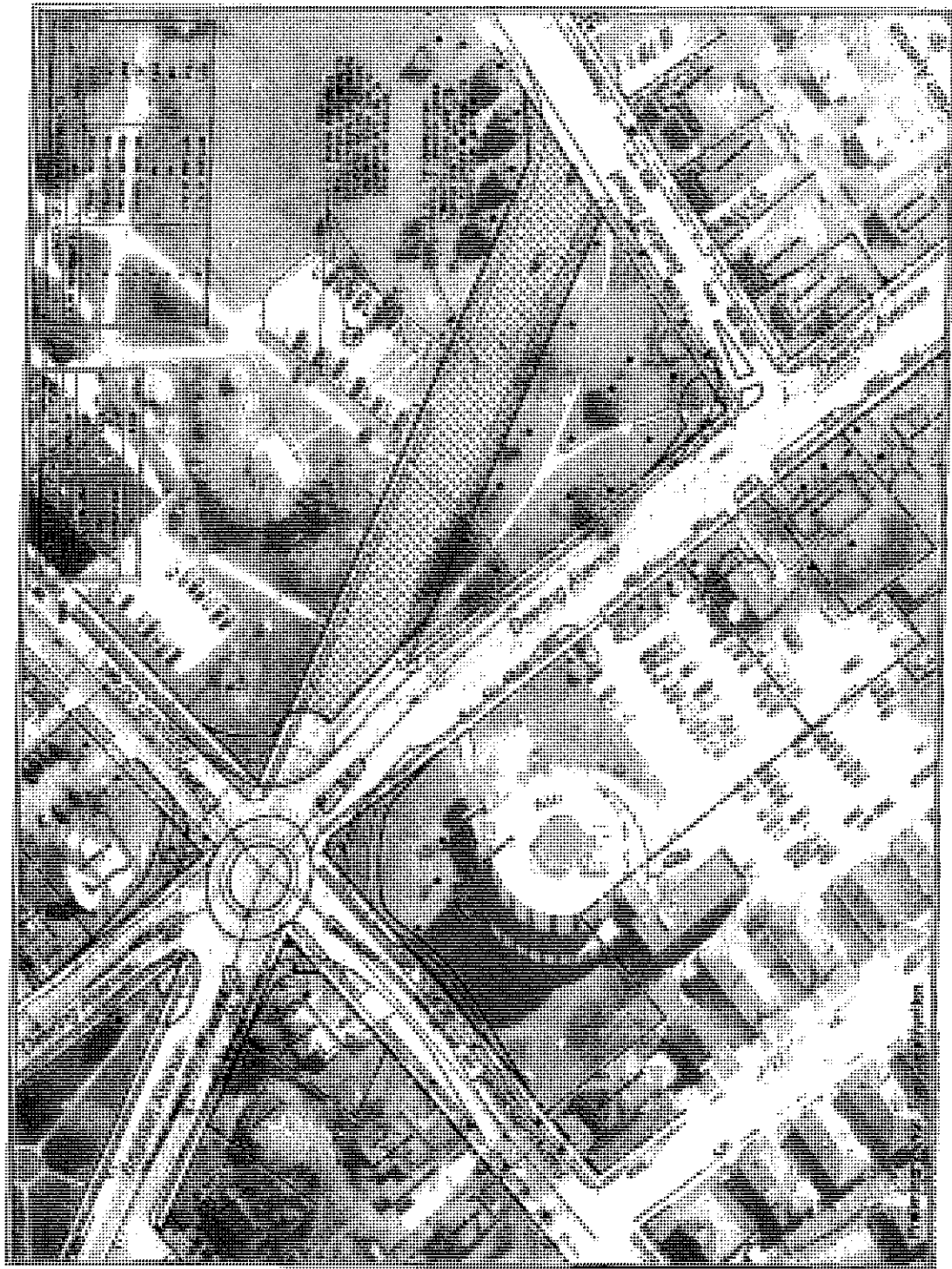
By: \_\_\_\_\_  
Jon Jennings, City Manager

Witness: *Donna L. Cook*

**University of Maine System**  
By: *M.F. Chip Gavin*  
M.F. Chip Gavin, Chief Facilities  
Management and General Services Officer

Approved as to form:

*[Signature]*  
Corporation Counsel's Office



Brighton-Deering-Falmouth  
& Beal-Deering  
Roundabouts

City of Portland  
380 Congress Street  
Portland, ME 04101

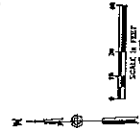


**RANSON**  
Consulting, Inc.  
200 Commercial Street, Suite 200  
Portland, ME 04101  
(207) 761-1111



tjd&a

DuBois  
SKING



Preliminary Right of  
Way Plan

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| 257 | RDY/UTB/ADOT Review | 5-1-33  |
| 258 | RDY/UTB/ADOT Review | 6-1-33  |
| 259 | RDY/UTB/ADOT Review | 7-1-33  |
| 260 | RDY/UTB/ADOT Review | 8-1-33  |
| 261 | RDY/UTB/ADOT Review | 9-1-33  |
| 262 | RDY/UTB/ADOT Review | 10-1-33 |
| 263 | RDY/UTB/ADOT Review | 11-1-33 |
| 264 | RDY/UTB/ADOT Review | 12-1-33 |
| 265 | RDY/UTB/ADOT Review | 1-1-34  |
| 266 | RDY/UTB/ADOT Review | 2-1-34  |
| 267 | RDY/UTB/ADOT Review | 3-1-34  |
| 268 | RDY/UTB/ADOT Review | 4-1-34  |
| 269 | RDY/UTB/ADOT Review | 5-1-34  |
| 270 | RDY/UTB/ADOT Review | 6-1-34  |
| 271 | RDY/UTB/ADOT Review | 7-1-34  |
| 272 | RDY/UTB/ADOT Review | 8-1-34  |
| 273 | RDY/UTB/ADOT Review | 9-1-34  |
| 274 | RDY/UTB/ADOT Review | 10-1-34 |
| 275 | RDY/UTB/ADOT Review | 11-1-34 |
| 276 | RDY/UTB/ADOT Review | 12-1-34 |
| 277 | RDY/UTB/ADOT Review | 1-1-35  |
| 278 | RDY/UTB/ADOT Review | 2-1-35  |
| 279 | RDY/UTB/ADOT Review | 3-1-35  |
| 280 | RDY/UTB/ADOT Review | 4-1-35  |
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| 284 | RDY/UTB/ADOT Review | 8-1-35  |
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| 288 | RDY/UTB/ADOT Review | 12-1-35 |
| 289 | RDY/UTB/ADOT Review | 1-1-36  |
| 290 | RDY/UTB/ADOT Review | 2-1-36  |
| 291 | RDY/UTB/ADOT Review | 3-1-36  |
| 292 | RDY/UTB/ADOT Review | 4-1-36  |
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| 297 | RDY/UTB/ADOT Review | 9-1-36  |
| 298 | RDY/UTB/ADOT Review | 10-1-36 |
| 299 | RDY/UTB/ADOT Review | 11-1-36 |
| 300 | RDY/UTB/ADOT Review | 12-1-36 |
| 301 | RDY/UTB/ADOT Review | 1-1-37  |
| 302 | RDY/UTB/ADOT Review | 2-1-37  |
| 303 | RDY/UTB/ADOT Review | 3-1-37  |
|     |                     |         |



Order 29-17/18

Motion to postpone to September 18, 2017: 9-0 on 9/6/2017

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,  
Re: Disorderly Houses That Are Also Short Term Rentals**

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

**ORDERED**, that Section 6-156 of the Code of Ordinances, City of  
Portland, Maine, is hereby amended to read as follows:

Sec. 6-156. Enforcement.

(a) The building authority as defined in section 6-1  
or his or her designee is authorized to institute, or cause  
to be instituted by and through the office of the corporation  
counsel, in the name of the city, any and all actions,  
legal or equitable, that may be appropriate or necessary  
for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for  
property that is subject to the registration requirements  
of this article, but is not registered in accordance with  
this article.

(c) Any short term rental at a property that is designated  
by the City as a disorderly house and fails to remedy the  
disorderly house as required by section 6-202~~and fails to meet~~  
~~the requirements of section 6-202~~, shall, at the discretion of  
the City Manager or his or her designee, have its registration  
revoked and be ineligible for registration for a period of  
twelve (12) months. Any registration after revocation shall be  
considered a new registration and not a renewal. Upon the  
second designation of the short term rental property as a  
disorderly house, the City shall, at the discretion of the City  
Manager or his or her designee, prohibit the registered owner  
from operating the property as a short term rental or post the  
property against occupancy pursuant to section 6-201.

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

**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  
Housing and Community Development Division

**DATE:** August 7, 2017

**SUBJECT:** Amendment to Portland City Code Chapter 6 re: Short Term Rentals

**SPONSOR:** Housing Committee, Councilor Jill Duson, Chair

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
1<sup>st</sup> reading August 21<sup>st</sup> Final Action September 6<sup>th</sup>

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

**PRESENTATION:** Richard Bianculli, Neighborhood Prosecutor; Anne Torregrossa, Associate Corporation Counsel will be available for questions

**I. ONE SENTENCE SUMMARY**

The intent of the proposed amendment to Portland City Code Chapter 6 was to strengthen and clarify the language in the ordinance regarding enforcement procedures for short term rentals following a Disorderly House designation.

**II. AGENDA DESCRIPTION**

In March 2017, the City Council adopted residential rental registration requirements for short term rentals. Subsequent to the adoption of the short term rental registration requirements, the Housing Committee sought additional information so that the Committee could determine if additional changes needed to be made to strengthen and clarify the enforcement provisions of the ordinance as it relates to short term rentals that receive a disorderly house designation.

At their July 12, 2017 meeting, the Housing Committee voted 3-0 to forward this item to the City Council with a recommendation to approve the amendment to Chapter 6 of the City Code.



### **III. BACKGROUND**

As the Housing Committee deliberated and worked on the short term rental registration requirements, the Committee acknowledged concerns from residents regarding the potential of short term rentals to cause neighborhood disturbances. The Committee sought to establish clarity with and strengthen the integration of the new Short Term Rental Registration Ordinance with the existing Disorderly House Ordinance.

At the May 5, 2017 Housing Committee meeting, the Committee heard from Richard M. Bianculli Jr., Esq., Neighborhood Prosecutor. Mr. Bianculli noted that up to that point, the Police Department had not designated a short term rental property as a disorderly house but suggested the proposed changes to the ordinance in an effort to pro-actively address potential enforcement issues.

The proposed language would, at the discretion of the City Manager or their designee, prohibit a short term rental property that has received a second designation as a disorderly house from operating the property as a short term rental.

### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

To strengthen and clarify the enforcement procedures for short term rentals that have received a Disorderly House designation.

### **V. FINANCIAL IMPACT**

N/A

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

### **VII. RECOMMENDATION**

That the City Council vote to approve the amendment.

### **VIII. LIST ATTACHMENTS**

Proposed Ordinance Language

Prepared by: Mary P. Davis, Housing and Community Development Division Director

Date: August 7, 2017

AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 6 AND CHAPTER 14  
Re: Short Term Rentals

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

1. That Chapter 6, Article VI., Sections 6-156 of the  
Portland City Code is hereby amended as follows:

**ARTICLE VI. RESIDENTIAL RENTAL UNIT REGISTRATION  
REQUIREMENTS**

Sec. 6-156. Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to remedy the disorderly house as required by section 6-202 ~~and fails to meet the requirements of section 6-202~~, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal. *Upon the second designation of the short term rental property as a disorderly house, the City shall, at the discretion of the City Manager or their designee, prohibit the registered owner from operating the property as a short term rental or the City may elect to post the property against occupancy pursuant to section 6-201.*

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

*Order 30-17/18  
Feb 21 - 8-21-19  
Feb 17 9-18-17*

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 5  
RE: WILD AND EXOTIC ANIMAL ORDINANCE**

**WHEREAS**, elephants, tigers, lions and other wild animals who live out their lives in the wild suffer when caged and when hauled in trucks and trains around the country; and

**WHEREAS**, forcing these wild animals to perform for audiences requires draconian training that can be cruel and inhumane; and

**WHEREAS**, even the wealthiest businesses that train and exhibit wild animals, with seemingly the resources to do otherwise, have been cited for violations of the federal Animal Welfare Act; and

**WHEREAS**, elephants owned and trained by the Carson & Barnes Circus have repeatedly escaped after suffering from that circus' failure to be safely handled, for which the circus paid a \$16,000 fine; and

**WHEREAS**, Vincent Von Duke's big cat act has been cited by the United States Department of Agriculture for failure to provide minimum space and a proper diet to its lions and tigers; and

**WHEREAS**, both Carson & Barnes Circus and Vincent Von Duke's big cat act have been in charge of wild animals brought to the City of Portland, Maine, to perform; and

**WHEREAS**, wild and exotic animals have also escaped their trainers and cages and roamed in cities, threatening the safety of the residents and presenting a dangerous challenge to the police officers who must respond; and

**WHEREAS**, enforcement of national and state animal welfare laws are inadequate, and these animals routinely suffer

from starvation and cruelty without finding any mercy under the law; and

**WHEREAS**, attitudes toward wild and exotic animals have changed since it was considered simple entertainment to watch them do tricks, and spectators are now more likely to find the tricks themselves a form of cruelty;

**NOW, THEREFORE, BE IT ORDERED**, that pursuant to the City of Portland's home rule authority articulated in 30-A M.R.S. section 3001 et seq., the Portland City Code, Chapter 5, Animals and Fowl, is hereby amended by adding an Article VI, Sections 5-506 to 5-509, which said sections read as follows:

**Article VI. Prohibition on Display of Wild and Exotic Animals.**

**Sec. 5-506. Definitions.**

The following words and phrases have the following meanings:

Director means the City Manager or his/her designee, which is the party responsible for enforcement of this Article.

Display means any exhibition, fair, act, circus, ride, or similar undertaking in which wild and/or exotic animals are required to perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience, whether or not a fee is charged.

Mobile or traveling housing facility means a transporting vehicle such as a truck, trailer or railway car, used to transport or house wild and/or exotic animals while traveling for exhibition or other performance of those wild and exotic animals.

Traveling animal act means any display of wild and/or exotic animals where such animals are transported to, from, or

between locations for the purpose of such display, in a mobile or traveling housing facility.

Wild and/or exotic animal means any live animal from any of the following scientific classifications:

- a) Artiodactyla (including hippopotamuses, giraffes, camels, and llamas, but excepting cattle, swine, sheep, and goats);
- b) Crocodylia (including alligators and crocodiles);
- c) Elephantidae (elephants);
- d) Felidae (including tigers, lions, jaguars, leopards, cheetahs, and cougars, or any hybrid thereof, but excluding domestic cats);
- e) Marsupialia (including kangaroos);
- f) Non-human primates (including apes, monkeys, and lemurs);
- g) Perissodactyla (including rhinoceroses, tapirs, and zebras);
- h) Pinnipedia (including seals, sea lions, and walruses);
- i) Ursidae (bears); or
- j) Elasmobranchii (including nurse sharks and lemon sharks).

#### **Sec. 5-507. Prohibited Acts.**

(a) It shall be a violation of this Article for any person, business, entity, corporation, limited liability company or other similar organization to allow for the participation of a wild and/or exotic animal in a traveling animal act in the City of Portland;

(b) The penalty for violations of this Article shall be \$500.00 per offense. Each and every wild and/or exotic animal exhibited and each day exhibition occurs shall constitute a separate offense; and

(c) This Article may also be enforced pursuant to Chapter 1, section 1-15 of the Portland City Code.

**Sec. 5-508. Administration and Enforcement.**

The Director shall be responsible for the administration and enforcement of the provisions of this Article.

**Sec. 5-509. Effective Date.**

This Article shall be effective on \_\_\_\_\_.



**THE HUMANE SOCIETY  
OF THE UNITED STATES**

**Testimony in support of an ordinance to prohibit the display of wild and exotic animals  
Portland City Council – Health & Human Services Committee  
July 11, 2017**

Good evening, Councilor Ray, Councilor Batson, and Councilor Mavodones. My name is Katie Hansberry. I'm a District 1 Portland resident and the Maine senior state director for The Humane Society of the United States. Thank you for the opportunity to address you tonight. On behalf of our supporters in Portland, I respectfully urge you to support the proposed ordinance that would prohibit the cruel and dangerous practice of having wild and exotic animals perform in traveling animal acts such as circuses.

With the wealth of information that is now available about the rich and varied lives that elephants, lions, tigers, bears and other wild animals naturally lead, it's become apparent that life in a traveling show is nothing but misery for them. Animals in circuses and other traveling displays are trained with pain and the fear of punishment, bullied to perform silly tricks, forced to endure extreme confinement while chained in trucks and trailers during months of grueling travel each year, and are routinely denied natural behaviors, proper veterinary care, and adequate exercise.

Experts agree that using wild animals in circuses requires inhumane training methods and fails to provide animals with an appropriate environment for their physical and psychological health. Ron L. Kagan, Executive Director and Chief Executive Officer of the Detroit Zoo, sums this up in his statement that, "By definition, traveling shows cannot provide the space, substrates, climate and social conditions necessary to meet even the basic needs of animals. It is extremely hard for even a modern zoo with great technical expertise and expansive space and resources to meet these needs. In addition to the constant stressful travel, the daily living conditions, often with prolonged restraint, aversive and cruel methods of physical training are very harmful."

Animal welfare concerns are well documented and many, if not most, exhibitors with wild animal acts have been repeatedly cited for serious violations of the federal Animal Welfare Act (AWA). For example, Carson & Barnes Circus, which has supplied elephants to circuses that perform in Portland, has a long history of abysmal animal care for a variety of species and multiple instances of elephants escaping. A year ago, Carson & Barnes Circus was assessed a penalty of \$16,000 for multiple charges of failure to safely handle elephants and its most recent elephant escape occurred just last month. And Vincent Von Duke's big cat act, which also performed in Portland earlier this year, has been cited by the USDA for failure to provide minimum space and a proper diet to big cats, failure to promote the psychological well-being of

primates, and repeated failure to have a responsible adult available for the USDA to conduct an animal welfare inspection.

The use of wild animals in circuses also poses a threat to public safety. Animal handlers cannot protect themselves, let alone the public, when a wild animal rebels. Escaped tigers have roamed through performance arenas, frightened and injured circus goers, and injured and killed their trainers in front of horrified spectators. Chaos has ensued when elephants bolted through parking lots and downtown streets, crashed through arena doors and plate glass windows, and collided with traffic. In two instances, rampaging elephants – one who had been giving rides to children – were gunned down and killed by police. Earlier this year, the Anah Shrine Circus in Bangor leased elephants from RW Commerford and Sons to perform in the shows and provide rides. One of those elephants, Minnie, has been involved in three dangerous incidents while giving rides to children. While we're fortunate that such an incident has yet to happen in Maine, it is only a matter of time if such performances are allowed to continue.

Circuses easily get away with routine abuse because no government agency monitors training sessions (where the most violent abuses occur), existing laws do not provide enough protection for wild animals, and travelling circuses for the most part go virtually unchecked as they move quickly from one jurisdiction to another, making it difficult for anyone to monitor, report, or investigate abuses. While circuses are regulated by the federal Animal Welfare Act, which is enforced by the USDA, the AWA establishes only minimum guidelines, and due to inadequate resources, the weak standards of the AWA are poorly enforced. In addition to animals used in exhibition, the AWA regulates research labs, animal dealers, and breeders, such as puppy mills. There are only about 120 USDA inspectors responsible for inspecting more than 10,000 diverse facilities— clearly an insufficient number of inspectors to conduct regular inspections and follow-up. In addition, inspectors may not be knowledgeable about exotic species. Enforcement actions are rare and typically result in mere warnings, small fines, or short license suspensions. The USDA rarely revokes licenses or confiscates animals. It is common for USDA licensees to keep animals in grossly inhumane and unsafe conditions, yet still be in compliance with the AWA. While Maine did adopt rules for the care and treatment of elephants (Chapter 703), they are similarly minimal in nature. It is also important to note that although state and local animal cruelty statutes do apply to wild animals in circuses, violations of these laws can be challenging to prosecute due to the transitory nature of circuses and local law enforcement's unfamiliarity with these species.

The inadequacies of current law were exemplified in 2008 when an elephant named Ned performed at Bangor's Anah Shrine Circus while sick and emaciated – nearly 2,000 pounds underweight. It was only after Ned was long gone from Maine and some photographs from that



performance came to the attention of someone at the Oakland, California zoo that steps were taken to try and help him. Unfortunately, it was too late and Ned died less than a year later.

The proposed ordinance will not have an adverse impact on the local economy. Circuses do not generate new economic spending in a region – they only redistribute a family's discretionary spending. Families have a fixed amount of entertainment dollars that will be spent locally, whether it's on movies, museums, ball games, or a circus. Similarly, local jobs will not be affected because if circuses choose not to comply with the new law, the venues that previously hosted animal circuses will simply book other entertainment options. In a recent Portland Press Herald article concerning the recent circus performances in Portland, one of the families in attendance stated that they would continue to go to the circus even if it decided to no longer feature elephants, would support a ban on animal acts, and that "you could put on a great show without them." Indeed, many animal-free circuses are thriving such as Circus Smirkus and Circus Vargas. While another family interviewed in the Portland Press Herald article stated that his grandson's "favorite part of the show" was the elephant ride and that "it's important for the younger generation to see these great creatures of the wild," the reality is that animal exhibitions and performances have no education or conservation value. Having wild animals do tricks in traveling acts does nothing to educate the public about ecology, natural behaviors or lives. It doesn't teach our children empathy or to respect animals. In fact it send the wrong message – that it is acceptable to exploit animals for our amusement.

In the wild, bears don't ride bicycles, tigers don't jump through fiery hoops, and elephants don't do handstands. Circuses present a distorted view of wildlife. There are many alternative forms of entertainment that are fun, exciting, and family-friendly that don't involve forcing abused animals to perform demeaning tricks.

Moreover, this ordinance will not prevent the Anah and Kora Shriners from continuing to help children in need of medical care. The Shriners Hospitals for Children is a separate entity and revenue from a \$9 billion endowment covers more than 90 percent of the hospitals' budgets. The New York Times reports that only 2 percent of the hospitals' operating expenses comes from money raised by Shrine temples and dues paid by members. According to the Director of Temple Accounting at Shriners International, "It is natural to associate the fez with Shriners Hospitals for Children. Because of this, meticulous attention must be given to all fundraising activities, including circuses, to make certain [...] that a contributor is not led to believe that his money will be used for the Hospitals when all or a portion thereof will be used otherwise."

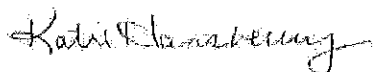
We're not saying that the organizations bringing circuses to Maine are intentionally condoning animal cruelty, but by relying on what they see during that very short period of time as the

basis of their statements that the animals are well-cared for they are turning a blind eye to the reality of the situation. The suffering wild animals endure in circuses is real and systemic. As stated in a recent op-ed by Delcianna Winders published in the Sun Journal, "Mounting evidence — including video footage, sworn eyewitness testimony, and government inspection reports — makes clear that the only way to force the Earth's largest land animals to perform is through the constant threat of physical punishment. Abuse is the rule, not the exception." It's time to ensure that fundraisers are humane, safe and appealing to today's audiences, as that will benefit everyone.

Attitudes have changed and it's important for laws to reflect public opinion. To date, four states and more than 125 other localities in 34 states have passed restrictions governing the use of wild animals in circuses and traveling shows.

For these reasons, we urge you to vote in support of this ordinance. In doing so, you will be protecting wild animals from cruelty and Mainers from public safety risks while demonstrating that Portland will continue to lead the way.

Thank you for your time and consideration.



Katie Hansberry

Maine Senior State Director

[khansberry@humanesociety.org](mailto:khansberry@humanesociety.org)

207-999-2323

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Health and Human Services Committee, Councilor Belinda Ray, Chair

**DATE:** July 20, 2017

**SUBJECT:** Wild and Exotic Animal Ordinance

**SPONSOR:** Health and Human Services Committee, Councilor Belinda Ray, Chair  
(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:**

1<sup>st</sup> reading 8/21/2017 Final Action 9/6/2017

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

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

**I. ONE SENTENCE SUMMARY**

This amendment to Chapter 5 prohibits the display of wild and exotic animals at circuses and other entertainments in order to stop the animal cruelty typically involved in such performances.

**II. AGENDA DESCRIPTION**

The Health and Human Services Committee reviewed this Amendment at its June 13, 2017 meeting and voted 3-0 to forward the revised ordinance to the full City Council with a recommendation for passage.

This ordinance would prohibit the display of wild and exotic animals in performances at circuses or similar entertainments in the City of Portland. Circuses and other popular entertainments have included wild and exotic animals in their performances for centuries, but acceptance of this practice is shifting, and those performances are now often viewed as acts of cruelty to the captive animals involved. Animal rights supporters have encouraged the City to adopt the ordinance under consideration, which is similar to those adopted by other cities and states around the country. Evidence that animal trainers use cruel methods and that circuses routinely abuse the animals in their possession is strong. By prohibiting the display of wild animals at circuses, supporters hope to stop this kind of animal cruelty throughout the country.

**III. BACKGROUND**

Please see attached testimony and articles provided by the Humane Society of the United States.

A fine of \$500 for violating this prohibition is part of the proposed ordinance. The Portland City Code imposes fines for various code violations involving animals, including:

Dogs running at large: \$75 first violation, \$100 2nd, \$150 3rd, \$500 4th;  
Dangerous dog: minimum \$500, \$750 2nd offense, \$1,000 3rd; and  
Violation of prohibition of sale of puppy mill animals, Section 5-504, \$250.00.

#### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

The prevention of animal cruelty and animal abuse.

#### **V. FINANCIAL IMPACT**

A cost for enforcement of the ordinance is anticipated, but there is no estimate. The ordinance imposes a \$500 fine for violation of the prohibition.

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

#### **VII. RECOMMENDATION**

#### **VIII. LIST ATTACHMENTS**

Background material and testimony from a Portland senior state director of the Humane Society of the United States

Amendment to Portland City Code Chapter 5 Re: Wild and Exotic Animal Ordinance

Prepared by: Nancy English

Date: July 20, 2017

Bean/agendarequestmemo/rev 11/2015

# The Truth Behind the Big Top



THE HUMANE SOCIETY  
OF THE UNITED STATES



**"[T]he big cats in Ringling Bros. ... are managed through fear, coercion, and punishment."**

Jay Pratte, B.S., M.A., Animal training, behavior, and welfare consultant

**Four states and at least 125 other localities have passed legislation addressing the abuse of wild animals in circuses.**

Updated January 9, 2017

## Protect Captive Wildlife from Circus Abuse

Circuses have earned the reputation as the cruelest shows on earth due to the use of violent training methods, constant confinement, and neglect of animals. With growing public awareness about the miserable lives endured by animals used in traveling shows, animal-based circuses have been dwindling in popularity. Some circuses are eliminating elephant and other animal acts, while others have simply closed down.

### Abusive Training

Wild animals don't perform confusing and often physically grueling circus tricks because they want to—they perform because they're afraid not to. Trainers use violent training methods, including beatings and electric shock, to force animals to perform difficult tricks on command. Tools of the trade include bullhooks—an outdated elephant training device that resembles a fireplace poker—as well as electric prods, sticks, whips, and chains.

### Constant Confinement

Animals used in traveling shows spend most of the time in extreme confinement. Elephants are often chained or confined to small pens and big cats spend the majority of their time in cramped transport cages that, on average, measure approximately 4 feet

by 7 feet. Deprived of adequate exercise and appropriate social groupings and with no opportunities to express natural behaviors, wild animals often exhibit signs of severe and chronic stress. Life in an unhealthy environment on the road also means that sick animals may not have access to immediate and expert veterinary care.

### Public Safety Concerns

Wild animals are dangerous and unpredictable and their use in circuses puts the public at risk. There have been countless instances of tigers escaping from cages, elephants rampaging, and even zebras bolting through traffic. And when an animal such as an elephant rebels against a trainer's physical dominance, trainers cannot protect themselves, let alone the general public.

### No Impact on Economy

Circuses do not generate new economic spending in a region—they only redistribute a family's discretionary spending. Most families have an entertainment budget that will be spent in the local economy, whether it's on miniature golf, a ball game, a movie, or a circus. Since circus owners and performers do not reside in the towns they perform in, when the show leaves, it takes its revenues out of the city.

# Dangerous Incidents

## Circuses, Fairs, Traveling Shows



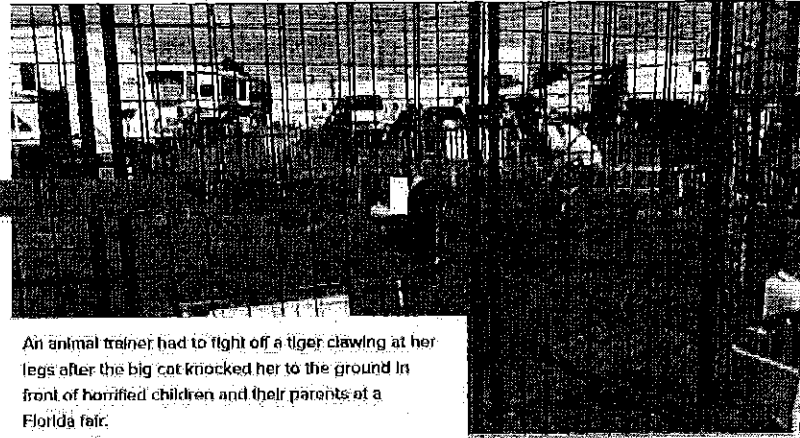
THE HUMANE SOCIETY  
OF THE UNITED STATES

## Kids watch in horror as tiger attacks trainer

By Joshua Rineff Miller

NEW YORK POST

October 26, 2016 1 9:08am 1 Updated



An animal trainer had to fight off a tiger clawing at her legs after the big cat knocked her to the ground in front of horrified children and their parents at a Florida fair.

CAN WILD ANIMAL ACT?

## Wild animals are dangerous and unpredictable and their use in traveling shows puts the public at risk

Since 1990, scores of people, including dozens of children, have been injured by bears, big cats, elephants, and primates used in circuses and other traveling shows. When a wild animal runs amok, it is typically local law enforcement authorities who are called on to protect public safety while attempting to recapture a dangerous, stressed animal. A growing number of communities are banning the use of wild animals in traveling shows out of concerns for the safety of the public and first responders as well as animal welfare.

**October 25, 2016/Pensacola, Florida:** A tiger attacked a trainer during a show at the Pensacola Interstate Fair. The tiger knocked the woman down, chewed on her leg, and dragged her across the cage as she screamed for help. Another trainer charged into the performance cage—leaving the door wide open—and started beating the tiger. Both trainers struck the tiger with sticks 30 times. Two tigers were in the cage at the time and could have easily bolted through the open door and confronted a group of 33 horrified children watching the incident. The trainer was rushed to a hospital and had to have surgery for her injuries.<sup>1</sup>

**October 9, 2015/Perry County, Georgia:** A lemur escaped from a cage at a county fair when an employee at an exhibit provided by Eudora Farms petting zoo failed to secure a door. The lemur "creat[ed] mayhem," and bit two bystanders.<sup>2</sup>

**April 27, 2014/St. Louis, Missouri:** A bear cub nipped eighteen students on the face and/or hands at Washington University. The cub was part of a traveling petting zoo that was brought onto campus by Cindy's Zoo. A decision to kill the bear cub so the animal could be tested for rabies was ultimately reversed.<sup>3,4</sup>

**March 22, 2014/St. Charles, Missouri:** Three elephants escaped from handlers with the Royal Hanneford Circus. The elephants (Kelly, Viola, and Isa) were spooked by noise in the performance arena, pushed through a door, and exited into the parking lot. Kelly ran between two trailers, resulting in abrasions and lacerations on her right side, Viola sustained lacerations on both sides of her body, and two cars were damaged. Hanneford was performing as the Moolah Shrine Circus and had leased the elephants from Carson & Barnes Circus.<sup>5,6</sup>

**April 20, 2013/Salina, Kansas:** A woman attending the Shrine Circus came within two to three feet of an escaped tiger in the restroom. The tiger bolted at the end of a performance and ran into the concourse of the arena, which contained food stands and restrooms. The tiger then returned to the performance ring and walked around the perimeter of the arena—which was separated from the audience seating area only by short walls. Then she again ran to the concourse and entered the women's restroom where she was ultimately cornered and recaptured.<sup>7,8</sup>

**February 16, 2013/Minneapolis, Minnesota:** A lemur bit a 3-year-old boy at the Minnesota Convention Center. The lemur, exhibited by Barry De Voll's Blue Trunk Educational Series, was invited to climb up the boy's arm for a photo and bit the child on the hand when he lowered his arm. The bite appeared to be mildly infected and medical personnel were concerned that a small cyst between three bite wounds could indicate a Herpes B infection if the lemur had been housed with macaques (a species that commonly carries the Herpes B virus). Although the cyst later tested negative for the deadly virus, the boy was put on anti-viral medication and given rabies prevention shots. The animal handler falsely claimed the lemur only scratched the child.<sup>9,10</sup>

**January 15, 2013/Collier County, Florida:** A 125-pound grizzly bear cub escaped from an enclosure through an improperly locked door and then off the property of Dexter and Megan Osborn's traveling zoo called A Grizzly Experience. The bear was on the loose for three days before being tranquilized and recaptured by The Florida Fish and Wildlife Conservation Commission. The state agency spent more than \$5,800 searching for the escaped bear.<sup>11,12,13,14</sup>

**November 2012/Los Angeles, California:** A squirrel monkey attacked Michele Kanan, the wife of *General Hospital* star Sean Kanan. The monkey, who had been brought as entertainment to her birthday party, leaped out of the handler's arms, jumped five feet, and bit Mrs. Kanan on the arm. The handler grabbed the monkey as the animal was about to bite her a second time.<sup>15</sup>

**August 31, 2012/Pueblo, Colorado:** Numerous animals exhibited at the Colorado State Fair ran loose, causing a U.S. Department of Agriculture inspector to write, "The animals [exhibited by Tammy Thomson's Camp Junction] are at risk of injury, being lost or stolen, or of potentially injuring a member of the public [...]." Two unconfined 3-month-old lemurs were startled when a cage fell off a table, causing them to bolt and run loose for more than 20 minutes, approaching members of the public and the food vending area. Another lemur escaped when an employee opened an enclosure and was on the loose for at least ten minutes, and an approximately 28-day-old lemur passed through the mesh of an enclosure and into the public area at least twice.<sup>16</sup>

**July 21, 2011/Warsaw, New York:** Three tigers with the Kelly Miller Circus escaped from their transport enclosures inside the main transport vehicle. Two of the tigers crossed a barrier fence and bit a horse in the next trailer. It took approximately 30 minutes to safely contain the tigers.<sup>17,18</sup>

**April 27, 2010/Lynchburg, Virginia:** An elephant named Viola escaped from the Cole Bros. Circus. She bolted from handlers

and ran directly past a line of people waiting to buy tickets, sending some running toward the parking lot. Viola slid in the mud and tumbled down a hill and into a ditch, resulting in a cracked toenail and an inflamed shoulder. She was on the loose for approximately 30 minutes before being recaptured. The circus claimed that the elephant had been spooked by a rabbit.<sup>19,20,21</sup>

**April 9, 2010/Wilkes-Barre, Pennsylvania:** An African elephant named Dumbo attacked and killed a handler between performances at the Irem Shrine Circus. The handler was kicked and thrown about 20 feet and died at the scene from multiple traumatic injuries. The elephant had been leased from Joe Frisco's Wonderful World of Animals.<sup>22,23,24</sup>

**April 2010/Winchester, Virginia:** Isa, an elephant with Carson & Barnes Circus and traveling with Cole Bros. Circus, stepped on a trainer who sustained injuries that required a foot splint and crutches and kept him off work for a few days.<sup>25</sup>

**February 6, 2010/Columbia, South Carolina:** Approximately 100 people were just feet away when a startled elephant broke through a door and rumbled around the performance area during a pre-show for the Ringling Bros. and Barnum & Bailey Circus at the Colonial Life Arena, causing the pre-show to end early.<sup>26</sup>

**November 4, 2009/Enid, Oklahoma:** A 4,500-pound African elephant named Kamba escaped from the Family Fun Circus and collided with an SUV on U.S. 81. Something reportedly startled the elephant as she was being loaded into a truck with another elephant and she ran off the fairgrounds and onto the highway. The passenger of the SUV hit the door when the driver swerved to avoid the elephant and suffered head, knee, and hip pain. The elephant's tusk pierced through the side of the vehicle. Kamba sustained a broken tusk, a fractured carpal bone, bruising to the trunk, and cuts and scrapes to her left front leg and body. Kamba was leased by the circus from exhibitor Doug Terranova and had escaped from another circus the previous year (see June 5, 2008/WaKeeney, Kansas).<sup>27,28,29,30,31</sup>

**July 30, 2009/Las Vegas, Nevada:** A 400-pound tiger used in a magic act escaped while being walked on a leash outside of the Fercos Brothers' gated property. The tiger ran after a rabbit, causing Tony Fercos to fall and drop the leash. Police responded to reports from local residents about a tiger wandering the streets, and the animal was found in a resident's backyard. The owners cornered the tiger and returned him to his cage.<sup>32,33</sup>

**March 13, 2009/Fruitland Park, Florida:** A spider monkey escaped from the Liebling Family Circus when the circus owner

failed to latch the animal's leash correctly. The monkey fled into nearby woods and was not recaptured until more than six weeks later.<sup>34,35</sup>

**March 7, 2009/Indianapolis, Indiana:** At least a dozen children and one adult were injured when an elephant giving rides at the Murat Shrine Circus knocked over the scaffolding stairway leading to the ride. The elephant was either startled by something and stumbled into the stairway or was pushed into the scaffolding by another elephant. People standing on, under, and around the scaffolding were injured. Their injuries were treated on the scene. The Shriners had leased the elephant from exhibitor Will Davenport, d.b.a. Maximus Tons of Fun.<sup>36,37,38,39</sup>

**August 5, 2008/Richmond, Illinois:** During a rehearsal for a circus performance, a tiger attacked a man at the Hawthorn Corporation circus training facility, knocking him to the ground, face down, and grabbing him by the neck. The man sustained deep puncture wounds and several scratches to his upper body, neck, and knee. Others present during the attack hit the animal with wooden poles in order to get him to release the victim. Paramedics transported the man to the hospital, where he stayed for five or six days. It was the second time the man had been attacked by a tiger at the facility.<sup>40,41</sup>

**June 5, 2008/WaKeeney, Kansas:** Despite four days of National Weather Service warnings that severe tornados were expected in the area, the Culpepper & Merriweather Circus had two elephants, Kamba and Congo, outside to give rides to the public. When a tornado hit, winds lifted an inflatable slide off the ground and it fell on one of the elephants. A handler sustained broken teeth and ribs after one of the elephants threw him. The elephants bolted from the fairgrounds and ran through neighborhoods several blocks away, causing property damage and frightening residents, including a woman who was chased into her garage. Police, sheriff's officers, firefighters, and circus workers pursued the elephants. Congo was shot three times with a tranquilizer gun in an effort to slow her down. The elephants were on the loose for approximately three hours before they were recaptured and loaded onto trucks. The circus had leased the elephants from exhibitor Doug Terranova.<sup>42,43</sup>

**November 8, 2007/Columbia County, Georgia:** A baboon bit a 17-month-old boy at the Columbia County Fair. The boy's father lifted him to feed the animal through the cage and the baboon, exhibited by Eudora Farms petting zoo, bit the child's hand.<sup>44</sup>

**March 6, 2007/Apache Junction, Arizona:** An employee with Enterprising Elephants suffered several broken ribs and a dislocated jaw when an elephant "spooked" and ran over him

at the Arizona Renaissance Festival. The injured man was hospitalized for several days.<sup>45</sup>

**January 21, 2007/San Angelo, Texas:** A woman was given a tetanus shot at a hospital emergency room after a 10-week-old African lion cub bit her right forearm and would not let go until a worker repeatedly hit the cub in the face. The cub, who was placed under quarantine, was being exhibited by GW Exotic Animal Foundation at a mall where patrons were allowed to pet and interact with the lion.<sup>46</sup>

**November 24, 2006/Evansville, Indiana:** A tiger clawed animal trainer Wade Burck during a performance of the Hadi Shrine Circus. Burck received hospital treatment, including stitches, for wounds to his left forearm and leg.<sup>47,48</sup>

**November 18, 2006/Coral Gables, Florida:** A 62-pound cougar mauled a 4-year-old girl at a children's birthday party. The cat took the child's head into her mouth, inflicting severe cuts to the girl's eyelid, cheek, and ear, and requiring surgical reattachment of part of her severed ear. The cougar had been provided by Wild Animal World and was killed to be tested for rabies. The proprietor of Wild Animal World had been cited at least twice previously for similar attacks.<sup>49</sup>

**July 18, 2006/Ballston Spa, New York:** An adult tiger clawed a 4-year-old boy at the Saratoga County Fair. The child was sitting next to a cage while having his photo taken with a baby kangaroo when the tiger, displayed by the Ashville Game Farm, reached out and clawed him. The boy was treated at the hospital and received 14 stitches for a 1-inch gash on his head.<sup>50,51</sup>

**June 16, 2006/Kaufman County, Texas:** A 300-pound tiger climbed out of an uncovered enclosure and chased and mauled a part-time employee of Zoo Dynamics, a traveling zoo owned by Marcus Cook. The tiger grabbed the man and threw him down, ripped off his ear, and left severe claw marks all over his body. The man spent the weekend in intensive care and received some 2,000 stitches. The employee in charge took the victim to the hospital without notifying local authorities that a tiger was still loose on the premises and recaptured the animal upon his return.<sup>52,53,54</sup>

**March 19, 2006/Gainesville, Florida:** A tiger bit a 25-year-old employee of exhibitor Josip Marcan at the Putnam County Fair when he stuck his arm into the animal's cage. The man was treated at a hospital for severed tendons in his arm.<sup>55,56</sup>

**March 5, 2006/Marlborough, Massachusetts:** An Asian elephant named Minnie at the Commerford Petting Zoo injured two employees while giving rides at a children's fair taking place at the Best Western Royal Plaza Trade Center. As



children were being loaded onto her back, she became agitated and suddenly swung her head toward the two employees, shifting her weight and pinning them against the loading ramp. An eyewitness reported that one of the employees had provoked the elephant by striking her in the face. One man sustained a chest injury and the other a broken arm. Both were taken by ambulance to the hospital. Two bystanders sustained bruises. Minnie had been involved in at least three previous dangerous incidents (see August 27, 1998/Syracuse, New York, and August 28, 1989/Essex Junction, Vermont).<sup>57,58,59</sup>

**December 12, 2005/San Juan, Puerto Rico:** Two elephants ran amok and sustained cuts and scrapes from arena seats after being startled by a barking dog after a Ringling Bros. performance.<sup>60</sup>

**August 29, 2005/Springdale, Ohio:** A capuchin monkey belonging to trainer Phil Dolci (a.k.a. Hendricks d.b.a. Banana Derby) with the Hendricks Bros. Circus was frightened by a train whistle and fled into a nearby wooded area. He was found the next day, damp and hungry, huddled in the roof area of a picnic pavilion at a park.<sup>61,62</sup>

**August 25, 2005/Mt. Pleasant Township, Pennsylvania:** An Asian elephant named Jewel, owned by Cole Bros. Circus and touring with Wambold's Circus Menagerie wrapped her trunk around a woman's wrist and yanked her as she reached out toward the elephant from a crowd of people feeding the animal at the county fair. The woman was treated at an emergency room for a sprain and possibly torn ligaments.<sup>63,64</sup>

**August 2005/Jefferson County, Missouri:** A capuchin monkey used for photo ops with the public bit a child at a festival. The boy was treated on site by medics and later went to the hospital and underwent rabies prevention shots. Health officials were unable to quarantine the monkey because the owner took the primate to a different county a few days after the incident.<sup>65</sup>

**July 2005/Richmond, Illinois:** One of 14 tigers circled a man during a photo shoot and then attacked his left leg at Hawthorn Corporation's circus-training facility. The man required immediate surgery, suffered nerve damage, and subsequently filed a lawsuit against Hawthorn and the tiger trainer seeking more than \$50,000 for medical bills and pain and suffering.<sup>66</sup>

**April 13, 2005/Polk City, Florida:** Ringling Bros. and Barnum & Bailey Circus elephant handler David Mannes was airlifted to a medical center to treat a fractured pelvis and soft tissue wound to his arm after being knocked down and kicked by an Asian

elephant named Tova while feeding the elephants at Ringling's breeding compound.<sup>67,68</sup>

**February 12, 2005/Oldsma, Florida:** A tiger cub bit a woman on the hand. The tiger cub was provided by Zoo Dynamics for public photo sessions at an automobile dealership.<sup>69</sup>

**January 31, 2005/Fort Wayne, Indiana:** An elephant trainer with Tarzan Zerbini Circus was trampled to death by one or more of three Asian elephants as the animals were being loaded into a trailer following performances at the Mizpah Shrine Circus.<sup>70</sup>

**January 20, 2005/Baraboo, Wisconsin:** An 80-pound, 7-month-old lion cub bit an 8-year-old girl on the chest during a promotional event at Creature Features Pet Store. The girl had to undergo rabies prevention shots.<sup>71,72</sup>

**December 9, 2004/Detroit, Michigan:** A capuchin monkey bit a student at a wildlife show-and-tell at Wayne State University. The monkey was part of a menagerie brought by the Chicago-based Bill Hoffman's Animal Rentals.<sup>73</sup>

**December 5, 2004/Laredo, Texas:** A circus worker was rushed to the hospital after she was badly bitten on the hand by a caged tiger at Great Circus of China.<sup>74</sup>

**November 26, 2004/Evansville, Indiana:** An ambulance was called to the Hadi Shrine Circus at Roberts Stadium after a chimpanzee bit a circus-goer on the cheek while posing for pictures. The chimpanzee belonged to Zoppe-Rosaire Chimpanzees. The patron was treated at the hospital for a puncture wound.<sup>75</sup>

**November 20, 2004/St. Augustine, Florida:** A 350-pound tiger attacked a 14-year-old boy and his handler as the big cat was being walked on a leash to a cage at the St. Johns County Fair. The tiger, displayed by The Catty Shack Ranch, jumped on the boy's back, knocked him to the ground, scratched him, and then turned on the handler, inflicting puncture wounds to the man's head. Police used stun guns to stop the attack.<sup>76</sup>

**November 2004/McHenry County, Illinois:** An elephant injured two employees at the Hawthorn Corporation's circus-training facility. One employee was hospitalized and then moved to a convalescent home and the other was unable to work for four days.<sup>77</sup>

**October 16, 2004/Tuscaloosa, Alabama:** A participant in a fraternity-house event broke his hand when an elephant, apparently startled when a band started playing, swung her head and knocked him to the ground with her trunk. The elephants were provided by Frisco's Elephants.<sup>78</sup>

**August 29, 2004/El Paso, Texas:** An elephant with the George Carden Circus attacked an arena worker following a performance at the El Maida Shrine Circus. The elephant knocked the man down, threw him into a wall, and pinned him against a fence. He sustained a dislocated shoulder, a torn rotator cuff, and nerve injury, which required surgery for repair and reconstruction and resulted in more than \$16,000 in medical bills.<sup>79, 80, 81</sup>

**August 1, 2004/Grayslake, Illinois:** A 2-month-old lion cub bit a man at the Lake County Fair. The man was having his photo taken with the cub, who he described as "feisty," when the cub climbed up to his shoulder and bit him, breaking the skin and leaving teeth marks. The cub, exhibited by Perry's Wilderness Ranch and Zoo, was quarantined for one month.<sup>82</sup>

**July 31, 2004/New York, New York:** A 450-pound white tiger belonging to Adriatic Animal Attractions bolted from the New Cole Bros. Circus while being transferred from one cage to another near the Forest Park band shell in Queens. Dozens of police officers with machine guns and tranquilizer darts pursued the tiger for 30 minutes as he prowled for a mile through a park crowded with picnickers, scattering screaming people and causing two traffic accidents. The trainer recaptured him. Two women filed a \$60 million lawsuit after suffering spinal fractures and other injuries in the multicar pileup on the Jackie Robinson Parkway.<sup>83, 84</sup>

**July 17, 2004/Detroit Lakes, Minnesota:** A tiger bit a worker with the Arcangel Wildlife Farm while on display at a local festival. The leashed tiger lunged at the man and bit him on the arm when the man attempted to move him.<sup>85</sup>

**July 6, 2004/St. Charles, Minnesota:** A capuchin monkey escaped and bit two people while exhibited by Staples Safari Zoo at the Winona County fairgrounds. The monkey was quarantined for 28 days while both victims agreed to undergo a series of rabies prevention shots.<sup>86</sup>

**July 4, 2004/Clinton, Iowa:** An African elephant named Nosey, with the Liebel Family Circus, attacked a circus worker who was tending to a water dish. The elephant hit the worker with her tusk, lifting him off his feet and propelling him down an incline. The man was rushed to the hospital and received stitches for a head injury.<sup>87</sup>

**June 2, 2004/Landover Hills, Maryland:** After fighting with another tiger, a tiger belonging to exhibitor Mitchel Kalmanson escaped from the UniverSoul Circus and attacked an elephant, biting her on the hip. During the escape, there were children from several elementary schools walking under the tent in the shopping mall parking lot where the tiger escaped.<sup>88, 89</sup>

**2004/Queensbury, New York:** A bear cub being exhibited at a AAA office by the Ashville Game Farm and Exotic Zoo bit a person in the face.<sup>90</sup>

**October 30, 2003/Savannah, Georgia:** The U.S. Department of Agriculture cited exhibitor Brian Staples for the escape of a spider monkey at the Georgia Coastal Fair. The monkey ran through the fair's public midway before being recaptured.<sup>91</sup>

**July 3, 2003/La Crosse, Wisconsin:** A tiger mauled circus trainer Bruno Blaszak in front of 400 people during his show at a festival. The tiger charged at Blaszak, knocked him down, and clawed him. His right leg required 30 to 40 stitches.<sup>92</sup>

**July 2, 2003/New Haven, Connecticut:** A tiger briefly got loose on the back lot where UniverSoul Circus was performing.<sup>93</sup>

**June 14, 2003/Dodge City, Kansas:** An adult tiger swiped at a young boy, tearing his pants at the Village Square Mall. The tiger, exhibited by G.W. Exotic Animal Foundation, was being used for photo ops with the public.<sup>94</sup>

**February 28, 2003/Muskegon, Michigan:** Sheba, a 9,000-pound African elephant performing with Jordan World Circus for the Shrine Circus, escaped from a tent shortly before a performance and was recaptured 15 minutes later in a busy downtown area.<sup>95</sup>

**February 4, 2003/Jacksonville, Florida:** A 450-pound tiger, belonging to exhibitor Mitchel Kalmanson, escaped from the UniverSoul Circus while the cage was being cleaned. The tiger climbed over a car, jumped over a fence, headed down an alley, frightened employees at a nearby restaurant, and was recaptured 10 minutes later.<sup>96, 97</sup>

**September 20, 2002/Scotts Valley, California:** A declawed 150-pound tiger, who was being walked on a leash by Zoo to You at an assembly with 150 children at the Baymonte Christian School, suddenly lunged at a 6-year-old boy and grabbed the child by the head with her jaws. The boy was wrestled away from the tiger by the principal and airlifted to a medical center where he received 55 stitches for two cuts to his scalp. A psychologist gave counseling to the terrified children who witnessed the attack.<sup>98</sup>

**August 4, 2002/Davenport, Iowa:** A monkey performing at the Mississippi Valley Fair went berserk and jumped on a woman, hitting her head and biting her as she posed for a photograph. The woman had to undergo tests for herpes, HIV, hepatitis, and rabies. The woman filed a \$5,000 lawsuit against the fair and Texas-based Gerald Eppel's Monkey Business.<sup>99</sup>

**June 17, 2002/Menomonee, Wisconsin:** Two elephants performing with the Mehara Shrine Circus at a county park bolted out of a circus tent during a show, scattering crowds. One hiked two miles through town before being recaptured at the University of Wisconsin–Stout campus when trucks blocked her escape. A child was injured, and the elephants damaged a door at the park and caused \$600 in damage to a city truck. The Shriners had contracted with George Carden Circus for the event.<sup>100, 101</sup>

**March 13, 2002/Easley, South Carolina:** An African elephant named Tonya, belonging to Robert Childress and used in various circuses, escaped the control of her handlers while she was being loaded into a truck, and walked about two miles before heading into nearby woods. It took police, firefighters, sheriff's deputies, and her handlers approximately 30 minutes to recapture her. This was the fourth time that Tonya has run amok (see June 21, 2000/Washington, Pennsylvania; February 16, 1998/Mentor, Ohio; and August 28, 1997/York, Maine).<sup>102, 103</sup>

**2002/Washington:** A 2-year-old male macaque monkey bit a child and a high school student while at the home of an animal caretaker working for traveling zoo operator Brian Staples. According to a USDA inspector, "The licensee was informed as early as March of 1998 about the risk of macaques carrying the Herpes B virus [...] He was instructed not to allow public contact with the macaques and agreed to do so [...] yet the problem persists."<sup>104</sup>

**October 27, 2001/Charlotte, North Carolina:** Debbie and Judy, two Asian elephants leased by Hawthorn Corporation to Circus Vazquez, rampaged through a church. Two church members were nearly trampled, and children had to be quickly ushered to safety. The elephants crashed into the church through a glass window, broke and buckled walls and door frames, and knocked a car 15 feet. The church estimated \$75,000 in damages. The elephants suffered cuts and bruises. Debbie had rampaged twice before (see July 10, 1995/Queens, New York, and May 18, 1995/Hanover, Pennsylvania).<sup>105</sup>

**June 10, 2001/Denver, Colorado:** Have Trunk Will Travel, a California-based elephant exhibitor that takes animals to fairs, festivals, special events, and film projects, leased two elephants to the Denver Zoo to perform daily shows during the summer. When a trainer dropped a barrel during a bathing demonstration, a 6,700-pound Asian elephant named Hope became startled and went into a rampage. She threw the trainer against a wall, stepped over a 3-foot barrier, and took off at a run. Crowds of zoo-goers screamed and scattered. The elephant knocked over a mother as well as her 3-year-old daughter who fell out of her stroller and slid in front of the elephant's foot. The girl was treated at a hospital for a bump

on the head, the trainer suffered cuts and bruises, a man sprained his ankle, and a woman had an asthma attack while running away from the elephant. It took three hours to return Hope to her pen. She was sedated and needed help to back out of the bushes and trees where she had gotten stuck.<sup>106, 107</sup>

**April 2001/Omaha, Nebraska:** Animal handler Bryan Franzen required stitches after a tiger clawed him during a performance at the Tangier Shrine Circus.<sup>108</sup>

**January 30, 2001/Las Vegas, Nevada:** A 1-year-old female chimpanzee named C.J., belonging to Monica Riddell's Xotic Stars of Las Vegas, bit a person on the finger during public exhibition.<sup>109</sup>

**September 10, 2000/Albuquerque, New Mexico:** A 16-week old, 30-pound tiger cub exhibited by Craig Perry bit a man on the arm during a photo op at the New Mexico State Fair.<sup>110, 111</sup>

**June 21, 2000/Washington, Pennsylvania:** An African elephant named Tonya traveling with Circus Hope became frightened when children approached her with toy horns. Tonya escaped the control of the handlers and walked across a mall parking lot through the rain and dark. Police officers, security personnel, and trainers later led Tonya back to the circus tent.<sup>112</sup>

**April 20, 2000/Yucca Valley, California:** Barbara and Connie, two African elephants with the Culpepper & Merriweather Circus, escaped following an evening performance. Connie wandered for three blocks, prompting a flood of emergency calls to the sheriff's office before she was recaptured. A circus worker who tried to get Barbara under control was trampled by the elephant and treated at a medical center for hip and thigh pain.<sup>113</sup>

**April 9, 2000/Franklin, Tennessee:** A chimpanzee named Angel, brought by Sid Yost (also known as Ranger Rick Kelly) to Blockbuster Video for photo ops and to promote a Critter Gitter movie, fiercely bit a 9-year-old girl on the hand after posing for a photograph. The girl's hand swelled and required stitches. Yost left the state before the chimpanzee could be quarantined and was issued a citation for violating Tennessee's exotic animal law. Yost failed to show up in court and never paid the fine. The girl's parents filed a \$50,000 lawsuit against Yost, Critter Gitters, and Blockbuster, claiming that the defendants should have been aware of the danger inherent in subjecting Angel to a crowded area with so many children. None of the parties named in the lawsuit offered to pay for medical expenses.<sup>114, 115</sup>

**April 2, 2000/Metairie, Louisiana:** A 9-year-old, 400-pound Syrian brown bear fell from a Sterling & Reid Circus trailer,

while the circus was driving on a freeway through New Orleans, La., at night. The trailer hit the bear and motorists found him on the road dazed and bleeding from his mouth. Traffic was halted for three hours while the bear was tranquilized and transported to the Audubon Zoo for treatment. The circus did not notice that the bear was gone until they stopped for fuel 20 miles down the road. The bear was returned to the circus the next day.<sup>116</sup>

**January 26, 2000/Riverview, Florida:** A female African elephant named Kenya attacked and killed a trainer at the Ramos Family Circus winter compound. Kenya knocked the trainer to the ground and stepped on her. When the woman stood up, the elephant went after her again and crushed her chest. Kenya was used in the Ramos' traveling shows and to give rides to the public.<sup>117,118</sup>

**October 4, 1999/Dallas, Texas:** An evening parade was cancelled after an African elephant named Kamba walked out of the ring where she was performing at the Texas State Fair and into an intersection filled with spectators. More than a dozen police officers worked to keep people away from the scene during the two hours it took handlers to coax the elephant back to the arena.<sup>119</sup>

**May 12, 1999/Bethune, South Carolina:** Flora, an African elephant with Circus Flora, grabbed a woman with her trunk as she was dismounting from a ride and threw her against a tree three times. The woman was in a body brace for three months with many broken bones and received \$468,000 as settlement of a lawsuit.<sup>120,121</sup>

**April 24, 1999/Duluth, Minnesota:** An animal handler with the Tarzan Zerbini Circus (also doing business as Circus Maximus) which was performing as the Shrine Circus was injured by an elephant and hospitalized in serious condition with injuries to his leg, pelvis, and one side of his face.<sup>122</sup>

**February 21, 1999/Poughkeepsie, New York:** Luna, an African elephant with the Royal Hanneford Circus, escaped from the center ring during a performance and charged toward the audience, coming within inches of some people. Luna ran through several rows of chairs, stepped onto the front of the bleachers, and sideswiped a man in a wheelchair. Circus-goers panicked and ran for safety and a few suffered minor injuries as they tried to get out of the elephant's path.<sup>123,124</sup>

**November 21, 1998/Chicago, Illinois:** A Ringling Bros. circus employee was seriously mauled by a tiger used in the circus when three tigers escaped from their cage in a Chicago parking lot. The tiger clawed the handler on his neck and side. This was the second attack by tigers used by Ringling in one year. (see January 7, 1998/St. Petersburg, Florida).<sup>125</sup>

**November 13, 1998/Newberry, Florida:** The same tiger who killed his trainer on October 8, 1998, attacked and killed his owner. The woman was leading the tiger to a pen when he lunged and bit her neck, killing her instantly. Authorities shot and killed the tiger. The tiger had been featured in circuses, fairs, and other public venues.<sup>126</sup>

**October 8, 1998/Newberry, Florida:** A nearly 400-pound tiger grabbed a trainer by the throat, killing him, while being moved between pens at Holiday's Cat Dancer facility. The tiger had been used in the operation's traveling animal show and featured in circuses, fairs, and other public venues.<sup>127</sup>

**August 27, 1998/Syracuse, New York:** While carrying children on her back at a state fair, Minnie, an elephant with the Commerford & Sons petting zoo panicked, knocking down and then stepping on the trainer. A 3-year-old girl was also injured after falling off the elephant. A local hospital treated both of the injured people. Minnie had been involved in at least two previous incidents (see August 28, 1989).<sup>128,129</sup>

**July 30, 1998/Minot, North Dakota:** A 5-year-old boy suffered facial cuts requiring plastic surgery after being attacked by a 4-month-old tiger cub at a Bridgeport Nature Center photo booth at the state fair.<sup>130</sup>

**May 1998/Wichita, Kansas:** A macaque monkey from Safari Zoological Park bit a teen-age girl at a store's promotional event.<sup>131,132</sup>

**February 21, 1998/Indio, California:** An elephant being ridden in a festival show became spooked, reared back, and bolted back to the pen, taking the "queen of the festival" with her.<sup>133</sup>

**February 15, 1998/Mentor, Ohio:** While waiting to enter a high school gymnasium for a circus performance, an African elephant named Tonya was startled in the hallway by a clown and bolted. The two-ton animal ambled through the hallways of the school, knocked a trainer to the ground, then opened a door and ran outside. She ran off for a quarter of a mile with police officers in squad cars and on foot chasing her and was finally caught outside a discount store. She had been spooked in the same hallway the previous day.<sup>134</sup>

**February 10, 1998/Lincolnton, North Carolina:** A 150-pound leopard nearly killed his trainer after attacking her at a Royal Palace Circus performance in North Carolina. The trainer suffered injuries requiring reconstructive surgery and hospitalization for a week.<sup>135</sup>

**January 7, 1998/St. Petersburg, Florida:** A trainer with the Ringling Bros. and Barnum & Bailey Circus suffered severe head wounds after a tiger grabbed him by the head during a training session in preparation for a publicity shoot. Richard

Chipperfield was hospitalized in critical condition and required extensive surgery. The trainer's brother shot the tiger five times with a 12-gauge shotgun after the animal had been returned to a transport cage, killing him.<sup>136</sup>

**1998/Harris County, Texas:** A tiger mauled a 4-year-old girl during photo ops at a county fair. The girl required stitches and \$17,000 in plastic surgery to her leg. The girl's family filed a lawsuit against tiger exhibitor Bridgeport Nature Center.<sup>137</sup>

**October 6, 1997/South Barrington, Illinois:** A baboon at a petting zoo bit a 4-year-old girl.<sup>138</sup>

**August 17, 1997/Marshfield, Massachusetts:** A 13-year-old girl was rushed to the emergency room after a tiger bit her hand during a photo session at the Marshfield Fair. The exhibitor, Bridgeport Nature Center, left the state before authorities could quarantine the tiger. The girl had to undergo painful rabies treatment. The Marshfield Mass. Animal Control Department reported "several" other bites associated with this photo booth.<sup>139</sup>

**August 15, 1997/Elburn, Illinois:** A baboon with a traveling zoo scratched a 15-year-old girl's leg during a parade.<sup>140</sup>

**June 29, 1997/Bourbonnais, Illinois:** A vervet monkey with a traveling zoo bit a 3-year-old girl in the face at a festival.<sup>141</sup>

**June 28, 1997/Seagoville, Texas:** An elephant attacked a 65-year-old man when he entered an area described as "a storage yard for circus animals," causing a broken arm and dislocated shoulder.<sup>142</sup>

**May 7, 1997/Carrollton, Pennsylvania:** A 400-pound tiger killed 50-year-old Wayne Franzen in front of 200 horrified schoolchildren at the Franzen Bros. Circus. The tiger pounced on him when he turned his back, grabbed him by the neck, and dragged him around the circus ring.<sup>143</sup>

**March 17, 1997/Grand Rapids, Michigan:** A muzzled and caged bear with Tarzan Zerbini Circus performing for Shriners bit off the tip of a 2-year-old child's finger. The child had to undergo surgery to repair her finger. There were no safety barriers around the bear cages, and 30 other children had been petting the bear.<sup>144</sup>

**December 21, 1996/Brooklyn Park, Minnesota:** A 7-month-old tiger bit or scratched three pet-supply store workers. The tiger had been brought to the store to have his picture taken. The three workers agreed to receive rabies prevention shots.<sup>145</sup>

**September 28, 1996/Los Angeles, California:** Actor Elizabeth Hurley reeled back in shock when she was bitten on the ear by a chimpanzee while appearing on Jay Leno's Tonight Show.<sup>146</sup>

**July 18, 1996/Middletown, New York:** A white tiger from Hawthorn Corporation bit the hand of a carnival worker while performing at the Orange County Fair.<sup>147</sup>

**June 14, 1996/Casper, Wyoming:** An Asian elephant named Sue charged, knocked down, and repeatedly kicked a trainer who required hospital treatment. At the time of the incident, the elephant was giving rides and had 5 or 6 children on her back. One child fell off the elephant. The elephant, owned by Hawthorn Corporation, was performing with the Jordan World Circus, sponsored by the Casper Shrine Club, at the Central Wyoming Fairgrounds. Sue had injured two other trainers two years previously (see April 4, 1994/Salt Lake City, Utah).<sup>148</sup>

**March 5, 1996/Comfort, Texas:** A high school principal suffered two broken ribs as well as arm and wrist injuries and was nearly trampled when he fell off an elephant with King Royal Circus. He had been preparing to ride the elephant in a race when the animal became upset and shook him off.<sup>149,150</sup>

**February 1996/Bridgton, Maine:** A squirrel monkey bit a child during a school demonstration.<sup>151</sup>

**1996/Pomona, California:** A lion displayed by Safari Wildlife got loose and roamed around the Los Angeles County fairgrounds before being recaptured.<sup>152</sup>

**November 2, 1995/Washington, D.C.:** House Speaker Newt Gingrich was bitten on the chin by a baby cougar he was holding and who had been brought to the Capitol by Jack Hanna.<sup>153</sup>

**September 30, 1995/Indianapolis, Indiana:** A lion with Ringling Bros. and Barnum & Bailey Circus bit off the index finger of a woman who put her hand in the cage that was in a staging area.<sup>154</sup>

**July 10, 1995/Queens, New York:** Two Asian elephants with the Clyde Beatty-Cole Bros. Circus ran amok in the middle of a performance, triggering a panic among hundreds of spectators that left 12 people injured. Six spectators were hospitalized after Debbie and Frieda bolted from the circus tent and crashed into a parked car before being brought under control by a trainer. It was the second incident in three months involving the two elephants (see May 18, 1995/Hanover, Pennsylvania).<sup>155,156</sup>

**May 28, 1995/Novi, Michigan:** Three lions and four tigers toppled onto a freeway when the 6-foot by 12-foot trailer they were in came unhitched. An 11-month old tiger bolted into a wooded area, leading police on a four-hour chase that included a helicopter search and foot patrols. The animals were en route to a Home Depot store for photo ops with the public.<sup>157,158</sup>

**May 18, 1995/Hanover, Pennsylvania:** Debbie and Frieda, two Asian elephants with the Clyde Beatty-Cole Bros. Circus, rampaged at the North Hanover Mall as they were being led to the circus tent for a show. The two elephants pushed and shoved their way around the parking lot, damaging cars and crashing through the plate glass windows of a car dealership before escaping into nearby woods. The elephants caused \$20,000 in damages and one sustained a deep gash under her eye. On July 6, 1985, Frieda killed a woman by grabbing the woman with her trunk and throwing her down to the ground in a parking lot of the New London Mall in Connecticut.<sup>259, 260</sup>

**February 6, 1995/Fort Wayne, Indiana:** As an employee with Tarzan Zerbini Circus was loading equipment onto a trailer, an Asian elephant named Roxie knocked him down with her trunk and stomped on him twice. He suffered a crushed pelvis and was in critical condition. The elephant was performing for the Mizpah Shrine Circus.<sup>261</sup>

**February 1, 1995/Hugo, Oklahoma:** A tiger with Carson & Barnes Circus escaped by squeezing through an opening in a cage. The Choctaw County Sheriff Department, Hugo Police Department, Game Department, and a helicopter from the National Guard searched for the tiger for 10 days before she was finally recaptured.<sup>262, 263</sup>

**November 8, 1994/Riley County, Kansas:** Mickey, a 15-month-old Asian elephant at the King Royal Circus wrapped his trunk around the neck of a 3-year-old girl and attempted to pull her into the arena while she was feeding him grass. The girl was treated for injuries at a local hospital.<sup>264, 265</sup>

**August 20, 1994/Honolulu, Hawaii:** An African elephant named Tyke killed a trainer and stomped and injured a circus groom shortly before a performance with Circus International at the Blaisdell Arena. Tyke then ran amok, breaking out of the arena and leading police on a chase down several city blocks until they shot her to death with almost 100 bullets. Ambulance officials described a scene of "total panic" as circus-goers fled from the arena, pushing and trampling each other. Ambulances transported fourteen people to the hospital and others drove themselves. Multiple lawsuits were filed. This was the second elephant incident at the circus in as many weeks (see August 15, 1994/Honolulu, Hawaii.) Tyke, who had rampaged twice before (see July 23, 1993/Minot, North Dakota and April 21, 1993/Altoona, Pennsylvania), was owned by Hawthorn Corporation.<sup>266, 267, 268</sup>

**August 15, 1994/Honolulu, Hawaii:** An elephant with Circus International rammed a fence that separated the first row of spectators from the circus rings, knocking a nearly 300-pound man into the next row and pinning his wife and their eight children under the fence. The man and his 15-year-old

daughter suffered injuries. They filed suit against the Hawthorn Corporation (owner of the elephant), as well as Roy Yempuku, the circus promoter.<sup>269, 270, 271</sup>

**July 18, 1994/New York, New York:** An African elephant named Flora with the Great Moscow Circus attacked a Russian translator backstage at ABC's Live With Regis and Kathie Lee television show. The elephant repeatedly smashed her head into the woman, pinning her to a wall and leaving her with a fractured skull, broken ribs, a punctured lung and two broken wrists. The victim filed a \$5 million lawsuit against the circus, the booking agent and ABC, and ultimately accepted a \$1.65 million settlement.<sup>272, 273</sup>

**April 4, 1994/Salt Lake City, Utah:** While giving rides to two children, an Asian elephant named Sue picked up, tossed, and stepped on an animal trainer with the Jordan Circus, breaking his arm and ribs and causing internal organ damage. The elephant also kicked another trainer and broke her finger. A third trainer gained control of the elephant and removed the children from her back.<sup>274</sup>

**March 5, 1994/Muskegon, Michigan:** A Tarzan Zerbini Circus elephant giving rides at a Shrine-sponsored circus caused injuries to three children when she fell into the passenger loading platform, spilling the riders and bending the platform.<sup>275, 276</sup>

**September 14, 1993/Joplin, Missouri:** A circus employee lost part of her arm after an attack by a tiger on the circus' animal farm. Doctors had to amputate her arm below the elbow.<sup>277</sup>

**July 28, 1993/Patterson, New York:** A 23-year-old declawed and defanged Himalayan black bear used in circuses escaped from an enclosure and disappeared into nearby woods.<sup>278</sup>

**July 23, 1993/Minot, North Dakota:** An African elephant named Tyke escaped from a trainer while at the North Dakota State Fair, charged, kicked, and trampled an elephant show worker, breaking three of his ribs, then led sheriff's deputies and circus workers on a 25-minute chase as she ran through a campground and into a maintenance building. Tyke, who the trainer described as dangerous, difficult, and high-strung, was later shot and killed when she rampaged during a circus performance in Hawaii (see August 20, 1994/Honolulu, Hawaii).<sup>279, 280</sup>

**June 5, 1993/Fishkill, New York:** An Asian elephant crushed a man to death by pinning him against a trailer in the elephant area of the Clyde Beatty-Cole Bros. Circus grounds at the Fishkill Mall.<sup>281</sup>

**May 6, 1993/Las Vegas, Nevada:** A keeper feeding a trio of lions in a residential backyard was hospitalized after one of the

cats attacked her. The victim, a member of the Fercos performing family, suffered five gouges to her leg. During an April performance, another employee was bitten by a lion.<sup>181</sup>

**May 5, 1993/Williston, Florida:** Famed animal trainer Alex Gautier died of internal injuries after an Asian elephant named Reba knocked him down and stomped on his chest at a Ringling Bros. and Barnum & Bailey Circus elephant farm.<sup>183, 184, 185, 186</sup>

**April 21, 1993/Altoona, Pennsylvania:** An African elephant named Tyke charged through an arena entryway during a performance with the Great American Circus. She ripped away part of a wall at the Jaffa Mosque, causing \$10,000 in damage. Tyke ran out onto an upstairs balcony and was later coaxed back by trainers. More than 3,000 children were in the audience. One young girl suffered injuries.<sup>187, 188</sup>

**April 17, 1993/Little Rock, Arkansas:** A tiger performing with the Shrine Circus at the Barton Coliseum escaped, ran into the audience, and bit a 13-year-old girl. The tiger was owned and trained by Jordan Circus.<sup>189</sup>

**February 24, 1993/Norfolk, Virginia:** Graham Chipperfield, a Ringling Bros. and Barnum & Bailey Circus big cat trainer, was mauled by a lion while breaking up a fight between two other lions.<sup>190</sup>

**October 14, 1992/Bloomington, Minnesota:** A handler was hospitalized for a leg injury that required ten stitches when an Asian elephant named Bunny slipped and fell, gouging the man with her tusk, while she was giving rides to several children at a Shrine circus. A child also suffered a minor leg injury.<sup>191</sup>

**July 15, 1992/Lafayette, Indiana:** Nine people were injured when elephants who were being led around the ring at the Tarzan Zerbini International Circus collided and toppled a barricade which fell into a crowded area under the circus tent.<sup>192</sup>

**May 20, 1992/Muhlenberg Township, Pennsylvania:** Two tigers with Clyde Beatty-Cole Bros. Circus escaped from an unlocked cage during a performance. One tiger roamed around the center ring, frightening 2,000 spectators before he was recaptured.<sup>193</sup>

**February 25, 1992/Dane County, Wisconsin:** A man underwent surgery to repair torn tendons in his ankle after he was attacked by a bear while participating in a bear "wrestling" event sponsored by Jungleworld Animal Rental Agency.<sup>194</sup>

**February 1, 1992/Palm Bay, Florida:** Janet (aka Kelly), an Asian elephant with the Great American Circus, went on a

rampage while giving rides to five children and one adult. Janet knocked down a high-wire platform in the circus ring, ran out of the tent with the people still on her back, and rampaged through the circus grounds. She threw two circus workers about 20 feet into the air, rammed a tractor-trailer, and picked up a police officer who tried to rescue the riders, threw him, then picked him up again and tried to step on him. Hundreds of circus-goers panicked and fled screaming. Police fired 43 shots at the elephant, but were unable to kill her until they used armor-piercing bullets. Twelve people, including trainer Tim Frisco, were treated at a hospital for injuries. In 1983, Janet had attacked the previous owner of the circus, who suffered a broken back and hips and was hospitalized for nearly four months.<sup>195, 196, 197, 198</sup>

**August 17, 1991/Fresno, California:** A lion with Ringling Bros. and Barnum & Bailey Circus bit a man who tried to pet the caged lion.<sup>199</sup>

**April 18, 1991/Wilkesboro, North Carolina:** A 3-year-old girl required stitches after she was attacked by a leopard traveling with the Great American Circus.<sup>200</sup>

**August 9, 1990/Sturgis, South Dakota:** A 5-year-old girl was mauled by a 175-pound leopard who was restrained by a small chain on a box in Engessor's Endangered Species traveling zoo. She was treated at a hospital for puncture wounds to her arm and back and claw marks on her back. The girl's mother sued for \$100,000 in damages.<sup>201</sup>

**July 7, 1990/Southeast Portland, Oregon:** Two leashed and collared chimpanzees went out of control during a Circus Gatti performance. They dragged the trainer into the stands and pulled a child from her seat and onto the arena floor, then mauled her.<sup>202</sup>

**June 20, 1990/Ft. Lauderdale, Florida:** An Asian elephant named Carol with the Hanneford Family Circus kicked and stepped on or sat on a handler after being startled by a passing car, crushing the man to death.<sup>203, 204, 205</sup>

**June 18, 1990/Sidney, Montana:** A leopard bit a 7-year-old boy when the owner of the traveling zoo removed the animal from a cage so members of the public could pet her.<sup>206</sup>

**June 6, 1990/Reading, Pennsylvania:** During a Great American Circus show, an elephant attacked a trainer and went on a rampage, panicking the crowd and injuring one man.<sup>207</sup>

**April 7, 1990/Oakdale, California:** An African elephant threw three passengers from her back while giving rides at a private party. The elephant, provided by Marine World Africa USA in Vallejo, began spinning and bumping into cars before she was

brought under control. One woman who fell bruised her back on a car and another sustained a bruised arm. The third woman was dragged 40 feet before she was freed and required five stitches.<sup>208</sup>

**August 28, 1989/Essex Junction, Vermont:** An elephant named Minnie with the Commerford & Sons petting zoo attacked and seriously injured a handler after he struck her with a stick at the Champlain Valley Fair. Minnie picked up the handler with her trunk and threw him against a trailer, breaking his shoulder and jaw. Two children were riding on the elephant's back at the time. According to a witness, "Blood was gushing everywhere. The kids were left stranded. The attendants were afraid to get the kids off the elephant." Commerford continued using Minnie for rides at the fair despite a public outcry that the elephant was too dangerous. Years earlier, Minnie had attacked a worker and broken his arm.<sup>209, 210</sup>

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<sup>7</sup> "Kansas Woman Encounters Tiger in Circus Bathroom," ABC News, April 23, 2013.

<sup>8</sup> U.S. Department of Agriculture, Decision and Order, Douglas Keith Terranova and Terranova Enterprises, Inc., Docket Nos. 15-0058, 15-0059, 16-0037, and 16-0038, September 28, 2016, page 52-55.

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# factsheet



## Carson & Barnes Circus

Carson & Barnes Circus (Hugo, Oklahoma, License 73-C-0001) has a long history of abysmal animal care and elephant rampages and has been repeatedly cited and fined by the U.S. Department of Agriculture (USDA) for violations of the federal Animal Welfare Act (AWA) including: using a bullhook with "excessive force" on an

elephant; failure to provide veterinary care to numerous animals, including a thin elephant who had been losing weight for almost two years; failure to safely handle and supervise elephants in the presence of the public, including during elephant rides; failure to maintain control of elephants, resulting in at least two instances of elephants bolting from handlers; failure to provide animals with sufficient shelter and minimum space, and failure to maintain enclosures and transport vehicles in order to prevent injury to animals.

In 2016, the USDA assessed Carson & Barnes Circus a civil penalty of \$16,000 for multiple charges of failure to safely handle elephants and in 2012, the circus paid a penalty of \$3,714 in a settlement agreement with the USDA for AWA violations.

Carson & Barnes Circus's animal care director, Tim Frisco, was videotaped viciously attacking elephants with a bullhook, shocking elephants with an electric prod, and instructing trainers to embed sharp, metal hooks into the elephants' flesh until the elephants screamed in pain.

**April 18, 2017:** The USDA cited Carson & Barnes Circus for improper food storage. Two sacks of elephant feed were on the floor of a trailer that was damp from recent rain and a bottle of hand sanitizer was stored inside a bin for the food used for the goats, llamas and zebu.<sup>1</sup>

**March 8, 2017:** The USDA cited Carson & Barnes Circus for housing a llama in a stall with a broken window. The inspector wrote that the edges of exposed glass were "at the height of the llama's head and within easy reach of the animal. This is a potential injury risk to the llama."<sup>2</sup>

**July 2, 2016:** The USDA cited Carson & Barnes Circus for failure to provide adequate veterinary care to an elephant named Bunny, who appeared to have a problem with her right front leg. The inspector wrote, "During the performance [Bunny] would sometimes not bend her right carpal joint in the same manner as she uses her left limb," and that Bunny sometimes extended the leg "in a peg-like fashion". The exhibitor had not noticed that Bunny appeared to be having trouble with her leg.<sup>3</sup>

**May 25, 2016:** The USDA assessed a civil penalty of \$16,000 against Carson & Barnes Circus to settle charges filed by the agency (see April 27, 2015) for two 2014 incidents that put both elephants and the public at risk.<sup>4</sup>

**April 27, 2015:** The USDA filed a complaint against Carson & Barnes Circus for failure to properly handle three elephants (Kelly, Viola, and Isa) when handlers lost control of the animals who subsequently ran into a parking lot, resulting in injuries to two of the elephants (see March 22, 2014), and for failure to properly handle elephants and provide sufficient distance and/or barriers between elephants and the public when three elephants (Kelly, Viola, and Isa) were given water in an area accessible to the public and a child and an adult were able to approach the elephants from behind and the adult photographed the child standing "at the back of and in direct proximity to the elephants."<sup>5,6</sup>

**January 5, 2015:** The USDA cited Carson & Barnes Circus for failure to provide adequate veterinary care to numerous animals including:<sup>7</sup>

- An elephant named Nina, who had been losing weight and was in thin body condition for almost two years and had lost 500 pounds, which was 8.7% of her body weight, in the previous 7-8 months;
- Two elephants, Rosie and Opal, who were being treated with acupuncture for stiffness and/or arthritis by a person who was not trained by a veterinarian or accredited to perform acupuncture for veterinary purposes;
- A pygmy hippo named Katie, who was noted to be losing weight and not doing well while traveling for exhibition in May 2014. Katie was returned to the home facility and seen by a veterinarian, but there was no documentation that she received medication prescribed for her and she subsequently died apparently without having received regular monitoring of her condition or her weight;
- A llama named Bandit who had excessively overgrown hooves, causing his toes to curve to the sides, a problem that no one had noticed despite the fact that he was being treated for an eye problem.

**September 9, 2014/Hope, Maine:** The co-founder of the facility Hope Elephants sustained multiple fractures and compression of the chest, and subsequently died, after being stepped on by an elephant when he fell inside the animal's pen. The facility had two elephants, Rosie and Opal, who had been acquired two years previously from Carson & Barnes Circus. Following this incident, the elephants were returned to the circus.<sup>8,9</sup>

**April 14, 2014:** The USDA cited Carson & Barnes Circus for failure to properly handle three elephants (Kelly, Viola, and Isa) when the elephants were given water in an area accessible to the public and a child and an adult were able to approach the elephants from behind and the adult photographed the child standing "at the back of and in direct proximity to the elephants." The circus was performing as the Zembo Shrine Circus in Altoona, Pennsylvania.<sup>10,11</sup>

**March 22, 2014:** While leaving the performance arena, three elephants (Kelly, Viola, and Isa) who belonged to Carson & Barnes Circus were spooked by noise from the ongoing show and escaped from their handlers. The elephants pushed through a door and exited into the parking lot. Kelly ran between two trailers, resulting in abrasions and lacerations on her right side, Viola

sustained lacerations on both sides of her body, and two cars were damaged. The elephants were performing with the Royal Hanneford Circus in St. Charles, Missouri.<sup>12,13</sup>

**March 12, 2014:** The USDA issued an official warning to Carson & Barnes Circus for failure to provide adequate veterinary care to a llama who was thin and had a worsening eye condition (see December 17, 2013.)<sup>14</sup>

**December 17, 2013:** The USDA cited Carson & Barnes Circus for failure to provide adequate veterinary care to a llama who was thin, had a poor hair coat, and had discharge from both eyes. In addition, the llama's right eye, which a veterinarian thought may have been punctured, was cloudy and reddened and had significantly worsened since the animal was last seen by a veterinarian more than a month previously. The circus was also cited for two enclosures that posed a risk of injury to the animals in them, as well as failure to have a sufficient number of adequately trained employees to identify the llama's worsening eye condition and the potentially hazardous animal enclosures.<sup>15</sup>

**August 7, 2013:** The USDA cited Carson & Barnes Circus for failure to provide documentation that an elephant named Nina, who was observed to be thin, with visible hip bones and shoulder blades, had been seen by a veterinarian. Nina and an elephant named Margaret were performing and giving rides to the public at Circus World in Baraboo, Wisconsin.<sup>16</sup>

**January 9, 2013:** The USDA cited Carson & Barnes Circus for failure to maintain facilities in good repair to protect the animals from injury. Enclosures housing goats, a zebu, and a zebra had loose and broken wires with sharp ends that protruded inward, a shelter for a zedonk and a donkey had a large hole in the concrete, and aluminum siding was pulled away from the wall of a shelter for two camels, creating a hole. All of these items posed a risk of injury to the animals.<sup>17</sup>

**August 2, 2012:** The USDA cited Carson & Barnes Circus for failure to provide elephants with a safe transport trailer. Three of the drainage holes in the wooden floor of the trailer had become enlarged and worn to the point that it threatened the structural integrity of the floor. The circus was performing in Minerva, Ohio.<sup>18</sup>

**July 26, 2012:** Carson & Barnes Circus was assessed a penalty of \$3,714 in a settlement agreement with the USDA for numerous violations of the Animal Welfare Act including:<sup>19,20,21,22</sup>

- Failure to maintain control of an elephant who bolted from handlers and was subsequently injured (see April 27, 2010);
- Failure to provide three elephants with shelter from cold rain;
- Failure to provide adequate containment for three elephants, thereby risking the safety of the animals and the public;
- Failure to provide a barrier or sufficient distance between elephants and the public, including when a member of the public was able to grab one elephant's trunk;
- Repeated failure to have elephants under direct control and supervision while the

- animals gave rides to the public;
- Failure to maintain an animal transport trailer that had a large hole in the floor at the entrance that could injure the animals as they walked over it;
- Failure to maintain the interior walls of the elephant barns in good repair and for sharp protruding edges of broken metal at the entryway to an elephant barn;
- A perimeter fence that had gaps as well as gates that did not close completely.

**June 26, 2012:** Carson & Barnes Circus received a Warning Notice from the Wisconsin Department of Agriculture for failure to obtain a certificate of veterinary inspection for four elephants—Minnie, Nina, Libby, and Suzie—who were taken into the state.<sup>23</sup>

**June 2012:** As of June 2012, Carson & Barnes Circus' elephant named Minnie had tested positive for tuberculosis and was prohibited from having contact with the public when she was at the Circus World Museum for the summer.<sup>24</sup>

**April 27, 2012:** The USDA cited Carson & Barnes Circus for repeated failure to provide a sufficient perimeter fence because three gates were damaged or not properly fitted and numerous sections of the fence had large gaps. The circus was also cited for failure to maintain a barn where a shift area for an adult male elephant named Colonel had sharp protruding edges of broken metal, which posed a risk of injury to the elephant.<sup>25</sup>

**April 9, 2012:** The City Council of Bellevue, Nebraska, voted to reject a permit for Carson & Barnes Circus to perform on the grounds of Bellevue University. Council members expressed concern about the circus's numerous Animal Welfare Act violations as well as the risk to the community.<sup>26</sup>

**December 20, 2011:** The USDA cited Carson & Barnes Circus for failure to maintain a barn that housed six Asian elephants. One wall of the barn had insulation that was damaged and missing in several places.<sup>27</sup>

**October 7, 2011:** The USDA cited Carson & Barnes Circus for "many instances" when elephants were not under direct control and supervision while the animals gave rides to the public. In one instance, a handler exchanged money with another employee while the elephant walked away with passengers on her back. In another, only one handler was present for two elephants giving rides and the inspector wrote, "One elephant would walk approximately 25 feet away with passengers on board, while the one handler would assist in loading passengers on the second elephant. The elephant with the passengers would stop and stand at the curtain exit with no physical barrier, other than the curtain, to stop it from leaving." The inspector wrote that such actions "allows for the risk of serious injury to members of the public." The circus was performing as the Kelly Miller Circus in Troy, Illinois.<sup>28</sup>

**August 22, 2011:** The USDA cited Carson & Barnes Circus for failure to provide adequate shade from direct sunlight to two bull elephants. The circus was also cited for failure to provide a

sufficient perimeter fence because one gate was not properly fitted and was held closed with a rubber strap, another gate was open and unsecured, there were numerous gaps between the bottom of the fence and the ground, in at least one place a section of fence was not secured to any post, and one section of fence had broken barbed wire that was hanging loosely.<sup>29</sup>

**June 29, 2011:** The USDA cited Carson & Barnes Circus, whose elephants were performing with Cole Bros. Circus in Meriden, Connecticut, for:<sup>30</sup>

- An elephant handler who was using a bullhook with "excessive force" on an elephant named Viola while she was giving rides to the public;
- Failure to provide a barrier or sufficient distance between the public and two elephants who were being bathed in a parking lot as well as two elephants in a ride area, where a member of the public grabbed ahold of one elephant's trunk and one elephant placed her trunk close to the man's feet and legs causing the inspector to write, "The safety of the elephant and the man were at risk in both of these situations;"
- Many instances when elephants who were giving rides to the public were not under the direct control and supervision of a handler, including when a handler answered his phone and walked away from an elephant who had an adult and six young children on her back;
- Failure to have a sufficient number of handlers when only one person was supervising two elephants.

**June 17, 2011:** A man and his son who stopped near a parking lot where Cole Bros. Circus was set up in Lanesboro, Massachusetts, witnessed a handler yelling at the elephants before striking one of them twice with "something that resembled a club," producing a clearly audible "whack" sound. The handler swung the device as if it were a baseball bat. "This was not just an 'attention getter,'" the father explained. "[This worker] reared back and swung the club with all his might, twice. You could hear the 'whack' as the club struck the elephant. My son and I were shocked." The elephants involved in this incident belonged to Carson & Barnes Circus and were performing with Cole Bros. Circus.<sup>31,32,33</sup>

**2011:** In early 2011, Carson & Barnes Circus' elephant named Isla was determined to be infected with tuberculosis.<sup>34</sup>

**September 25, 2010:** The USDA cited Carson & Barnes Circus for failure to provide veterinary care to a pygmy hippo who had reddened and raw skin lesions that, the inspector wrote, could "easily become infected." The circus was also cited for failure to provide any shade to goats, llamas, an alpaca, and a donkey when the temperature was more than 85 degrees; for feeding goats, llamas, alpacas, a zebra and a zebu by placing the animals' hay on the ground, where it became contaminated with feces and the animals walked through it; and was cited again for failure to maintain a trailer that was used to transport a hippopotamus and numerous other animals which had an area where the vinyl liner had separated from the wall, exposing foam padding. The circus was performing in Colorado Springs, Colorado.<sup>35</sup>

**June 19, 2010:** The USDA cited Carson & Barnes Circus for failure to maintain a trailer that was used to transport a hippopotamus, a zebra, camels, llamas, a zebu, an alpaca, and goats. The trailer had a hole that was at least 8 inches in diameter just inside the door through which the animals entered and exited. The inspector wrote, "This may lead to injury of the animals' feet or legs if they stepped through the hole." The circus was performing in Nashville, Tennessee.<sup>36</sup>

**May 12, 2010:** The USDA cited Carson & Barnes Circus for failure to provide shelter to three elephants - Lisa, Becky and Traci. The inspector wrote, "The weather was 50 degrees and drizzling rain for most of the day. The elephants were out in the cold rain with no protection from the inclement weather." The circus was also cited for failure to provide sufficient fencing to safely contain the three elephants as well as for insufficient security measures to prevent public access to the elephants. The inspector wrote, "Without adequate containment, the animals and the public are at risk of injury." The circus was performing in Roanoke, Indiana.<sup>37</sup>

**April 27, 2010:** An elephant named Viola, who belonged to Carson & Barnes Circus, escaped while appearing with Cole Bros. Circus in Lynchburg, Virginia. She bolted from handlers and ran directly past a line of people waiting to buy tickets, sending some running toward the parking lot. Viola slid in the mud and tumbled down a hill and into a ditch, resulting in a cracked toenail and an inflamed shoulder. She was on the loose for approximately 30 minutes before being recaptured. The circus claimed that the elephant had been spooked by a rabbit.<sup>38,39,40,41</sup>

**April 2010:** Isa, an elephant with Carson & Barnes Circus and traveling with Cole Bros. Circus, stepped on a trainer who sustained injuries that required a foot splint and crutches and kept him off work for a few days. The incident occurred while the circus was in Winchester, Virginia.<sup>42</sup>

**August 30, 2007:** The USDA again cited Carson & Barnes Circus for failure to provide adequate veterinary care to elephants when the results of tuberculosis testing on two of the three elephants were found to be invalid. The circus was also cited for failure to handle elephants in a manner that ensured minimal risk of harm to the animals and the public when the inspector observed that three elephants had been left unattended and there was a gap in the fence that surrounded the animals. The inspector wrote, "[I]t would have been very possible for a member of the public to enter the area and endanger both him- or herself and/or the animals." The circus was performing in Schaghticoke, New York.<sup>43</sup>

**July 12, 2007:** Three elephants - Minnie, Susie, and Bunny - who were being leased from Carson & Barnes Circus and were performing with the Garden Bros. Circus in Newmarket, Canada, escaped from their enclosure in the middle of the night. Susie and Bunny roamed through downtown Newmarket, and Bunny was eventually found in a residential neighborhood.<sup>44,45</sup>

**June 6, 2007:** The USDA cited Carson & Barnes Circus for failure to provide adequate veterinary care to three elephants who had not had foot care since February 2007. Becky had two cracked nails on each hind foot and a cracked nail on a front foot. Traci's nails were unevenly trimmed,



causing her to bear her weight unevenly. Lisa had a cracked nail on two feet. A 1.5-inch piece of fence wire was found in the hind foot of one of the elephants, and all three of them had rough cuticles.<sup>46</sup>

**June 5, 2007:** The USDA cited Carson & Barnes Circus for failure to have valid tuberculosis test results for three elephants. The inspector wrote, "Two of the three culture samples required for Isla and Opal were contaminated ... All three required culture samples for Isa were contaminated. These are not adequate to diagnose potential disease in these animals." The circus was performing in Aurora, Colorado.<sup>47</sup>

**October 2, 2006:** The USDA cited Carson & Barnes Circus for failure to properly construct and maintain a dog enclosure so that it securely contained the animals. A portable enclosure for three small dogs had large spaces between the bars and was only 3.5 feet tall. One dog escaped from the pen during the inspection. The circus was performing in Clarksville, Virginia.<sup>48</sup>

**June 16, 2006:** The USDA cited Carson & Barnes Circus for failure to provide adequate veterinary care to two elephants who had not had foot care since March 2006. Both Beckie and Tracie had two cracked nails on each hind foot. The inspector wrote that the cracks "extend[ed] up the nail to [approximately] ¼ inch from the cuticle." According to *The Elephant's Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants*, cracked nails can lead to foot disorders that may result in serious disability or death. The circus was performing in Landover, Maryland.<sup>49</sup>

**July 18, 2005:** The USDA cited Carson & Barnes Circus for failure to have its program of veterinary care available for inspection and failure to provide documentation that employees were tested for tuberculosis. The USDA requires that handlers who have direct contact with elephants be tested for tuberculosis at least annually in order to prevent the spread of the disease. The circus was performing in Farmington, Maine.<sup>50</sup>

**June 21, 2005:** A U.S. District Court judge who viewed videotape of Carson & Barnes Circus' animal care director Tim Frisco beating elephants with bullhooks and shocking them with electric prods (see December 27, 2002) described it as "troubling" and noted that it depicted conduct that violates the federal Animal Welfare Act.<sup>51</sup>

**May 26, 2005:** The USDA cited Carson & Barnes Circus for failure to provide adequate shelter for elephants. The vinyl awning that was meant to provide the elephants with shelter from the sun and inclement weather had multiple holes in it. The circus was performing in Landover, Maryland.<sup>52</sup>

**August 16, 2004:** The USDA issued Carson & Barnes Circus a \$550 stipulation for an accident that occurred while transporting elephants and resulted in injuries to two elephants.<sup>53,54</sup>

**May 28, 2004:** The USDA cited Carson & Barnes Circus for failing to provide an adequate safety

barrier between the public and elephants. The circus was performing in Landover, Maryland.<sup>55</sup>

**April 12, 2004:** Carson & Barnes Circus's 5-year-old endangered Asian elephant named Jennie died after contracting an elephant herpes virus carried by African elephants. Despite widely accepted industry recommendations that Asian and African elephants should not be caged together because of disease risks from this deadly virus, Carson & Barnes continued to commingle the two species. In addition, the stress from being sent on the road at just 16 months of age, apparently without her mother, and being subjected to forceful training sessions, demanding performances, and constant travel likely compromised Jennie's immune system and left her vulnerable to the infection.<sup>56</sup>

**June 27, 2003:** Isla and Opal, two elephants with Carson & Barnes Circus, were injured when the semitrailer carrying them between shows in Minot and Beulah, North Dakota, overturned. The truck drifted off the highway and then tipped over. The fire department had to cut a large hole in the truck's roof to extricate the elephants. Both animals sustained cuts from the accident and a patrol investigator described the truck as a total loss.<sup>57</sup>

**March 11, 2003:** The USDA cited Carson & Barnes Circus for failure to maintain a trailer used to transport a hippo and numerous other animals. Rubber siding had been torn away from the wall and the floor of the trailer, posing a risk of the animals chewing on the rubber and exposing the wood floor of the trailer to water and excreta.<sup>58</sup>

**February 5, 2003:** During an inspection at Carson & Barnes Circus's home site, the USDA noted that elephants Becky and Susie had cracked toenails. According to *The Elephant's Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants*, cracked nails can lead to foot disorders that may result in serious disability or death.<sup>59</sup>

**January 24, 2003:** The USDA cited Carson & Barnes Circus for failure to document that a veterinarian visited the facility on a regular basis.<sup>60</sup>

**December 27, 2002:** The USDA assessed a \$400 civil penalty against Carson & Barnes Circus after viewing video of the circus's animal care director Tim Frisco viciously attacking terrified elephants with a bull hook and shocking them with an electric prod. Frisco instructed other trainers to hurt the elephants until they scream, to forcefully strike the elephants with bull hooks, and to sink a bull hook into their flesh and twist it. Frisco also cautioned that the beatings must be concealed from the public. The circus entered into a settlement agreement and paid the \$400 fine for mishandling elephants in order to avoid formal charges of violating the Animal Welfare Act.<sup>61,62</sup>

**August 9, 2002:** A Carson & Barnes Circus truck carrying two African elephants, Paula and Kristi, crashed in Rhinebeck, New York. The 18-wheeler tipped onto its side after the driver veered onto the right shoulder, which had a 4-foot drop-off. The state police, county sheriff's office, state Department of Environmental Conservation, village police, and village fire department all

responded to the scene. The elephants were trapped in the overturned truck for approximately three hours while emergency workers used power tools to cut out a section of the roof in order to free them. The road was closed for five hours while crews cleared the wreckage and replaced a utility pole that was struck by the truck. Both elephants sustained abrasions and soreness. The driver was charged with having an uninspected trailer, an insufficient logbook, and failure to keep right. The accident occurred when the circus was en route from Rensselaer to Poughkeepsie, New York.<sup>63,64,65</sup>

**June 5, 2002:** The USDA again cited Carson & Barnes Circus for failure to provide adequate veterinary care to an African elephant named Paula who had several areas of skin that were dry and rough. The circus was in Chillicothe, Missouri.<sup>66</sup>

**May 14, 2002:** The USDA cited Carson & Barnes Circus for failure to provide adequate veterinary care to an African elephant named Paula who had dead skin covering her back, ears, and face. The circus was in Emporia, Kansas.<sup>67</sup>

**January 10, 2002:** The USDA cited Carson & Barnes Circus for failure to provide a sufficient perimeter fence around seven enclosures for big cats and around an enclosure for 19 elephants. The inspector also noted that the condition of the African elephant Paula's skin was not improving.<sup>68</sup>

**May 22, 2001:** While performing in Perry, Iowa, and Webster City, Iowa, Carson & Barnes Circus was cited by the USDA for:<sup>69</sup>

- Failure to provide veterinary care to a zebu with overgrown hooves;
- Failure to have 15 elephants under the direct control and supervision of a knowledgeable handler while children, parents, and teachers were present;
- Overworking a camel used to provide rides to the public;
- Failure to provide shelter to a pygmy hippopotamus, a zebu, a water buffalo, three llamas, 25 goats, and four camels during gusty and rainy weather conditions;
- Failure to provide minimum space to two African elephants who were confined to a 25'x25' area and a travel trailer for the two days of the inspection and to two Asian elephants who were chained by two legs for the same duration except for 20 minutes when they were performing;
- Failure to provide minimum space to six big cats who, except for the 20 minutes when they were performing, were confined to their travel cages;
- Allowing a dog to run loose in the parking lot and onto the property of an adjacent school;
- Improper storage of meat for the big cats.

**January 30, 2001:** The USDA cited Carson & Barnes Circus for failure to maintain the structural strength of its animal transport trailers.<sup>70</sup>

**September 2000:** Carson & Barnes Circus leased a single elephant to Roberts Bros. Circus and a

single elephant to Circus Vargas. Both elephants were kept in solitary confinement. The American Zoo and Aquarium Association's *Guide to Accreditation of Zoological Parks and Aquariums* states, "It is inappropriate to keep highly social female elephants singly."<sup>71</sup>

**August 24, 2000:** The USDA cited Carson & Barnes Circus for failure to have elephant attendants, handlers, and grooms tested for tuberculosis.<sup>72</sup>

**July 22, 2000:** Carson & Barnes Circus was forced to cancel two shows in Anne Arundel County, Maryland, after fire officials deemed the circus's tent unsafe and because the circus did not have a permit to erect a tent. The tent failed the inspectors' flame-spread test for fire safety. Inspectors also found problems with exit lightings and signs.<sup>73</sup>

**June 6, 2000:** The USDA cited Carson & Barnes Circus for mishandling an elephant who was shackled with a leg chain that didn't have a protective covering.<sup>74</sup>

**October 13, 1999:** The USDA cited Carson & Barnes Circus for failure to provide sufficient space to two bears who were housed in enclosures that measured approximately 4½ feet by 4½ feet, as well as failure to store the bears' food and bedding in a manner that prevented contamination.<sup>75</sup>

**June 16, 1998:** The USDA cited Carson & Barnes Circus for failure to maintain the transport trailer for big cats.<sup>76</sup>

**February 5, 1998:** The USDA cited Carson & Barnes for failure to provide adequate housing for 12 dogs who were being kept outdoors; failure to maintain the elephant transport trailers which had holes in the roofs and loose metal on the walls; failure to maintain structurally sound fencing around exotic hoofed animals; and failure to provide adequate drainage in a muddy water buffalo enclosure.<sup>77</sup>

**October 28, 1997:** The USDA again cited Carson & Barnes Circus for failure to provide adequate ventilation in the elephant transport trailer. The circus was also cited for failure to provide veterinary care to elephants who had cracked nails and/or overgrown feet; failure to maintain transport trailers for tigers - who had water leaking into their trailer from a tank on top of the vehicle - a pygmy hippopotamus, llamas, goats, sheep, and other animals; failure to maintain records of acquisition for the elephants; and improper food storage.<sup>78</sup>

**July 1997:** After an inspection of Carson & Barnes Circus in Colorado, a Marin Humane Society humane investigator stated that she found animals living in the "most appalling" conditions in her 14 years with the agency. The officer described elephants with boils the size of soccer balls, a hippopotamus without access to water, ponies and horses who were being ridden despite the fact that they had saddle sores, and snakes in extremely crowded cages.<sup>79</sup>

**May 28, 1997:** The USDA cited Carson & Barnes Circus for failure to provide adequate

ventilation in the elephant transport trailers.<sup>80</sup>

**March 31, 1997:** The USDA cited Carson & Barnes Circus for failure to make necessary repairs to a tiger transport trailer. The inspector wrote, "One board on exit ramp for tiger trailer is becoming splintered and needs to be replaced to prevent injury to animals' feet." The circus was also cited for confining two dogs on short tethers and failure to have an exercise plan and required identification for the dogs.<sup>81</sup>

**October 15, 1996:** The USDA cited Carson & Barnes Circus for failure to provide veterinary care to elephants, more than half of who needed routine foot and nail care.<sup>82</sup>

**April 17, 1996:** Carson & Barnes Circus received a letter from the USDA warning it to repair and/or replace the barrier fence in the area where elephants were chained and fed and which the circus had been cited for on two consecutive inspections (December 7, 1995 and March 4, 1996).<sup>83</sup>

**April 11, 1996:** The USDA cited Carson & Barnes Circus for failure to maintain the elephant transport trailer which had a hole in the metal on an inside wall.<sup>84</sup>

**March 4, 1996:** The USDA again cited Carson & Barnes Circus for failure to repair a barrier fence in the area where elephants were chained and fed. The circus was also cited for failure to maintain elephant transport trailers as well as enclosures for lions and camels, all of which had holes in the walls and ceilings, and failure to maintain fencing in a camel enclosure.<sup>85</sup>

**December 7, 1995:** The USDA cited Carson & Barnes Circus for failure to maintain cages used for tigers and lions, which had rusted walls; failure to maintain the zebra-donkey building, and failure to maintain a barrier fence around the area where elephants are chained and fed.<sup>86</sup>

**September 28, 1995:** The USDA again cited Carson & Barnes Circus for failure to maintain a tiger cage that had peeling paint and excessive rust.<sup>87</sup>

**August 16, 1995:** The USDA cited Carson & Barnes Circus for failure to provide veterinary care to an elephant named Paula who had an excessive buildup of dead skin, as well as to a pot-bellied pig with overgrown hooves; failure to dispose of expired medication; failure to provide llamas with shade; failure to provide clean water to a giraffe and zebra whose water receptacles had a buildup of algae; failure to maintain a tiger cage that had peeling paint; excessive clutter; and failure to maintain records.<sup>88</sup>

**May 8, 1995:** The USDA cited Carson & Barnes Circus for failure to provide minimum space and adequate exercise to an African elephant named Paula; failure to provide adequate ventilation in the trailers used to transport the elephants and to house them at night and during cold weather (two trucks had no ventilation holes and three trucks had only small openings) as well as the trailer used to transport the pot belly pigs; failure to provide big cats with sanitary

drinking receptacles; failure to provide proper sanitation for a pygmy hippopotamus whose stall was being cleaned only three times per week; failure to update veterinary care records; failure to have the required identification for dogs; and improper food storage.<sup>89</sup>

**May 3, 1995:** According to an affidavit given to a USDA investigator, a woman attending the circus with her daughter and a friend observed a Carson & Barnes Circus employee kick an elephant in the face and strike or stab two elephants with a pocket knife as the elephants tried to reach for hay, causing one elephant to scream and squeal.<sup>90</sup>

**February 23, 1995:** The USDA cited Carson & Barnes Circus for failure to maintain cages and transport trailers for tigers, lions, ligers, and hoof stock.<sup>91</sup>

**February 1, 1995:** A tiger escaped by squeezing through an opening in the cage she was in at the Carson & Barnes Circus winter quarters in Hugo, Oklahoma. The Choctaw County Sheriff Department, Hugo Police Department, Game Department, and a helicopter from the National Guard searched for the tiger for 10 days before she was finally recaptured.<sup>92,93</sup>

**October 26, 1994:** The USDA cited Carson & Barnes Circus for failure to provide a sufficient number of handlers and adequate security to ensure the safety of animals and the public when children were able to run toward and touch an elephant who was being taken from the circus tent.<sup>94</sup>

**October 21, 1994:** An elephant named Kay with the Carson & Barnes Circus "keeled over" and died while the circus was performing in Taylorville, Illinois. Kay had refused to eat or drink for several days. The 60-year-old elephant had not been retired even though she had a history of health problems and had had a kidney infection for approximately a year.<sup>95</sup>

**August 17, 1994:** The USDA cited Carson & Barnes Circus for an incomplete program of veterinary care.<sup>96</sup>

**June 24, 1994:** The USDA cited Carson & Barnes Circus for failure to have an adequate veterinary care program; failure to have a safety barrier between the public and large animals including elephants, giraffes, and camels; failure to maintain a elephant transport trailer that had sharp and jagged edges and rusty holes; failure to have an exercise plan and the required identification for a dog; and improper food storage.<sup>97</sup>

**June 23, 1994:** During Carson & Barnes Circus's appearance in Kearney, Nebraska, two reporters observed an animal handler kick and curse at a pygmy hippopotamus as the animal was being moved into a transport truck, and saw another worker hit an elephant across the eye with a bullhook.<sup>98</sup>

**March 9, 1993:** The USDA cited Carson & Barnes Circus for failure to maintain the elephant barn, the roof of which was rusted and full of holes, for inadequate drainage in the giraffe pen,

and for a filthy zebra pen.<sup>99</sup>

**October 7, 1992:** The USDA cited Carson & Barnes Circus for failure to provide sufficient space to a pygmy hippopotamus, as well as a liger and tiger who were housed together, who were in enclosures so narrow that the animals were unable to turn around freely; failure to provide shelter from the elements to zebu, sheep, llamas, and zebra; inadequate pest control for the pygmy hippopotamus, who was plagued by swarms of flies; and failure to record veterinary treatment for a wounded rhinoceros.<sup>100</sup>

**1990:** A giraffe with Carson & Barnes Circus died from a possible neck injury.<sup>101</sup>

**1989:** A giraffe with Carson & Barnes Circus died of hypothermia.<sup>102</sup>

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<sup>1</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, April 18, 2017.

<sup>2</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, March 8, 2017.

<sup>3</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, July 2, 2016.

<sup>4</sup> U.S. Department of Agriculture, Consent Decision and Order, Carson & Barnes Circus Company, Respondent, Docket No. 15-0103, May 25, 2016.

<sup>5</sup> U.S. Department of Agriculture, Complaint, Carson & Barnes Circus Company, Respondents, Docket No. 15-0103, April 27, 2015.

<sup>6</sup> Leah Thorsen, "Moonah Circus organizers taking steps so elephants don't get loose again," St. Louis Post-Dispatch, March 19, 2015.

<sup>7</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, January 5, 2015.

<sup>8</sup> Eric Russell, "Co-founder of Maine sanctuary for elephants, killed in pen, apparently fell and was stepped on," Press Herald, September 9, 2014.

<sup>9</sup> Leslie Bridgers, "Two elephants to leave Maine after tragic death of caregiver," Press Herald, September 10, 2014.

<sup>10</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, April 14, 2014.

<sup>11</sup> U.S. Department of Agriculture, Complaint, Carson & Barnes Circus Company, Respondents, Docket No. 15-0103, April 27, 2015.

<sup>12</sup> U.S. Department of Agriculture, Complaint, Carson & Barnes Circus Company, Respondents, Docket No. 15-0103, April 27, 2015.

<sup>13</sup> Leah Thorsen, "Moonah Circus organizers taking steps so elephants don't get loose again," St. Louis Post-Dispatch, March 19, 2015.

<sup>14</sup> Official Warning, Violation of Federal Regulations, Violator: Carson & Barnes Circus, 73-C-0001, March 12, 2014.

<sup>15</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, December 17, 2013.

<sup>16</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 7, 2013.

<sup>17</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, January 9, 2013.

<sup>18</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 2, 2012.

<sup>19</sup> U.S. Department of Agriculture, Settlement Agreement, Citation and Notification of Penalty, Carson & Barnes Circus Co., Inc., July 26, 2012.

<sup>20</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 12, 2010.

<sup>21</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 15, 2010.

<sup>22</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 29, 2011.

<sup>23</sup> State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, Case Number: 26829, August 14, 2012.

<sup>24</sup> State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, Case Number: 26829, August 14, 2012.

<sup>25</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, April 27, 2012.

<sup>26</sup> "City rejects permit for Carson And Barnes Circus," KETV, April 10, 2012.

<sup>27</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, December 20, 2011.

<sup>28</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 7, 2011.

<sup>29</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 22, 2011.

<sup>30</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 29, 2011.

<sup>31</sup> Witness declaration, June 23, 2011.

<sup>32</sup> Video: <https://www.youtube.com/watch?v=jlnR2tSP2M>

<sup>33</sup> U.S. Department of Agriculture, APHIS, Animal Care, Animal Welfare Complaint, Carson & Barnes Circus, Complaint No. E11-182, June 24, 2011.

<sup>34</sup> Letter from Ray Flynn, DVM, Assistant Regional Director, Western Region, USDA APHIS AC, to Carson & Barnes Circus, March 11, 2011.

<sup>35</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, September 25, 2010.

<sup>36</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 19, 2010.

<sup>37</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 12, 2010.

<sup>38</sup> Jason Snyder, "Circus elephant captured after escape," The News & Advance, April 27, 2010.

<sup>39</sup> "No title," WSET, April 27, 2010.

<sup>40</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, April 28, 2010.

<sup>41</sup> U.S. Department of Agriculture, Settlement Agreement, Citation and Notification of Penalty, Carson & Barnes Circus Co., Inc., July 26, 2012.

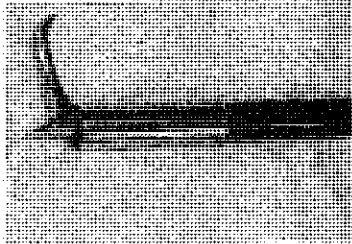
<sup>42</sup> U.S. Department of Agriculture memo from Gloria S. McFadden, VMO, to Ellen J. Magid, SACS, May 26, 2010.

<sup>43</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 30, 2007.

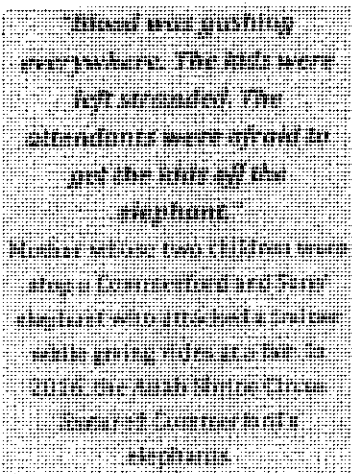
- <sup>44</sup> Bill Taylor, "Hi ... we found an elephant," *Toronto Star*, July 13, 2007.
- <sup>45</sup> Omar El Akkad, "Elephants on the loose cause a circus in Ontario," *The Globe and Mail*, July 12, 2007.
- <sup>46</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 6, 2007.
- <sup>47</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 5, 2007.
- <sup>48</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 2, 2006.
- <sup>49</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 16, 2006.
- <sup>50</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, July 18, 2005.
- <sup>51</sup> Transcript of Temporary Restraining Order Ruling Before the Honorable Paul L. Friedman, United States District Judge, Debra Lynn Leahy, et al, v. United States Department of Agriculture, et al, Docket No. CA 05-1135 (PLF), June 21, 2005.
- <sup>52</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 26, 2005.
- <sup>53</sup> U.S. Department of Agriculture, Complaint, Carson & Barnes Circus Company, Respondents, Docket No. 15-0103, April 27, 2015, page 2.
- <sup>54</sup> Email from Jim D. Rogers, U.S. Department of Agriculture, APHIS, to Nicole Meyer, PETA, April 12, 2005.
- <sup>55</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 28, 2004.
- <sup>56</sup> Carson & Barnes Circus Press Release, April 2004.
- <sup>57</sup> "Elephants suffer minor injuries in highway accident," Associated Press, June 28, 2003.
- <sup>58</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, March 11, 2003.
- <sup>59</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, February 5, 2003.
- <sup>60</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, January 24, 2003.
- <sup>61</sup> U.S. Department of Agriculture, Investigative and Enforcement Services, Settlement Agreement, Carson and Barnes Circus, Inc., Case Number OK02012-AC, December 27, 2002.
- <sup>62</sup> <http://www.peta.org/videos/carson-barnes-circus-cruelty/>
- <sup>63</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 9, 2002.
- <sup>64</sup> Hallie Arnold, "Circus comes to town - by accident," *Freeman*, August 10, 2002.
- <sup>65</sup> Erikah Haavie, "Elephant trailer tips over," *Poughkeepsie Journal*, August 10, 2002.
- <sup>66</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 5, 2002.
- <sup>67</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 14, 2002.
- <sup>68</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, January 10, 2002.
- <sup>69</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 22, 2001.
- <sup>70</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, January 30, 2001.
- <sup>71</sup> "For 3 generations, the Frisco family has been 'taking care of business,'" *White Tops*, September/October 2000, page 19.
- <sup>72</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 24, 2000.
- <sup>73</sup> Michelle Besso, "Officials cancel circus; shows to resume today," *The Capital*, July 22, 2000.
- <sup>74</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 6, 2000.
- <sup>75</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 13, 1999.
- <sup>76</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, July 27, 1998.
- <sup>77</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, February 5, 1998.
- <sup>78</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 28, 1997.
- <sup>79</sup> Donna Horowitz, "Humane Society may keep circus out of Novato," *San Francisco Examiner*, July 23, 1997.
- <sup>80</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 28, 1997.
- <sup>81</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, March 31, 1997.
- <sup>82</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 15, 1996.
- <sup>83</sup> Letter from Dr. Bruce R. Mammeli, Supervisory Animal Care Specialist, USDA, to Carson & Barnes Circus, April 17, 1996.
- <sup>84</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, April 11, 1996.
- <sup>85</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, March 4, 1996.
- <sup>86</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, December 7, 1995.
- <sup>87</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, September 28, 1995.
- <sup>88</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 16, 1995.
- <sup>89</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, May 8, 1995.
- <sup>90</sup> Affidavit of Tammy Cabral to Lupe Aguilar, Investigator, U.S. Department of Agriculture, May 26, 1995.
- <sup>91</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, February 23, 1995.
- <sup>92</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, February 23, 1995.
- <sup>93</sup> "Capture of Shawana was a joint effort," *Choctaw County News*, February 16, 1995.
- <sup>94</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 26, 1994.
- <sup>95</sup> "Circus elephant dies at Taylorville," *Mt. Vernon Register-News*, October 26, 1994.
- <sup>96</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, August 17, 1994.
- <sup>97</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, June 24, 1994.
- <sup>98</sup> "Care of circus animals disputed," *Kearney Hub*, June 23, 1994.
- <sup>99</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, March 9, 1993.
- <sup>100</sup> U.S. Department of Agriculture, Inspection Report, 73-C-0001, October 7, 1992.
- <sup>101</sup> USDA telephone conversation record of Dr. Hardy, April 26, 1991.
- <sup>102</sup> "Care of circus animals disputed," *Kearney Hub*, June 23, 1994.



# Circuses in Maine



An elephant handler conceals the business end of a bullhook in his back pocket.



THE HUMANE SOCIETY  
OF THE UNITED STATES  
Updated: March 1, 2017

## Circuses that do not use or are phasing out elephants

**Ringling Bros. and Barnum & Bailey Circus** eliminated elephant acts from its shows in 2016. Kenneth Feld, president of Feld Entertainment, Ringling's parent company acknowledged, "There's been, on the part of our consumers, a mood shift where they may not want to see elephants transported from city to city."<sup>1</sup> **Circus Vargas** long ago eliminated all animal acts in order to cut costs and has seen attendance numbers grow between 3% and 6% over the last few years.<sup>2</sup> Numerous **Shrine** temples have announced plans to eliminate elephants in future circuses. For example, the **Al Bedoo Shrine Circus** in Montana stated that 2016 was the last year to see elephants at its circus and the **Ainad Shrine Circus** in Illinois indicated that 2016 would likely be the last year for elephants.<sup>3,4</sup> And Minnesota **Zurah Shrine** CEO Ross Hjermstad believes using elephants, tigers, and lions in circuses will become a thing of the past, stating, "It's something that is going to be inevitable at some point. There is a growing trend to get way from those animals."<sup>5</sup>

Animal-based circuses have been dwindling in popularity for decades, while contemporary circuses that dazzle crowds solely with skilled human performers, such as **Cirque du Soleil**, have soared. According to a November 2016 article in **Forbes** magazine, circus attendance in the United States has dropped an estimated 30 to 50 percent over the last 20 years and gross revenue from circuses in the U.S. fell almost 9 percent between 2007 and 2012.

## Circuses with elephants that perform in Maine

Every exhibitor that has recently appeared in Maine with elephants has a record of federal Animal Welfare Act (AWA) violations and/or dangerous incidents.

Many circuses do not have their own U.S. Department of Agriculture (USDA) exhibitor license but instead contract all of their animal acts. For example, the **Shriners** do not own a circus or have a USDA license to exhibit animals. Each Shrine temple that produces an annual circus hires a circus to perform under the Shrine name, or the temple works with a circus producer who arranges for that year's animal acts, as well as jugglers, trapeze artists, and other performers.

In 2016, the **Anah Shrine Circus** in Bangor leased elephants from **RW Commerford and Sons** to perform in the shows and provide rides. One of Commerford's elephants has been involved in three dangerous incidents while giving rides to children. In March 2006, Commerford's elephant named **Minnie** injured two employees while giving rides at a children's fair in Massachusetts. As children were being loaded onto her back, Minnie became agitated and swung her head toward the employees, shifting her weight and pinning them against the loading ramp. An eyewitness reported that one of the employees had provoked the elephant by striking her in the face. One man sustained a chest injury and the other a broken arm. Both were taken by ambulance to the hospital. Two bystanders sustained bruises.<sup>6,7,8</sup> In August 1998, while carrying children on her back at a state fair in New York, Minnie panicked, knocking down and then stepping on the trainer. A 3-year-old girl was also injured after falling off the elephant. Both of the injured people were treated at a local hospital.<sup>9,10</sup> In August 1989, Minnie attacked and seriously injured a handler after he struck her with a stick at a fair in Vermont. Minnie picked up the handler with her

trunk and threw him against a trailer, breaking his shoulder and jaw. Two children were riding on the elephant's back at the time. According to a witness, "Blood was gushing everywhere. The kids were left stranded. The attendants were afraid to get the kids off the elephant." Commerford continued using Minnie for rides at the fair despite public outcry that the elephant was too dangerous.<sup>11,12</sup>

In 2008, the **Anah Shrine Circus** in Bangor featured elephant exhibitor Lancelot Kollman, who forced a sick emaciated elephant named Ned to perform and give rides. Ned, who was about 2,000 pounds underweight, was subsequently confiscated by the U.S. Department of Agriculture.

The **Garden Bros. Circus**, which has appeared in Auburn and Biddeford, typically **leases elephants from Carson & Barnes Circus**. Carson & Barnes has a long history of abysmal animal care and has been repeatedly cited and fined by the USDA for violations of the AWA including:

- Using a bullhook with "excessive force" on an elephant who was giving rides to the public.<sup>13</sup>
- Repeated failure to provide adequate veterinary care to a thin elephant who had lost hundreds of pounds.<sup>14,15</sup>

- Repeated failure to safely handle elephants. Inspectors wrote, "The safety of the elephant and [a member of the public] were at risk" and the actions of the handler "allow[ed] for the risk of serious injury to members of the public."<sup>16,17,18</sup>
- Repeated failure to maintain control of elephants, resulting in at least two instances of elephants bolting from handlers and becoming injured.<sup>19,20,21</sup>
- Failure to provide elephants with shelter from cold rain, with adequate shade, and with a safe transport trailer.<sup>22,23,24</sup>

Elephants with Carson & Barnes have also been involved in numerous dangerous incidents. In 2014, while leaving a performance arena, Carson & Barnes handlers lost control of three elephants who subsequently ran into a parking lot, resulting in injuries to two of the elephants and damage to two cars in the lot.<sup>25,26</sup> In 2010, a Carson & Barnes elephant named Viola who was performing with Cole Bros. Circus bolted from handlers and ran directly past a line of people waiting to buy tickets, sending some running toward the parking lot. Viola slid in the mud and tumbled down a hill and into a ditch. She was loose for approximately 30 minutes before being recaptured.<sup>27,28,29</sup> In 2007, three Carson & Barnes elephants escaped from their enclosure and roamed through the town.<sup>30,31</sup>

<sup>1</sup> Richard Pérez-Peña, "Elephants to Retire From Ringling Brothers Stage," *New York Times*, March 5, 2015.

<sup>2</sup> Hugo Martin, "Circus Vargas cuts costs and nixes animal acts to keep its show on the road," *Los Angeles Times*, February 2, 2017.

<sup>3</sup> "Shrine Circus returns to Billings; it's the last year featuring elephants," *Billings Gazette*, March 29, 2016.

<sup>4</sup> "Shrine Circus Coming to Salem Thursday and Friday," *WJBD*, June 8, 2016.

<sup>5</sup> Paul Walsh, "Shrine Circus avoids canceling, finds producer for Target Center shows," *Star Tribune*, November 9, 2015.

<sup>6</sup> Lisa Gentes, "Workers hurt by elephant," *The Milford Daily News*, March 6, 2006.

<sup>7</sup> Lisa Gentes, "Questions arise about zoo show," *The Milford Daily News*, March 7, 2006.

<sup>8</sup> Marlborough Police Department report, Incident No. 2006000003632, March 9, 2006.

<sup>9</sup> Andrena Irvin, "Elephant panics; two hurt," *Syracuse Post Standard*, August 28, 1998.

<sup>10</sup> J.M. Lawrence, "Controversy follows elephant to Topsfield fair," *Boston Herald*, October 3, 1998.

<sup>11</sup> "Elephant gives ride after attack," *Burlington Free Press*, August 30, 1989.

<sup>12</sup> Mike Donoghue, "Elephant attack raises concerns," *Burlington Free Press*, August 31, 1989.

<sup>13</sup> USDA, Inspection Report, 73-C-0001, June 29, 2011.

<sup>14</sup> USDA, Inspection Report, 73-C-0001, January 5, 2015.

<sup>15</sup> USDA, Inspection Report, 73-C-0001, August 7, 2013.

<sup>16</sup> USDA, Inspection Report, 73-C-0001, June 29, 2011.

<sup>17</sup> USDA, Settlement Agreement, Citation and Notification of Penalty, Carson & Barnes Circus Co., Inc., July 26, 2012.

<sup>18</sup> USDA, Inspection Report, 73-C-0001, October 7, 2011.

<sup>19</sup> USDA, Settlement Agreement, Citation and Notification of Penalty, Carson & Barnes Circus Co., Inc., July 26, 2012.

<sup>20</sup> USDA, Complaint, Carson & Barnes Circus Company, Respondents, Docket No. 15-0103, April 27, 2015.

<sup>21</sup> Leah Thorsen, "Moolah Circus organizers taking steps so elephants don't get loose again," *St. Louis Post-Dispatch*, March 19, 2015.

<sup>22</sup> USDA, Inspection Report, 73-C-0001, May 12, 2010.

<sup>23</sup> USDA, Inspection Report, 73-C-0001, August 22, 2011.

<sup>24</sup> USDA, Inspection Report, 73-C-0001, August 2, 2012.

<sup>25</sup> USDA, Complaint, Carson & Barnes Circus Company, Respondents, Docket No. 15-0103, April 27, 2015.

<sup>26</sup> Leah Thorsen, "Moolah Circus organizers taking steps so elephants don't get loose again," *St. Louis Post-Dispatch*, March 19, 2015.

<sup>27</sup> Jason Snyder, "Circus elephant captured after escape," *The News & Advance*, April 27, 2010.

<sup>28</sup> Untitled, *WSET*, April 27, 2010.

<sup>29</sup> USDA, Settlement Agreement, Citation and Notification of Penalty, Carson & Barnes Circus Co., Inc., July 26, 2012.

<sup>30</sup> Bill Taylor, "Hi ... we found an elephant," *Toronto Star*, July 13, 2007.

<sup>31</sup> Omar El Akkad, "Elephants on the loose cause a circus in Ontario," *The Globe and Mail*, July 12, 2007.

# What Experts Say

*Experts agree that using wild animals in circuses requires inhumane training methods and fails to provide animals with an appropriate environment for their physical or psychological health. Below are a few comments from experts about the use of elephants and other wild animals in traveling shows.*

"By definition, traveling shows cannot provide the space, substrates, climate and social conditions necessary to meet even the basic needs of animals. It is extremely hard for even a modern zoo with great technical expertise and expansive space and resources to meet these needs. In addition to the constant stressful travel, the daily living conditions, often with prolonged restraint, aversive and cruel methods of physical training are very harmful."

Ron L. Kagan  
Executive Director/Chief Executive Officer  
Detroit Zoo

"I observed that the big cats in Ringling Bros.' Red Unit were treated with aversive stimuli that they were unable to avoid and are managed through fear, coercion, and punishment. ... Circuses do not promote conservation, education, or the advancement of animal welfare or management techniques. They are a cruel relic from human history, and for welfare reasons, big cats should be banned from circus exhibition and placed in more appropriate environments with trained, skilled caregivers."

Jay Pratte, B.S., M.A.  
Animal training, behavior, and welfare consultant  
Bachelor of Science degree in zoology and behavioral psychology, Masters of Interdisciplinary Studies in zoo and aquarium leadership, 25 years of experience training both domestic and exotic species

"The simple fact is that captive elephants, and performing elephants in particular, cannot cope with the consequences of the standard of care and living conditions governed by the use of the bullhook."

Philip K. Ensley, DVM, Dip. ACZM  
Associate veterinarian (retired) at the San Diego Zoo for 29 years following a postdoctoral training program as a Smithsonian Fellow at the National Zoological Park in Washington, DC.

"Elephants are self-aware, empathetic and are capable of higher-level emotions such as love, anger and grief. They have a complex system of communication, can remember other individuals after more than a decade of separation and have an understanding of death. Elephants also experience long-term psychological wounds caused by trauma and abuse. ... Bullhooks and similar devices used to control and confine elephants in traveling shows and circuses are inappropriate and inhumane."

Joyce H. Poole, PhD  
Co-Founder, Co-Director, ElephantVoices  
World expert in elephant social behavior and communication. Forty years of experience studying elephants in the wild and working for their conservation and welfare.

## What Experts Say

"I have spent the majority of my life working around and caring for captive elephants, including in circuses and zoos where I helped train and manage both old and young elephants. I have used on elephants all of the commonly used training tools, including but not limited to bullhooks, electricity, axe handles and pitchforks. ... Unfortunately most people do not know what goes on behind the scenes ... Once dominance-based management is removed you can ... begin to see the elephants for who they really are: sensitive, intelligent, caring and uniquely forgiving and empathetic individuals."

Scott Elais, CEO

Global Sanctuary for Elephants

"Establishing the ankus as an aversive stimulus is done by repeatedly striking the elephant with it and/or poking (sometimes lacerating the skin) with the metal tip on sensitive parts of the elephant's body such as the mouth, ears, chin, cuticles or anus. The elephant learns to associate the bullhook, or the sight of it, with pain and therefore fear."

Margaret Whittaker, Animal Behavior Consultant

Gail Lauke, President

Active Environments, Inc.

"The Elephant Sanctuary has two decades of experience in managing and caring for elephants that have been retired from lives in entertainment. The long list of medical, physiological, and behavioral issues that our resident elephants must confront each and every day demonstrates that life on the road, performing tricks and giving rides, all prompted by negative reinforcement training and the use of the bullhook, is fundamentally hard on elephants—physically and emotionally."

Janice Zeitlin, CEO

Richard Rhoda, Board Chair

The Elephant Sanctuary in Tennessee

# factsheet

## State and Local Restrictions Governing Traveling Shows and Circuses in the U.S.

Four states and more than 125 other localities in 34 states have passed restrictions governing the use of wild animals in circuses and traveling shows.

### Arkansas

Eureka Springs Bans the display of wild animals.

### California

Statewide Bans the use of bullhooks and similar devices designed to inflict pain on elephants (effective January 1, 2018).

Corona Bans the display of wild animals in circuses, carnivals, or similar entities.

Dinuba Bans the use of chemical, electrical, or mechanical devices on performing animals.

Encinitas Bans the display of wild animals in circuses, carnivals, or similar entities.

Hanford Bans the use of chemical, electrical, or mechanical devices on performing animals.

Huntington Beach Bans performing wild animal acts.

Irvine Bans the display of wild animals in circuses.

Los Angeles Bans the use of bullhooks and similar devices designed to inflict pain on elephants.

Marin County Regulates animal acts.

Newport Beach Proclamation from Mayor that city will not display wild animals for entertainment.

Oakland Bans the use of bullhooks and similar devices designed to inflict pain on elephants (effective September 1, 2017).

Orinda Bans the use of devices likely to cause injury and suffering to performing animals.

Pasadena Bans the display of wild animals and rodeos on city property; restricts displays of domestic animals.

Rohnert Park Bans the display of wild animals.

Rolling Hills Estates Bans performances of wild animals for public entertainment.

San Francisco Bans wild animals from performing in the city, including motion pictures.

Santa Ana Bans the display of wild animals in circuses, carnivals, or similar entities.

West Hollywood Bans the display of wild animals in circuses, carnivals, or similar entities.

### Colorado

Boulder Bans the display of wild animals.

Loveland Bans the use of devices likely to cause injury and suffering to performing animals.

Timnath Bans the use of devices likely to cause injury and suffering to performing animals.

### Connecticut

Stamford Bans carnivals, circuses, and wild west shows.

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**Florida**

|                  |                                                                                                                                                                                                                           |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Citrus County    | Bans the use of prods, sticks, electrical shock, chemical or physical force on performing animals.                                                                                                                        |
| Destin           | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                       |
| Hallandale Beach | Bans the use of tools that may cause, or are likely to cause animals pain, suffering, or injury, including bullhooks, electric prods, and whips.                                                                          |
| Hollywood        | Bans the display of vertebrate animals on city property for entertainment; bans the display of wild, threatened or endangered species on private property for entertainment.                                              |
| Margate          | Bans the use of tools that may cause, or are likely to cause animals pain, suffering, or injury, including bullhooks, electric prods, and whips.                                                                          |
| Mary Esther      | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                       |
| Miami Beach      | Bans the use of tools that may cause, or are likely to cause animals pain, suffering, or injury, including bullhooks, electric prods, and whips.                                                                          |
| Okaloosa County  | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                       |
| Panama City      | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                       |
| Pompano Beach    | Bans animal displays on city property for entertainment (except horses); bans the use of tools that may cause, or are likely to cause animals pain, suffering, or injury, including bullhooks, electric prods, and whips. |

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**Georgia**

|                |                                                                                                             |
|----------------|-------------------------------------------------------------------------------------------------------------|
| Baldwin County | Bans the use of devices likely to cause injury and suffering to performing animals.                         |
| Coweta County  | Bans the use of devices likely to cause harm to performing animals.                                         |
| Fulton County  | Bans the use of bullhooks and any device that inflicts pain on, or is likely to cause injury to, elephants. |
| Union City     | Bans the use of bullhooks and any device that inflicts pain on, or is likely to cause injury to, elephants. |

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**Hawaii**

|             |                                                      |
|-------------|------------------------------------------------------|
| Maui County | Bans the display of cetaceans (whales and dolphins). |
|-------------|------------------------------------------------------|

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**Iowa**

|            |                                                                                     |
|------------|-------------------------------------------------------------------------------------|
| Ames       | Bans the use of devices likely to cause injury and suffering to performing animals. |
| Burlington | Bans the use of devices likely to cause injury and suffering to performing animals. |
| Roland     | Bans the use of devices likely to cause injury and suffering to performing animals. |

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**Idaho**

|               |                                                                                                    |
|---------------|----------------------------------------------------------------------------------------------------|
| Blaine County | Bans the display of wild animals as part of a circus, animal act, exhibit, or other special event. |
| Ketchum       | Bans the use of wild animals in traveling animal acts.                                             |

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**Indiana**

|             |                                                                                     |
|-------------|-------------------------------------------------------------------------------------|
| Beech Grove | Bans the use of chemical, electrical, or mechanical devices on performing animals.  |
| Bloomington | Bans the use of devices likely to cause injury and suffering to performing animals. |

|                      |                                                                                                                                                                            |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Munster              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Whiting              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| <b>Kansas</b>        |                                                                                                                                                                            |
| Olathe               | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Wyandotte County     | Bans the use of devices likely to cause injury and suffering to performing animals; bans public contact with wild animals, with no exemption for elephant rides.           |
| <b>Kentucky</b>      |                                                                                                                                                                            |
| Grant County         | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Kenton County        | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Louisville           | Bans the use of African elephants for rides; regulates the use of Asian elephants for rides; bans public contact with other inherently dangerous animals used in circuses. |
| <b>Massachusetts</b> |                                                                                                                                                                            |
| Braintree            | Bans the display of wild animals in circuses, carnivals, or similar entities.                                                                                              |
| Cambridge            | Bans the display of wild animals in circuses and traveling shows.                                                                                                          |
| Pittsfield           | Bans the display of wild animals in circuses, carnivals, or similar entities.                                                                                              |
| Plymouth             | Bans the display of dangerous wild animals in traveling shows.                                                                                                             |
| Provincetown         | Bans the display of wild animals in circuses, carnivals, or similar entities.                                                                                              |
| Quincy               | Bans the display of wild animals in circuses, carnivals, or similar entities.                                                                                              |
| Revere               | Bans the display of wild animals for entertainment.                                                                                                                        |
| Somerville           | Bans the display of wild animals in circuses, carnivals, or similar entities.                                                                                              |
| Weymouth             | Bans the display of wild animals in circuses, carnivals, or similar entities.                                                                                              |
| <b>Michigan</b>      |                                                                                                                                                                            |
| St. Clair Shores     | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| <b>Minnesota</b>     |                                                                                                                                                                            |
| Minneapolis          | Bans the use of bullhooks and similar devices designed to inflict pain on elephants (effective January 1, 2019).                                                           |
| <b>Mississippi</b>   |                                                                                                                                                                            |
| Statewide            | Prohibits temporary exhibits from allowing public contact with most wild animals.                                                                                          |
| Biloxi               | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Brandon              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Clinton              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Crystal Springs      | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| D'Iberville          | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Flowood              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Gulfport             | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Horn Lake            | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Jackson              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |
| Meridian             | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                        |

|                       |                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ridgeland             | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| Southaven             | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| West Point            | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| <b>Missouri</b>       |                                                                                                                                                                                                                                                                                                                     |
| Richmond              | Bans the display of wild animals.                                                                                                                                                                                                                                                                                   |
| <b>Montana</b>        |                                                                                                                                                                                                                                                                                                                     |
| Missoula              | Bans performing wild animals, wild animal exhibits, and elephant rides.                                                                                                                                                                                                                                             |
| <b>Nebraska</b>       |                                                                                                                                                                                                                                                                                                                     |
| Bellevue              | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| <b>New Jersey</b>     |                                                                                                                                                                                                                                                                                                                     |
| Bergen County         | Bans performing wild animals on county property.                                                                                                                                                                                                                                                                    |
| Cumberland County     | Bans traveling shows or circuses that use wild animals on county property.                                                                                                                                                                                                                                          |
| Hudson County         | Bans traveling shows or circuses that use wild animals on county property.                                                                                                                                                                                                                                          |
| Jersey City           | Bans performing wild animals on public or private property.                                                                                                                                                                                                                                                         |
| Passaic County        | Bans traveling shows or circuses that use wild animals on county property.                                                                                                                                                                                                                                          |
| Vineland              | Bans traveling shows or circuses that use wild animals on city property.                                                                                                                                                                                                                                            |
| <b>New Mexico</b>     |                                                                                                                                                                                                                                                                                                                     |
| Las Cruces            | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| <b>New York</b>       |                                                                                                                                                                                                                                                                                                                     |
| Statewide             | Bans public contact with big cats; bans public contact with endangered or threatened species, including elephant rides.                                                                                                                                                                                             |
| East Hampton          | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| Greenburgh            | Bans the display of wild animals in circuses; prohibits all rodeos on town property; bans wild animal species from "parades, carnivals, races, rides, public shows, trade shows, photo opportunities, or similar undertakings in which animals perform tricks, fight or participate in performances for amusement." |
| Southampton           | Bans the display of wild animals.                                                                                                                                                                                                                                                                                   |
| Walkill               | Bans public contact with big cats and bears at fairs, circuses, carnivals or exhibitions.                                                                                                                                                                                                                           |
| <b>North Carolina</b> |                                                                                                                                                                                                                                                                                                                     |
| Asheville             | Bans the display of wild animals.                                                                                                                                                                                                                                                                                   |
| Chapel Hill           | Bans the display of wild animals.                                                                                                                                                                                                                                                                                   |
| Orange County         | Bans the display of wild animals.                                                                                                                                                                                                                                                                                   |
| <b>Ohio</b>           |                                                                                                                                                                                                                                                                                                                     |
| Delaware              | Bans wild animals in circuses.                                                                                                                                                                                                                                                                                      |
| <b>Oklahoma</b>       |                                                                                                                                                                                                                                                                                                                     |
| El Reno               | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |
| Mustang               | Bans the use of devices likely to cause injury and suffering to performing animals.                                                                                                                                                                                                                                 |



|                       |                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Oregon</b>         |                                                                                                                          |
| Clatsop County        | Bans the use of bullhooks, electric prods, whips or other devices that cause injury to elephants, felines, and primates. |
| <b>Rhode Island</b>   |                                                                                                                          |
| Statewide             | Bans the use of bullhooks and similar devices designed to inflict pain on elephants.                                     |
| <b>South Carolina</b> |                                                                                                                          |
| Aiken County          | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Edgefield County      | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Spartanburg           | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| <b>Tennessee</b>      |                                                                                                                          |
| Germantown            | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Oliver Springs        | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| <b>Texas</b>          |                                                                                                                          |
| Aransas Pass          | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Austin                | Bans the use of bullhooks on elephants.                                                                                  |
| Corpus Christi        | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Denton                | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Killeen               | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Marion                | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Nolanville            | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| <b>Utah</b>           |                                                                                                                          |
| Helper                | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Huntington            | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Layton City           | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| <b>Vermont</b>        |                                                                                                                          |
| Burlington            | Bans the display of wild animals.                                                                                        |
| <b>Virginia</b>       |                                                                                                                          |
| Charlottesville       | Bans the use of devices likely to cause injury and suffering to performing animals.                                      |
| Fairfax               | Bans public contact with wild animals, with no exemption for elephant rides.                                             |
| King George County    | Bans public contact with wild animals, with no exemption for elephant rides.                                             |
| Manassas              | Bans public contact with wild animals, with no exemption for elephant rides.                                             |
| Manassas Park         | Bans public contact with wild animals, with no exemption for elephant rides.                                             |
| Prince William County | Bans public contact with wild animals, with no exemption for elephant rides.                                             |
| Richmond              | Bans the use of bullhooks and similar devices designed to inflict pain on elephants (effective June 30, 2018).           |

|                     |                                                                              |
|---------------------|------------------------------------------------------------------------------|
| Salem               | Bans public contact with wild animals, with no exemption for elephant rides. |
| Spotsylvania County | Bans public contact with wild animals, with no exemption for elephant rides. |

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#### **Washington**

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Darrington    | Bans the use of devices likely to cause injury and suffering to performing animals.  |
| Redmond       | Bans the display of wild animals.                                                    |
| Port Townsend | Bans the display of wild animals.                                                    |
| Snohomish     | Bans the use of devices likely to cause injury and suffering to performing animals.  |
| Spokane       | Bans the use of bullhooks and similar devices designed to inflict pain on elephants. |

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#### **Wisconsin**

|             |                                                                                         |
|-------------|-----------------------------------------------------------------------------------------|
| Dane County | Bans performing elephants at the Alliant Energy Center of Dane County (effective 2020). |
| Madison     | Bans circuses and traveling shows from displaying cougars and bears.                    |

Updated March 24, 2017



# Investigative Report

## ShowMe Tigers Circus Act



THE HUMANE SOCIETY  
OF THE UNITED STATES



BAN WILD ANIMAL ACTS



Tora flinches and snarls as Easley whips at her 31 times during a practice session.

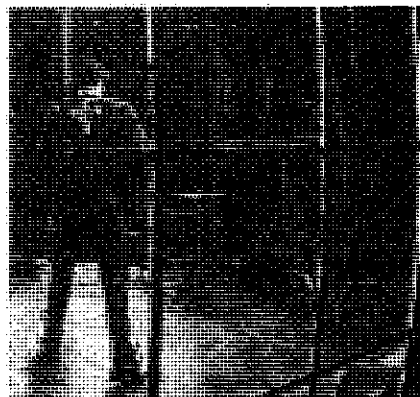
During early 2017, an undercover investigator with The Humane Society of the United States spent several weeks working and traveling with Ryan Easley's ShowMe Tigers circus act. Our investigation found that the eight tigers featured in the act were trained and handled through the violent use of whips and sticks, forced to perform tricks that could lead to physical ailments, left in cramped transport cages when not performing, and fed an inappropriate diet. Easley, who uses the stage name Ryan Holder, tours with Carden Circus, often performing for Shrine Circus. Jay Pratte, an animal-behavior expert, trainer and wildlife consultant with 25 years of experience, stated in a declaration provided to The HSUS, "Ryan Easley utilizes archaic training methods which entail fear, force and punishment. In my professional opinion, the tigers at ShowMe Tigers are suffering from psychological neglect and trauma on a daily basis." The HSUS has filed a complaint with the U.S. Department of Agriculture for potential violations of the Animal Welfare Act, and is urging the agency to investigate ShowMe Tigers and to take swift enforcement action for violations of federal law.

### Abusive Training

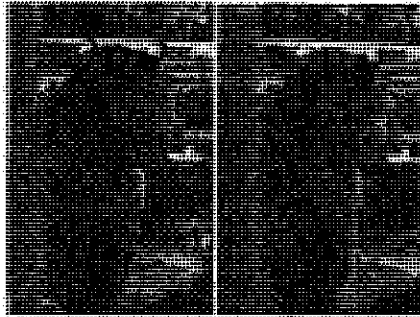
Our investigator documented Easley using a lunge whip and a long stick as training tools to control the six female and two male tigers. He cracked the whip, sometimes making a loud noise and sometimes making contact with the tigers, and he used the stick to prod and hit the tigers. While Easley did not always use the same degree of force in whipping and striking the tigers during the show as he did during a practice session, the tigers never knew what to expect. It was obvious that the mere presence of these tools created a great deal of anxiety for the tigers.

While in the performance ring, the tigers exhibited classic signs of fear and behavioral stress. They squinted, flinched, flattened their ears back, sat with hunched shoulders, snarled, cowered, moaned in distress, swatted at Easley or the training tools, crept reluctantly to position in the performance ring, and bolted back to their pedestals—sometimes in the middle of a trick.

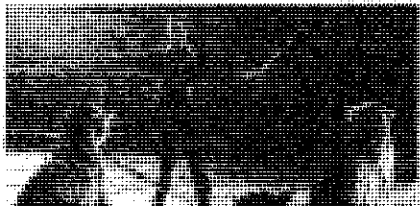
During a practice session, our investigator documented Easley becoming visibly annoyed with a tiger named Tora who was not responding to commands. Easley



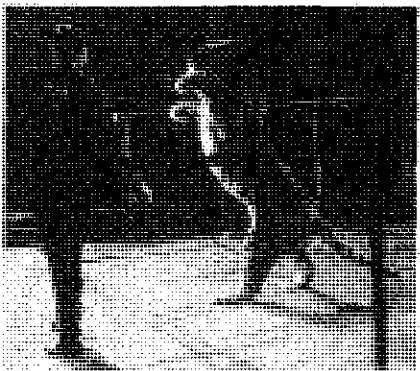
A tiger snarls and cowers between pedestals during a performance.



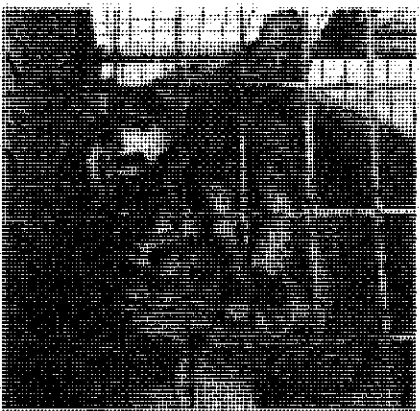
A whip mark appears on the back of a tiger's head (right) as Easley whips him during an abusive practice session.



The tigers' flattened-back ears as Easley raises his whip and goad are a sign that they anticipate conflict.



Walking upright could lead to physical disorders such as arthritis.



This tiger never received veterinary care for a raw, open wound near her eye.

aggressively whipped at Tora to get her down from the pedestal, making contact with her paws, chest and face multiple times. In less than two minutes, Easley whipped at a traumatized Tora 31 times while she flinched, snarled and roared.

Some of the tigers are forced to walk backwards and hop forwards while upright on their hind legs, a physically grueling trick that could lead to physical disorders such as arthritis.

### Constant Confinement

When Easley went on tour for the circus season, the tigers were kept in pairs in transport cages that measured 6½-feet long x 4-feet wide x 4-feet high. The two male tigers, each weighing more than 500 pounds, shared one transport cage. Except for the few minutes each day when the tigers performed, they were kept exclusively in transport cages where they ate, slept, paced, urinated and defecated in the approximately 13-square feet of floor space afforded to each one. Not once were they provided the chance to exercise outside the transport cages. In fact, the tigers' exercise cage was never even unloaded from the trailer.

Tigers are generally solitary animals. When multiple tigers are caged together with no opportunity to escape from an aggressive, stressed cagemate, conflicts can turn deadly.

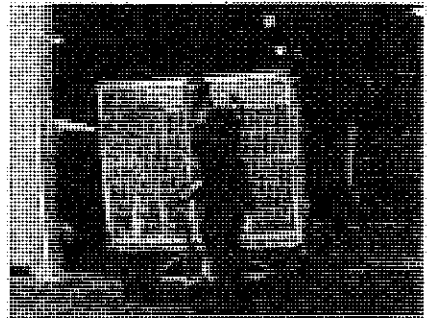
They were never provided with any enrichment items to keep them physically and mentally active. Tigers love to swim, but Easley's tigers have no access to a pool. Confined to transport cages on the road, they were never able to walk on grass, jump onto elevated resting platforms, or even stretch upright. According to Jay Pratte in his declaration to The HSUS, "The big cats at ShowMe Tigers are [...] deprived of the minimum standards of care exercised by professional institutions that house big cats in captivity."

### Neglect

Before Easley's circus act went on tour, the tigers were kept at his winter quarters in Hugo, Oklahoma. Despite temperatures that were often well below freezing, the tigers had no heat source and were only provided a mere inch of bedding during bitterly cold weather.

For the duration of the HSUS investigation, Easley typically fasted the tigers more than once per week, fed the tigers almost exclusively raw chicken legs, and rarely provided any dietary supplements. On fasting days, the tigers were not given bones, rawhides, or similar items to promote periodontal health and encourage natural feeding behaviors as is done at professionally-run facilities.

Tora, the tiger who our investigator documented being subjected to extensive whipping during the practice session, did not receive veterinary care for a raw open wound on the side of her face. The USDA had previously cited Easley in 2012 for not providing veterinary care to Tora when she had a 1-inch cut on her ribcage.



The tigers spent 21 1/2 to 24 hours per day in transport cages.

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sticlysweetmaine Absolutely horrible 🐘

jenningfield Not cool!

ashleydow123 VERY upsetting

@cross\_arena

eatingportlandalive 🐘🐘🐘

danners\_k Thank you for posting @maps\_bar!! I'll be protesting in front of the entrance at 6:30 today, tomorrow and Wednesday if anyone wants to join me!! 🐘

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lynn\_prettyfloral thanks, @maps\_bar 🐘🐘

kietzer These poor 🐘! What a shame!

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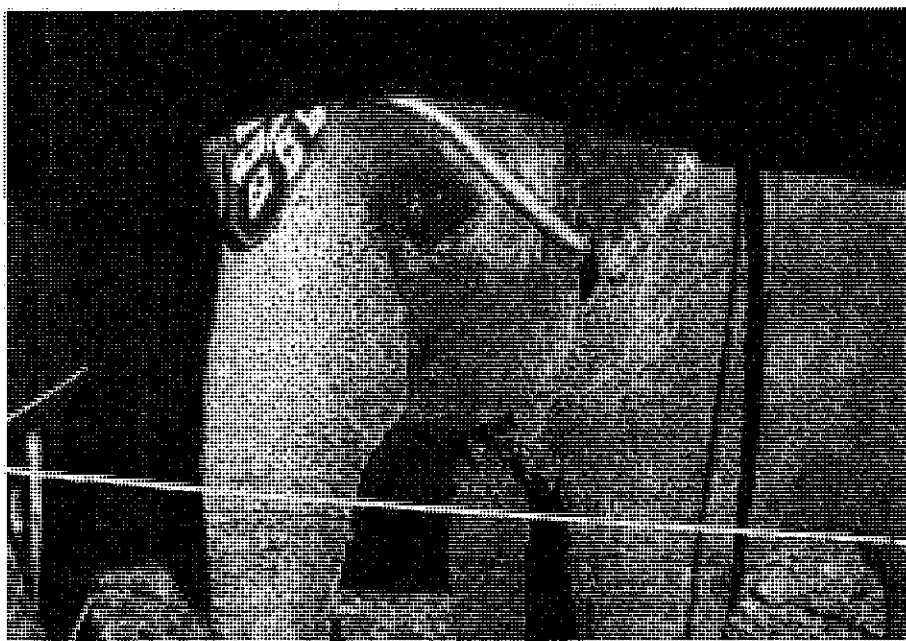
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# Prohibit Elephant Acts Support LD 396



THE HUMANE SOCIETY  
OF THE UNITED STATES



FROM THE ROADS: MISERABLE ELEPHANTS

## Protect Elephants Used in Traveling Shows

The use of elephants in circuses, for rides at fairs, and in other traveling shows subjects these highly intelligent, social animals to cruel treatment and a miserable life on the road where they are deprived of exercise and the ability to express natural behaviors. When chained and confined in small spaces, handled with electric prods and bullhooks and kept in socially deprived conditions, elephants become dysfunctional, unhealthy, depressed, and aggressive.

**LD 396 will put an end to the use of elephants in travelling animal acts including in circuses and provides for reasonable penalties.**

Citing in part a shift in public opinion, Ringling Bros. and Barnum & Bailey Circus eliminated its elephant act in 2016.

### Stronger Laws Needed

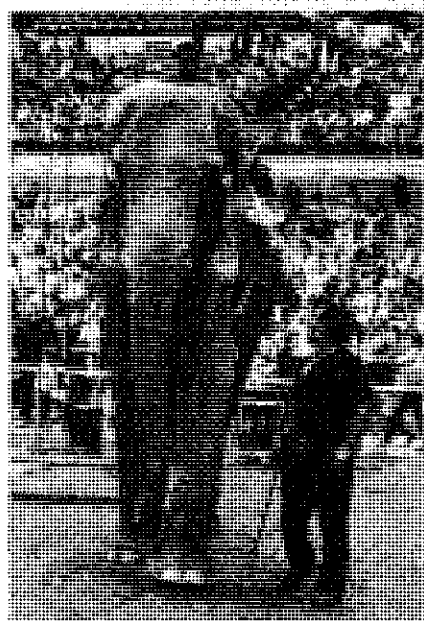
While circuses are regulated by the federal Animal Welfare Act (AWA), which is enforced by the USDA, no agency monitors training sessions where the most violent abuses occur. Further, because the AWA establishes only minimum guidelines and fails to incorporate modern husbandry practices, an exhibitor can be in compliance with the federal law, yet the animals can still be subjected to grossly inhumane

conditions. And due to inadequate resources, the weak standards of the AWA are poorly enforced.

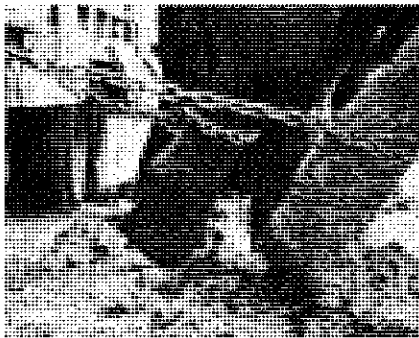
To address deficiencies in the AWA, four states and at least 125 other localities have passed legislation addressing the use of wild animals in circuses. For example, California, Rhode Island, and more than a dozen cities and counties have banned the use of bullhooks, an outdated elephant training tool. And dozens of cities, including San Francisco, Calif., Boulder, Colo.; Quincy, Mass.; Missoula, Mont., and Jersey City, N.J., have banned the use of wild and exotic animals in performances.

### Abusive Training

Circus tricks, such as headstands, hind-leg stands, and continuous lying down and sitting up, place a great deal of stress on an elephant's muscles and joints. No elephant would perform these grotesquely exaggerated maneuvers on command—over and over, hundreds of times a year—without the constant threat of punishment. Trainers use a purposely cruel and outdated tool called a bullhook to force elephants to perform. A bullhook resembles a fireplace poker and consists of a long rod with a sharp metal hook, and spiked tip at one end, and is used as a weapon to



This photo of an emaciated elephant named Ned was taken by photographer Jeff Kirlin at Bangor's Anah Shrine Circus in 2008. Ned was later confiscated by the U.S. Department of Agriculture and transferred to The Elephant Sanctuary in Tennessee. Despite months of intensive care by a team of elephant experts, Ned died in May 2009. The sanctuary reports that he suffered from "extensive, irreversible ulcers and scarring throughout his intestinal tract—believed to have been caused by years of stress."



Chaining causes deadly foot problems and arthritis.

"[Hugo Liebel] held Nosey outdoors tethered by chains around the elephant's left front and right rear ankles that were so taut that ... the elephant was unable to lie down on her side, or to make any forward or backward movement, and could only move a few feet from side to side."

USDA, Complaint, Hugo Tommy Liebel, AWA Docket No. 12-0103,

December 7, 2011

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**'Nosey's Law' Approved By Senate Committee**  
New Jersey state Senator Raymond Lesniak who sponsored a bill to ban the use of elephants in traveling animal acts

**"This elephant [Nosey] is forced to give rides to the public while exhibiting symptoms of arthritis and degenerative joint disease. The pain and suffering inflicted on this or any animal should be ended."**

**69%**

of Americans are very or somewhat concerned about the treatment of animals in circuses.

2015 Gallup poll

inflict pain and punishment on elephants.

Trainers use the hooked and pointed end to strike, jab, pull, prod, and hook sensitive spots on the elephant's body. The use of bullhooks results in trauma, suffering, lacerations, puncture wounds, and abscesses.

Elephants who fail to cooperate may be restrained and beaten into submission, often by several people. While the most abusive handling takes place behind the scenes, just the presence of a bullhook reminds elephants that they are never free from the threat of physical punishment.

### Unhealthy Confinement

Elephants are confined to trailers, sometimes for days at a time, during nearly year-round transport. At venues, elephants are confined to small pens or are chained by two legs much of the time, restricting movement to a step forward or backward. Prolonged immobilization and standing in their own excrement results in problems such as degenerative joint disease and foot disorders—which are the leading causes of euthanasia in captive elephants—as well as urine burns, rotting and cracked foot pads, and cracked and infected nails. In addition, chaining is associated with neurotic behaviors, such as head-bobbing, rocking, and swaying, indicators of poor welfare commonly seen in elephants used in traveling shows.

### Tuberculosis (TB)

While approximately 12.4 percent of captive elephants in the U.S. have tested positive for *Mycobacterium tuberculosis* (a human strain of TB), many more may actually be infected with this deadly bacterial lung disease since TB testing on elephants is unreliable. People have tested positive for exposure to TB after direct and indirect contact with infected elephants, suggesting that not only circus workers, but arena staff and circus goers could be at risk if a TB-positive elephant is on the road. In 2015, Dallas officials prohibited UniverSoul Circus from exhibiting two elephants during

their 2-week performance schedule after the county health department received information that the elephants had tested reactive for TB and warned city officials of potential transmission to members of the public.

### Public Safety Concerns

Countless elephant rampages and attacks demonstrate the dangers of putting a stressed, wild, 8,000-pound animal in a traveling show. Elephants have trampled trainers before horrified spectators, bolted out of circus tents with frightened children clinging to their back, and run amok in city streets causing significant property damage.

### About Shrine Circus Fundraisers

Consistent with growing trends, a number of Shrine chapters are experiencing declining interest in the annual circus and moving away from using wild animals in its circuses. According to forms filed with the IRS, more than three dozen chapters showed a decrease in net circus income for 2014 from the previous year.

The Shriners Hospitals for Children is a separate entity from the Shrine. Revenue from a \$9 billion endowment covers more than 90 percent of the hospitals' budgets. The *New York Times* reports that only 2 percent of the hospitals' operating expenses comes from money raised by Shrine temples and dues paid by members.

According to the Director of Temple Accounting at Shriners International, "It is natural to associate the fez with Shriners Hospitals for Children. Because of this, meticulous attention must be given to all fundraising activities, including circuses, to make certain [...] that a contributor is not led to believe that his money will be used for the Hospitals when all or a portion thereof will be used otherwise."

In other words, Shrine circuses are used as fundraisers to primarily benefit the local fraternal organizations where proceeds may be spent on liquor, parties, members' travel to Shrine events, and other activities.





## Maine should ban cruel elephant acts

By Delcianna Winders

Published on Thursday, May 4, 2017 at 12:12 am | Last updated on Thursday, May 4, 2017 at 12:12 am

The Kora Shrine Circus' recent stint at Androscoggin Bank Coliseum serves as a stark reminder of the importance of LD 396 — a bill being considered by the Maine Legislature that would ban the use of elephants in traveling acts. The Hamid Circus — the notorious company that puts on the Kora Shrine Circus — exemplifies the need for this kind of legislation.

Hamid has partnered with an elephant exhibitor who racked up hundreds of animal welfare violations, including repeatedly chaining an elephant so tightly she could barely move. According to a whistleblower's report to the federal government, this trainer also "turned off the lights and beat" his elephant while she "was staked down by all four legs" and "directed others to take part in that by using other objects such as [a] sledge hammer and shovel handles." In another incident, a handler testified that this elephant struck him and threw him down a hill, sending him to the hospital with a head injury. Another elephant with Hamid Circus killed a handler between circus performances.

Other traveling elephant exhibitors that frequent Maine have similarly damning records. Royal Hanneford, which has performed in Bangor and Presque Isle, recently paid thousands of dollars to settle alleged Animal Welfare Act violations after three elephants escaped from a circus where they were being used to give children rides. They ran amok for nearly an hour.

The Garden Bros. Circus, also known as Piccadilly Circus, which has repeatedly hauled elephants into the state through the years, has a long, well-documented record of featuring elephant abusers. According to government records, a handler with Garden Bros./Piccadilly admitted to forcefully striking an elephant in the face with a bullhook — a weapon resembling a fireplace poker that is designed to inflict pain. And the head trainer for the outfit currently supplying Garden Bros.' elephant act was caught on video screaming at elephants while violently attacking them with electric prods and bullhooks and encouraging others to do the same.

The elephant handler now on the road with Garden Bros. was also caught on video using the sharp, pointed tip of a bullhook to force an elephant's head down while swearing at her. In another incident, the same handler was caught hooking an elephant when she attacked another elephant in a circus ring after he completely lost control of the animals. This was only one of many such perilous incidents. At least three elephants have escaped from Garden Bros., and the company supplying elephants for the circus has a long history of elephant escapes and recently paid a penalty for its chronic unsafe handling of these unpredictable animals.

Mounting evidence — including video footage, sworn eyewitness testimony, and government inspection reports — makes clear that the only way to force the Earth's largest land animals to perform is through the constant threat of physical punishment. Abuse is the rule, not the exception. What's more, elephants are dangerous animals and the suffering abuse they endure in circuses only make it more likely that they will lash out. An elephant can easily kill a human with a single trunk swipe or foot stomp, and captive elephants kill about one person per year on average in America, while injuring many more.

Given the cruelty and serious safety risks inherent in elephant acts, the public is increasingly turning away from them.

Ringling Bros. will shutter next month after a decade of falling ticket sales, while animal-free circuses — such as Circus Vargas, which ended animal acts around the same time Ringling's ticket sales began to plummet — are thriving. Shrines across the continent have begun to move toward animal-free circuses and other humane fundraisers. As Shiner and Hamid Circus owner and producer James M. Hamid Jr., has himself recognized, "As we look into the future, we see all circuses moving to non-animal productions."

I urge Maine's legislators to do their part to ensure that this transition happens without further delay so that elephants are no longer harmed on their watch and their constituents are no longer put at risk.

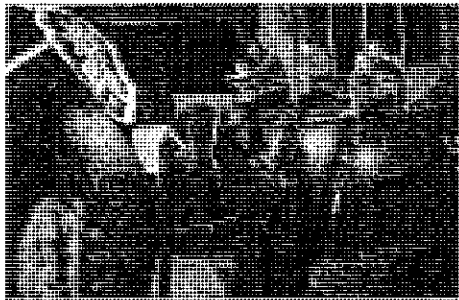
Delcianna Winders is Academic Animal and Law Policy Fellow at Harvard in Cambridge, Massachusetts. For five years, she was head of the PETA Foundation's Captive Animal Law Enforcement division. She has taught animal law at Tulane University Law School and Loyola University New Orleans College of Law and presented on animal law at law schools across the country.



# Return of circuses to Maine revives controversy over treatment of elephants

The Kora Shriners, Maine legislators, protesters and families join the debate over using elephants and other wild animals for entertainment.

BY DENNIS HOEY STAFF WRITER AND KELLEY BOUCHARD STAFF WRITER



Amara's Legel, the elephant trainer, uses voice command to guide Lisa and a group of riders before the show. Staff photo by Derek Davis  
DavisStaff photo by Derek Davis

The Kora Shrine Circus is back in town, bringing with it the national controversy over the treatment of elephants and other performance animals that led to the demise of Ringling Bros. and Barnum & Bailey Circus.

The 64th annual Kora Shrine Circus, which raises money for the Lewiston-based fraternal organization, wrapped up three days at the Cross Insurance Arena in Portland on Wednesday before heading to the Augusta Civic Center for several shows Friday and Saturday.

Animal rights protesters have been present at this year's shows, which fall amid the final days of the famed Ringling Bros. circus. The 146-year-old touring company, which will hold its last show May 21 in Uniondale, New York, blamed its closure on rising operating costs and declining attendance, especially after public pressure forced it to eliminate elephant acts last year.

Dan Gove, chairman of the Kora Shrine Circus, said he sees no end in sight for the springtime tradition in Maine, even as the Legislature debates a bill that would prohibit the use of elephants as entertainment in Maine.

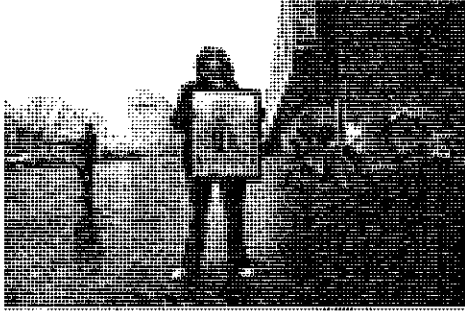
"Because our animals aren't mistreated," Gove said. "It's unfortunate that that's the angle that gets sensationalized each year. We're glad we're still able to put on fine family entertainment."

Gove, a Kora Shrine member who has worked on the circus for 30 years, described the show as a "first-class act" that has been produced by Hamid Circus Inc. of Egg Harbor Township, New Jersey, for the past 10 years.

Gove said the company emphasizes the safety of performers and animals, including elephants, lions and tigers. He has witnessed a "natural affection" between animals and handlers, he said, and he noticed that the animals are trained to respond to voice commands rather than whips or other training tools.

"I pay attention to the animal care because I've done this for so many years," Gove said. "The animals are very well cared for. If I observed anything inappropriate, I'd go right to the trainers. They are sometimes better taken care of than children."

Not everyone would agree with Gove's assessment of how the elephants are treated.



Jessica Yandell of South Portland was one of about 10 people who protested using animals for entertainment. *Staff photo by Shawn Patrick Ouellette*

About 10 protesters stood Wednesday evening outside the Cross Insurance Arena. They held signs with pictures of tigers and elephants on them and handed out fliers that said "Circuses are mean to animals, wild animals belong in the wild not in tiny cages or in performance rings in front of screaming crowds."

### **PROTESTERS: CIRCUSES ABUSE ANIMALS**

Melissa Gates, founding director of Animal Rights Maine, organized the protest. She held a sign with the message "Elephants have families too" – a reference to the fact that elephants in the wild are herd animals that live in groups.

Gates said the crowd's reaction to protesters was mixed. Many parents shunned the protesters, but children seemed interested in reading the flier, she said.

A 2015 Gallup poll found that 69 percent of Americans were either very or somewhat concerned about the treatment of circus animals.

Gates said her organization urges the public not to buy tickets to a circus performance that uses animals in its acts.

Gates accused the Kora Shrine Circus of abusing elephants by forcing them to perform tricks that are potentially painful, such as standing on their hind legs. This year's show features Asian elephants Lisa, 33, and Traci, 37, said trainer Armando Loyal. While Asian elephants can live to be 60 years old in the wild, those in captivity have shorter lifespans, according to the National Geographic website.

"There's no question that circuses constitute animal abuse, and there is no place for animal abuse in Maine," Gates said in a message posted on her organization's Facebook page.

"All we are trying to do is convince the Kora Shrine Circus to discontinue its animal acts," Gates said Wednesday.

Supporters of L.D. 396, an Act to Prohibit the Importation of Elephants to Maine, also disagree with Gove's characterization of how the elephants are treated.

"It's just not natural," said Rep. Kim Monaghan, D-Cape Elizabeth, the bill's sponsor. "I think we live in a somewhat different world today, where forcing wild, exotic animals to do tricks is no longer considered good old-fashioned entertainment, even by children."

Monaghan said that even when circus elephants are treated relatively well, they are often chained, kept in cages, transported in box cars and not allowed to roam free in their natural habitat. And while some circus animals may eventually respond to voice commands, trainers initially must use techniques that promote fear so elephants will stand on their hind legs and do other tricks, she said.

Monaghan sponsored the bill on behalf of the The Humane Society of the United States – Maine. The amended bill would restrict people from importing or possessing an elephant in Maine unless it would be kept in a protective environment where it could behave as naturally as possible. Elephants would be banned from any public show, ride, parade, race or other event intended for the entertainment or benefit of an audience.

The amended bill would delay the impact of the ban on groups such as the Kora Shrine for more than two years. A traveling circus with elephants could operate legally in Maine through Jan. 1, 2020, if it's raising money for a charity.

## FAMILY FEELS SORRY FOR ELEPHANTS

Kristen Cobb and Joshua Stone of Westbrook brought their three children, ages 10, 3 and 1, to see the circus Wednesday afternoon, a tradition that Cobb says her family has had for years.



Kristen Cobb of Westbrook talks about the elephants. *Staff photo by Shawn Patrick Ouellette*

Although Cobb said she would still bring her family to the circus even if it decided to no longer feature elephants, she said this year's performance was different and it touched her in a way that it never had before.

"The elephants looked miserable," Cobb said. "I think they looked very sad. They'd probably be a lot happier if they were in the wild."

She said the elephants' handler gave rides to circus-goers -- a new feature of this year's circus -- before the show and during intermission. The elephants seemed uncomfortable, carrying five or six children as well as one or two adults at a time, she said.

Cobb said she would support a ban on animal acts "for the sake of the elephants."

"I never really thought about it until I saw them giving rides to people," she said.

"They looked wicked sad," said Lily Stone, Cobb's 10-year-old stepdaughter. "I think the elephants are cool, but they looked really sad."

"They had sad eyes," Joshua Stone said. "It's a sad thing, but at the end of the day, when you think about it, the elephants aren't necessary. You could put on a great show without them."

Bruce Arseneault of Yarmouth brought his two grandsons to the circus Wednesday. His oldest grandson, who is 8 years old, paid \$10 to ride the elephant. "He told me it was his favorite part of the show," Arseneault said.

He said he doesn't see anything wrong with having animal acts in the circus -- Wednesday's show featured elephants, lions, tigers and dogs -- provided the animals are well cared for, and he saw no evidence that the animals in the Kora Shrine Circus were being abused.

Arseneault said it's important for the younger generation to see these great creatures of the wild, especially if they are to be protected from poachers. "It could become a detriment to these animals if they are kept out of sight and out of mind," he said.

The Kora Shrine Circus is held each April to coincide with school vacation week. Volunteers present 17 shows in seven days, including five shows last Friday and Saturday at the Androscoggin Bank Coliseum in Lewiston. The Anah Shriners will present their circus Friday, Saturday and Sunday at the Cross Insurance Center in Bangor.

The circus is a major fundraiser for the Kora Shriners, who use the money to maintain the Kora Shrine Center, a historic, Moorish-style building on Sabattus Street in Lewiston. Kora members also hold fundraisers to support 22 Shriners children's hospitals for burn victims and orthopedic care.

Gove wouldn't say how much the circus raises. It varies from show to show and year to year, depending on the weather, he said.

The Anah Shrine tried to generate opposition to the bill in the Legislature and support for its circus with a Facebook post Feb. 23.

"Shrine Circus supporters, we need your help," the post stated. "This bill, if passed, will stop all elephant acts (from) coming to Maine for the circus. It is a fact that the audience is substantially larger at our circus when the elephants come to perform. It is also our experience that circus-goers enjoy seeing the large animal acts. Stopping the elephants from coming to Maine will only harm the Shriners in Maine that depend on the circus to raise money to operate their philanthropy. As this loss trickles down, it could affect funding for the Shriners hospitals that treat children for FREE."

#### ON FACEBOOK, SOME OPPOSING VIEWS

On the Kora Shrine Circus Facebook page, animal rights activists from around the country have posted pleas to exclude animals from the shows, calling circuses "a dying breed."

"Love the cause (of) the Shriners and their purpose, but it's time for (a) change on using animals in this world," wrote Cathy Tardiff Stairs, who works in western Maine. "There could be other things added to the show."

"I urge you to please exclude animals from your shows." Briana Terwilliger wrote. "Circuses with animals are a dying breed. Circuses across the country are retiring or phasing out their animal acts. Entire countries are even banning this. People are waking up and realizing how cruel this is. Animals are not entertainment. These are wild animals who belong in their natural habitat."

Meanwhile, Trish Allen of Buxton defended the use of animals in the circus and praised the Kora Shriners for raising money for children's hospitals.

"Thank you for what you do!" she wrote.

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**CORRECTION:** This story was updated at 2:10 p.m. on April 20, 2017, to correct the reference to the group backing a bill to ban elephants from use as entertainment. The group is The Humane Society of the United States — Maine.

# In uncertain times for circuses, Smirkus thrives

*Rutland Herald | July 01, 2017*

By **STEPHEN MILLS**

**STAFF WRITER**



Patrick Chikoloma, 18, of Zambia, who is a member of Circus Smirkus' current traveling troupe of performers, demonstrates his juggling on the Greensboro campus of the 30-year-old Vermont youth circus. **DAVID W. SMITH / STAFF PHOTO**

**GREENSBORO** — Ringling Bros. Circus may be gone, but for many in Vermont's homegrown Circus Smirkus, the circus is still the greatest show on earth.

The year 2017 marks some important milestones in circus history, both nationally and locally. This year marks Smirkus' 30th anniversary, and also when its longtime executive director, Ed LeClair, will step down.

"It's very much like the politicians say, 'I'm going to spend more time with my family,'" said LeClair, who has overseen 15 annual seasons of the Greensboro traveling troupe. "I've spent my career making stars and now I get to sit back and watch the stars."

Not quite, it seems. LeClair revealed that there will be a second act in the circus world for him.

LeClair said he would be part of a new organization that will try to "unify the circus" in an attempt to spur a comeback for the industry nationally. "Right now, it's referring to itself as 'Circus Umbrella,'" LeClair said. "With the demise of Ringling Bros., and Big Apple Circus, the whole youth circus movement is really growing, yet the professional area is really diffused."

A number of circus industry leaders are getting together to help find common ground, LeClair said.

LeClair was also sanguine about his time with Smirkus and his departure.

"I'm really filled with pride because this year we have three alumni come back to coach, and I get to see the love that they have for this place and the excitement they feel to be able to give back to the kids now," said LeClair.

Speaking on Tuesday while travelling to the Smithsonian Institute Folk Festival in Washington, D.C., with a Smirkus troupe he selected to perform, company founder Robert Mermin echoed LeClair's optimism. "I never expected to reach this landmark. It's extremely gratifying to watch the older Smirkus generation, now experienced professionals, return as top-notch coaches. What a joy."

That boomerang effect that is not uncommon for Smirkus. Many former students return year after year to join the staff or work during summer camps with circus students. There are camps for children and adults, and school residencies are also offered.

Abby Suskin, of East Montpelier, was still a student at U-32 in East Montpelier when she started at circus camp in 2000 and was a trouper each summer until 2006, when she graduated from high school and joined Smirkus as part of its full-time summer staff.

"My mom let me 'run away' and join the circus when I was 12 years old," she said. "I fell in love with performing, that feeling that circus is a special art form when you're within inches of your audience. You can see the live impact you're having on kids and their parents and everyone who's there to see the show, and that energy is infectious."

As a coach, Abbey Jermyn said she sees the same drive and ambition in other young hopefuls just joining as campers or graduating to troupe potential.

"They love the challenge, they rise to it and they like to be pushed," she said.

Also returning to the student camp this year are Abbey's twin sister, Lucy Jermyn, of Montpelier, and their brother, Ivan, who has been on the circus circuit as an acrobat and clown while studying physical theater in college.

Smirkus is also known to be something of a family affair, both literally and figuratively. Members of the cast and crew include relatives as well as seasoned professionals and performers from other circuses like Ringling Bros. They include Troy Wunderle, artistic director for 20 years, his wife, Sara, the assistant director, and their 13-year-old daughter,



Twin sisters Lucy and Abbey Jermyn, of East Montpelier, have progressed from campers to staff at Circus Smirkus, along with other members of their family. PHOTO BY MICHAEL JERMYN  
Ariana, who is in the traveling troupe this year.

When Abbey Jermyn's mother, Alice Day, the school nurse at Twinfield Union School in Plainfield, first signed her kids up online for the Smirkus camp, she answered a circus ad for a nurse and was accepted. She's still there 11 years later.

"It's a joy to be here, just knowing that we're making a huge difference in the lives of these kids, doing a good thing," she said. "For a lot of the kids, this is their favorite place to be all year. There's always magic here."

Many students return each year to compete for one of just 30 coveted spots in the traveling troupe that will tour the region for what has become a calendar highlight for many communities.

The theme of this year's show is "Midnight at the Museum." Without giving too much away, Creative Director Mark Lonergan said he got the idea for this season's show from visits with his 3-year-old son to the American Museum of Natural History, with numerous exhibits that inspired the characters, costumes and capers of this year's cast.

"What's really striking is how museums — created centuries ago as displays of exotic items from private collections — can be a source of wonder and magic in 2017," Lonergan writes in the circus playbill. "With all our high-tech distractions, a place of real objects, some hundreds of years old, can still capture our imaginations in a profound way. What better way to celebrate 30 years of Smirkus than with a show that looks backwards and forwards simultaneously."

It was business as usual this week in Greensboro, with dozens of students buzzing around Smirkus's two campuses.

The Circus Barn, Inc., about three miles from the center of Greensboro, is where the nonprofit was founded by Mermin in 1987. It is also where the annual Smirkus season premieres its show on Sunday before the road tour that will make 17 stops, with 69 shows in five states: Vermont, New Hampshire, New York, Massachusetts and Maine.

The current student camp, a short drive out of the center of Greensboro, is a site purchased and opened in 2015, and includes comfortable camp-style dormitories and shared living spaces. The camp serves 84 campers every session — and a total of 600 young and adult students each season — with 39 staff. The high student/staff ratio includes both circus coaches and camp counselors who attend to students' social and emotional needs.

There are onsite training tents for aerials, acrobatics, juggling, clowning, balance and other skills.

Joining the camp again this year are the Carlson sisters — Estherline, 11; and Anya, 10, of Montpelier, who said they are excited to be at the camp and learning new skills every day.

"The tightrope walking looks easy — we have a slack line (to practice) at home — but it's really hard," Anya said.

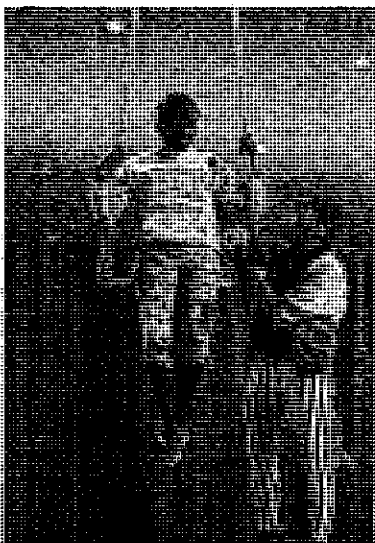
"You think you can't do it, but when you keep doing it, it becomes easier," Estherline said.

Asked what makes a good circus experience, Anya replied: "Teamwork."

"Doing fun activities," Estherline added: "At other camps, they want to talk too much but here they want to get to the fun part."

Asked if they missed their parents, Estherline said: "No, not really. We have so much to do that you don't really have much time to think about them, which is good."

Lending credence to Smirkus' claim to be an "international" troupe is Patrick Chikoloma, 18, of the African nation of Zambia, where he performs for residents of a poor neighborhood in the country's capital, Lusaka. A founding member of Circus Zambia, he visited



Estherline Carlson, 11, of Montpelier, gets instruction from Trapeze Coach Alyssa Luna at Circus Smirkus Camp. PHOTO BY AMIRA SILVERMAN  
the U.S. on a circus theater cultural exchange last year. After seeing Circus Smirkus in Vermont, he applied to join the troupe for a season, auditioned and was accepted. A princess of the Council of Chiefs in Zambia will travel to Vermont to see Chikoloma perform this year.

"I found my happiness in circus and being on stage, and back home, I use circus as a way to help people in Chibolya (a district of Lusaka) because everything about it is bad," Chikoloma said. "It was good news that I made it to Smirkus."

For all the razzle and dazzle that audiences have come to expect from classic circus capers, there is a backdrop of sometimes backbreaking work and big business operations to make the show seamless and successful.

Tent Boss Nat Brown has the responsibility for coordinating the transportation and safe erection of a variety of tents used at the camp and barn practice and rehearsal spaces, and when the troupe is on tour. The tour includes 80 people — crew, musicians, performers and coaches. It takes eight hours to set up the big top and backstage and concession tents, and to prep 200 costume pieces, 100 props, 70 spotlights and a mile of electrical cable.

Brown said tent technology has come a long way from older designs that required multiple bosses and crews for a variety of steps involved in circus operations.

"My job kind of falls under the category of catch-all, responsible for everything that's on the lot," Brown said. "When I put up the lot, I have to consider the grade of the lot, how the ground is going to hold, what happens if it rains."

Brown said he became involved 15 years ago after his brother attended the camp.

"I kind of stepped into it because they were shorthanded one year and I helped out. I was doing construction before, and there's an immediate satisfaction coming into an empty lot and within a few hours you have this," Brown said, waving at several nearby tents.

On the business front, Judy Gaeth, the director of circus operations for the past 15 years, has had to manage tough times, and more than once referred to "putting out fires" when it came to managing the nonprofit's \$2.4 million budget.

"I don't call it a fire unless it's really a fire," she remarked. "We have a lot of assets and we're at the mercy of hitting every facet of the budget."

At the end of the day, she said, it was still about the company's bottom line.

"Butts in seats is incredibly important," she said with a laugh. "If we can grab sponsors, that's great, but filling the tent is very important."

While there are many pieces to the puzzle when it comes to running the company, Ed LeClair summed up the company's prime objective and the key to its success: "The function of Smirkus is to astound and amaze."

For more information, call 533-7443, email [info@smirkus.org](mailto:info@smirkus.org) or visit [www.smirkus.org](http://www.smirkus.org).

[stephen.mills@timesargus.com](mailto:stephen.mills@timesargus.com)

## **CIRCUS SMIRKUS IN VERMONT**

— The Circus Barn, Circus Road, Greensboro, Sunday, July 2, 1 p.m. and 6 p.m. — Kenyon's Field, Waitsfield, July 5 and 6, 1 p.m. and 6 p.m. — Champlain Valley Expo, Essex Junction, July 8 and 9, noon and 5 p.m. — Green Mountain Mall, St. Johnsbury, July 14 and 15, 1 p.m. and 6 p.m. — Montpelier High School, Montpelier, Aug. 16, 17 and 18, 1 p.m. and 6 p.m. — The Circus Barn, Circus Road, Greensboro, Aug. 20, 1 and 6 p.m. For more information, call 533-7443, email [info@smirkus.org](mailto:info@smirkus.org) or visit [visitsmirkus.org](http://visitsmirkus.org).



Tab 15

Order 32-17/18

Motion to postpone to September 18, 2017: 9-0 on 9/6/2017

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)

**AMENDMENT TO CHAPTER 12 OF THE PORTLAND CITY CODE  
RE: RECYCLING CARTS**

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

*That Chapter 12, Section 12-16 is hereby amended to  
read as follows:*

**Sec. 1216. Definitions.**

The following words and terms as used in this article shall have the meanings ascribed thereto, unless the context otherwise indicates:

...

*Suitable recycling containers for recyclable material shall mean the lidded, rolling plastic carts ~~rectangular plastic bins~~ distributed by the public works authority or containers designated by the city for receipt of recyclable material at designated recycling drop off locations.*

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Troy Moon, Sustainability Coordinator

**DATE:** 8/16/2017

**SUBJECT:** Minor Code Amendment – Chapter 12 – Definition of Acceptable Recycling Container

**SPONSOR:** Jon Jennings, City Manager

**COUNCIL MEETING DATE ACTION IS REQUESTED:** August 21, 2017

1<sup>st</sup> reading       x       Final Action       

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

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

**I. ONE SENTENCE SUMMARY:** The request seeks a minor code amendment in order to update the definition of acceptable container for recyclables in accordance with the guidance of the City Council.

**II. AGENDA DESCRIPTION:** In order fully implement the City's goal of adopting a cart based recycling program so that litter is reduced and recycling is increased throughout the City it is necessary to make a minor revision to the Chapter 12 of the Portland City Code. This order accomplishes this revision by updating the definition of suitable recycling container. It is the last step in the process of ensuring that the City's recycling program goal is met.

**III. BACKGROUND:** Chapter 12 of the Portland City Code currently defines a suitable recycling container to include the recycling bins. These bins are being replaced by recycling carts. Consequently, the revised Code language now specifies that a suitable recycling container is a lidded, rolling plastic cart distributed by Public Works.

**IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED:** The City established a goal of implementing a cart based recycling program in order to reduce litter and increase recycling in the City. The intended result of this request is that the City Council pass this amendment.

**V. FINANCIAL IMPACT:** None.

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

**VII. RECOMMENDATION:** Staff recommends that the City Council pass this Order as it is the last step in the process of implementing the City's goal of implementing a cart based recycling program.

**VIII. LIST ATTACHMENTS**

Prepared by: Troy Moon, Sustainability Coordinator  
Date: 8/14/2017

Bean/agendarequestmemo/rev 1/23/2017

Order 48-17/18  
~~Feb 21-96-17~~  
Feb 16 9-18-17

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 MUNICIPAL PARTNERSHIP INITIATIVE AGREEMENT  
BETWEEN PORTLAND AND MAINE DEPARTMENT OF TRANSPORTATION  
RE: WASHINGTON AVENUE PAVING BETWEEN ALLEN AND OCEAN AVENUES**

**ORDERED**, that the two-party agreement between the Maine Department of Transportation (MDOT) and the City of Portland, for paving on Washington Avenue between Allen Avenue and Ocean Avenue, with the MDOT identification number of 21928.12, is hereby approved in substantially the form attached hereto; and

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

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Michael Farmer, Senior Engineer, Department of Public Works

**DATE:** August 17, 2017

**SUBJECT:** MaineDOT Municipal Partnership Initiative Agreement  
Washington Avenue MPI Phase 2 Paving Project

**SPONSOR:** Jon P. Jennings, City Manager

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading:** 9/6/2017

**Final Action:** 9/18//2017

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

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

*Not Applicable*

**I. ONE SENTENCE SUMMARY**

The City Council is being asked to authorize the City Manager to sign the attached MaineDOT Municipal Partnership Initiative (MPI) Agreement, which would allow City staff to move ahead with plans to pave Washington Avenue between Allen Avenue and Ocean Avenue.

**II. AGENDA DESCRIPTION**

Approving and signing this agreement between MaineDOT and the City of Portland would confirm the City's intent to undertake this project and pay 50% of the total project cost. The estimated total project cost is \$1,000,000. The City's 50% share would be \$500,000.

**III. BACKGROUND**

The main objective of the project is to mill and pave Washington Avenue, within the project limits, with a 2-inch hot mix asphalt pavement overlay. New pavement markings and sidewalk ramp improvements are also included in the scope of work.

**IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

This project will improve the pavement surface and ride quality in the project area. New pavement markings will delineate on-street bike lanes. Sidewalk ramp improvements are intended to bring the ramps in the project area into compliance with ADA standards.

## **V. FINANCIAL IMPACT**

The total estimated project cost is \$1,000,000. The City's 50% share of the total estimated project cost would be \$500,000. The City share of the project cost would (typically) come from the annual CIP.

If the total project costs were to exceed \$1,000,000, the City would be obligated to pay for 100% of the total project costs in excess of \$1,000,000, in addition to the 50% local share.

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

The fully executed MaineDOT MPI project agreement would be the City's notice to proceed toward construction of the project.

MaineDOT has two separate Municipal Partnership Initiative (MPI) programs that are available to Portland. One MPI program is administered at the local level by MaineDOT's regional office in Scarborough. The other MPI program is administered at the local level by PACTS. Both MPI programs provide grants of up to 50% of the cost for paving projects on arterial and collector streets.

City staff has submitted two separate PACTS MPI applications for paving work on Allen Avenue. The Washington Avenue MPI Phase 1 paving project, which was funded through the MaineDOT MPI program, was recently completed.

## **VII. RECOMMENDATION**

The Department of Public Works recommends approving and signing the subject MaineDOT MPI Agreement to allow City staff to proceed with design and construction of the Washington Avenue MPI Phase 2 paving project.

## **VIII. LIST ATTACHMENTS**

MaineDOT MPI Agreement for WIN # 21928.12  
Project location map

Prepared by: Michael Farmer  
Date: August 17, 2017

|                   |       |
|-------------------|-------|
| Internal Use Only |       |
| TEDOCS #:         |       |
| CT#:              | CSN#: |

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

**WIN 21928.12**

**REGARDING WASHINGTON AVE.**

**PORTLAND**

This Cooperative Agreement (AGREEMENT) is entered into by and between the MAINE DEPARTMENT OF TRANSPORTATION ("MaineDOT"), an agency of state government with its principal administrative offices located on Child Street, Augusta, Maine, and the **CITY OF PORTLAND** ("MUNICIPALITY"), a municipality in the State of Maine with offices located at **389 Congress St., Portland, ME.**

**WHEREAS,**

**Portland** shall perform 1.42 miles of Highway Mill and Fill improvements on Washington Ave, between Allen Avenue and Ocean Avenue.

**Portland** estimates this project at **\$1,000,000.00**

**PORTLAND SHALL:**

- A. Procure all contracts for and oversee the Project on **Washington Avenue** for the Work outlined above.
- B. Cause such Work to be performed in accordance with a design by an engineer licensed in the State of Maine. The Licensed Engineer shall provide a certification to the Municipality and to MaineDOT that, in his/her professional opinion, the Project as designed will provide a smooth ride, not reduce the safety, mobility or structural quality of the state [state aid] road. All design documents must be stamped and signed in accordance with this provision by the Professional Engineer.
- C. Agree to secure all necessary Federal, State and Local permits necessary to complete the work. Portland also agrees to secure any needed property rights in accordance with all applicable State and Federal Law.
- D. Agrees that any exceptions to State Design Standards shall be documented as part of this process. This documentation shall compare the new design to the existing conditions for each of the exceptions to current design standards. Any such exceptions shall be displayed on the cover sheet for the Project plans with the signature and PE stamp of the engineer responsible for the design of the Project.
- E. Be responsible, within the Project limits, for the following:

a. Ensuring that the safety of the corridor and the life of the resulting structural and design elements are equal to or better than existing conditions and design;

b. Ensuring that the structures, roadways and/or design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;

c. Ensuring that the Project does not introduce any unanticipated safety hazards to the traveling public;

d. Ensuring that the Project retains the same level of mobility or improves mobility of travel within the corridor;

e. Ensuring that the Project does not in any manner decrease the life expectancy of this component of Maine's transportation system; and,

f. Ensuring that the Project meets the most recent standards of Americans with Disabilities Act of 1990 (ADA) design requirements.

F. Provide certification through their Engineer to MaineDOT that the Project is complete and was constructed as designed.

G. Ensure that construction shall commence within EIGHTEEN (18) months and shall be certified complete within THIRTY SIX (36) months of execution of this agreement. **PORTLAND** may forfeit the unpaid balance of this grant if these deadlines are not met or they cannot demonstrate earnest and good faith efforts to meet them.

H. Be responsible for or cause its contractors to be responsible for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of **PORTLAND** or its contractors, including damage to vehicles passing through the Project limits.

I. Bear all risk of loss relating to the Project and the Work regardless of cause.

#### **MAINEDOT SHALL:**

A. **Provide a maximum \$500,000.00 in State funds supporting the Work stated above.** Reimbursement will be made by the Department at a minimum of 1/3 project completion upon receipt of supporting cost documentation from the Municipality. Payments will be made per Appendix A attached. The Department's Region Engineer shall review the costs and certify their eligibility prior to reimbursement of Municipal Partnership Initiative Funds. Payment by MaineDOT Municipal Partnership Initiative funds shall not exceed **\$500,000.00** or 50% of the actual costs incurred and paid by the Municipality.

B. **This project has been approved for Calendar Year 2018.** If the **Municipality** commences construction of the project as outlined above prior to January 1, 2018, the Municipality assumes the risk and responsibility for costs incurred, in the event that funding levels fall below MaineDOT projections. If this occurs, the Municipality will not receive reimbursement from MaineDOT.



**PORTLAND** and MaineDOT agree to function within all applicable laws, statutes, regulations, and AGREEMENT provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this AGREEMENT.

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

**CITY OF PORTLAND**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
**Jon Jennings**  
**City Manager**

**STATE OF MAINE**  
**DEPARTMENT OF TRANSPORTATION**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
**David Bernhardt, PE**  
**Commissioner**  
**MaineDOT**

**APPENDIX A**  
**PROJECT SCOPE AND COST SHARING MAINE**  
**DEPARTMENT OF TRANSPORTATION**

Municipal Partnership Initiative Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO: Washington Avenue

STATE PROJECT IDENTIFICATION NUMBER (WIN) 21928.12

FUNDED CONSTRUCTION YEAR 2018

**Project Scope:** HIGHWAY MILL AND FILL

**Funding Outline:** The Total Project Estimated Cost is \$ 1,000,000 and the Parties agree to share costs through all stages of the Project under the terms outlined below.

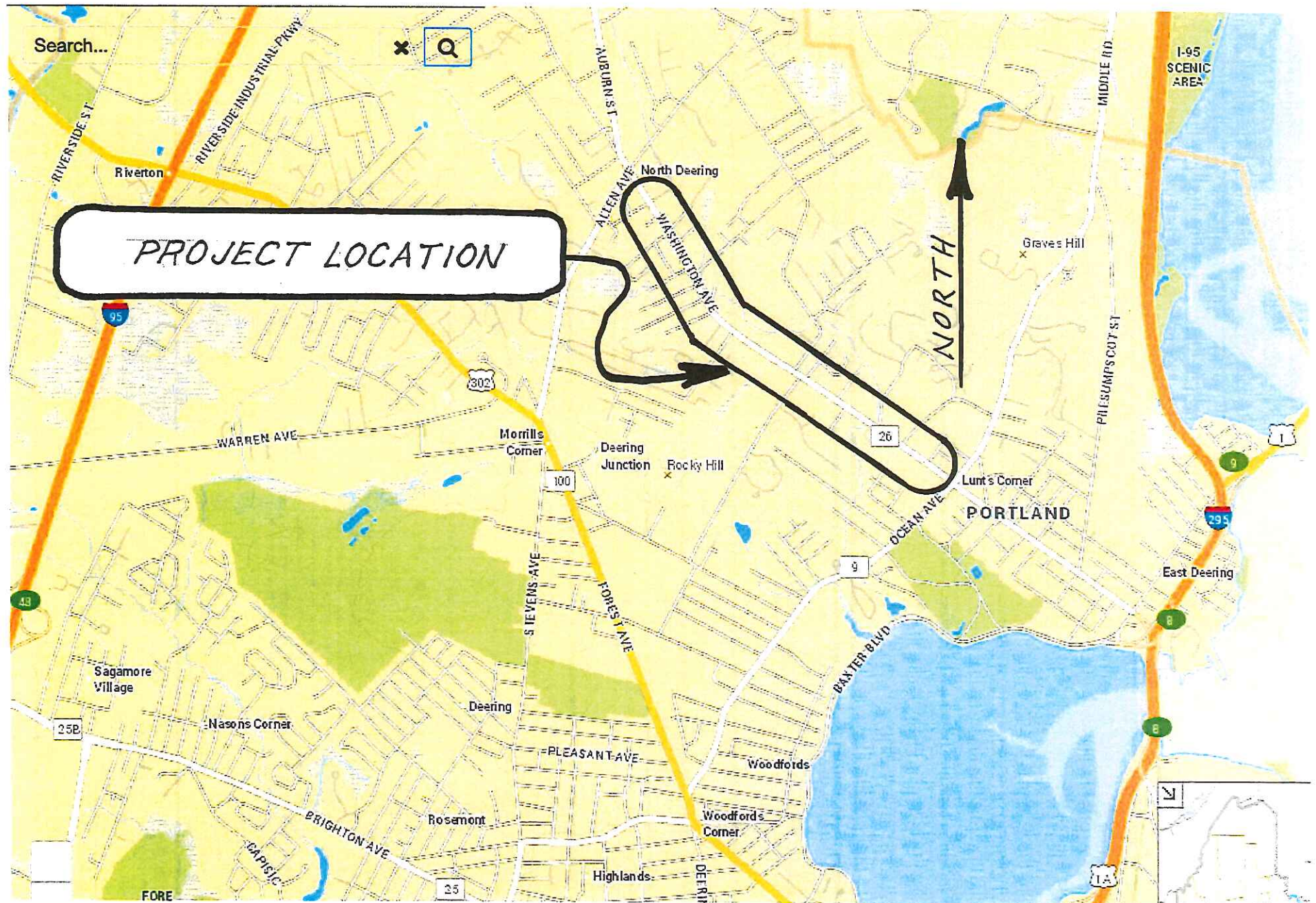
| Work Element                                           | Municipal Share |         | State Share |         | Total Cost |
|--------------------------------------------------------|-----------------|---------|-------------|---------|------------|
|                                                        | %               | \$      | %           | \$      | \$         |
| Project Costs                                          | 50              | 500,000 | 50          | 500,000 | 1,000,000  |
| <b>PROJECT SHARES</b>                                  |                 | 500,000 |             | 500,000 | 1,000,000  |
| Total Cost of Additional Work above agreement estimate | 100%            |         |             |         |            |
| <b>TOTAL ESTIMATED MUNICIPAL REIMBURSEMENT</b>         |                 | 500,000 |             |         |            |

**REIMBURSEMENT SCHEDULE:**

Upon 1/3 project completion the municipality may begin invoicing the Department. Preferred invoicing interval is 1/3, 2/3, final, the Department will accept monthly invoices after 1/3 project completion with a maximum invoice submittal not to exceed 5 invoices.

**DESIGN EXCEPTIONS REQUIRED:** ☐ YES ☒ NO

Design exceptions where required for this project. Please see attached approval from MaineDOT Chief Engineer outlining design exceptions.



Order 49-17/18  
~~Tab 22 9-6-17~~  
Tab 17 9-18-17

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
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JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 14  
Re: INDIA STREET FORM-BASED CODE**

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

*That Chapter 14, Article III, Division 15.2 is hereby  
amended as follows:*

**DIVISION 15.2. INDIA STREET FORM-BASED CODE ZONE (IS-FBC)**

**Sec. 14-275.1 Purpose.**

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code Zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

(a) **GENERAL GUIDING PRINCIPLES:** The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.

1. The street is a coherent space, with consistent building and streetscape character on both sides



of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.

...

2. Respect historic character. If a property is within the India Street Historic District, Article IX Historic Preservation is applicable. New construction, BUILDING ADDITIONS, or ~~ALTERATIONS~~ alterations in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

**Sec. 14-275.2. Applicability and Partial Waivers.**

(a) The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN.

(b) A partial waiver of the requirements of this Division listed below may be granted if it can be demonstrated to the satisfaction of the Planning Authority that the requirements in subsection (c) below have been met:

1. Building orientation;
2. BLANK FAÇADE length (max);
3. Fenestration, ground floor facade area;
4. Building entry frequency, orientation, or elevation;
5. Garage door setback or width; and/or
6. Additional Building Length - ground floor partition or module requirements.

(c) A partial waiver request must meet the following requirements:

1. The intent of the ISFBC zone as stated in Sec. 14.27.1 Purpose and Sec. 14-275.7 Subdistrict dimensional requirements;

one accessory building. See Table 14.275.4c. Building - Principal & Accessory.

*BUILDING, PRINCIPAL* means the main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.275.4c. Building - Principal & Accessory.

*BUILDINGS, ATTACHED* means two or more independent buildings that share at least one common PARTY WALL but have full building separation and independent PRINCIPAL ENTRIES; not free-standing. Attached buildings may or may not have common ownership.

*BUILDING DESIGN STANDARD (BDS)* means the basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

*ELEVATION* means an exterior wall of a building not along a frontage line. See FAÇADE and Table 14.275.4~~de~~. Frontage & Lot Lines.

*ENTRANCE, PRINCIPAL* means the main point of access for pedestrians into a building. A building may have more than one principal entrance.

~~*EXPRESSION LINE* means a line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.~~

*FAÇADE* means any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.275.4~~de~~. Frontage & Lot Lines.

*FAÇADE, BLANK* means a building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

*GREEN ROOF* means a roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a



root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

~~LOT LAYER means a range of depth of a lot within which certain elements are permitted. See Table 14.275.4d. Lot Layers.~~

*MID-BLOCK PERMEABILITY* means a continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

*PARTY WALL* means any partition wall common to two adjacent or attached buildings.

*REGULATING PLAN* means a zoning map that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

*STEPBACK* means a building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground and excludes the minimum necessary housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy.

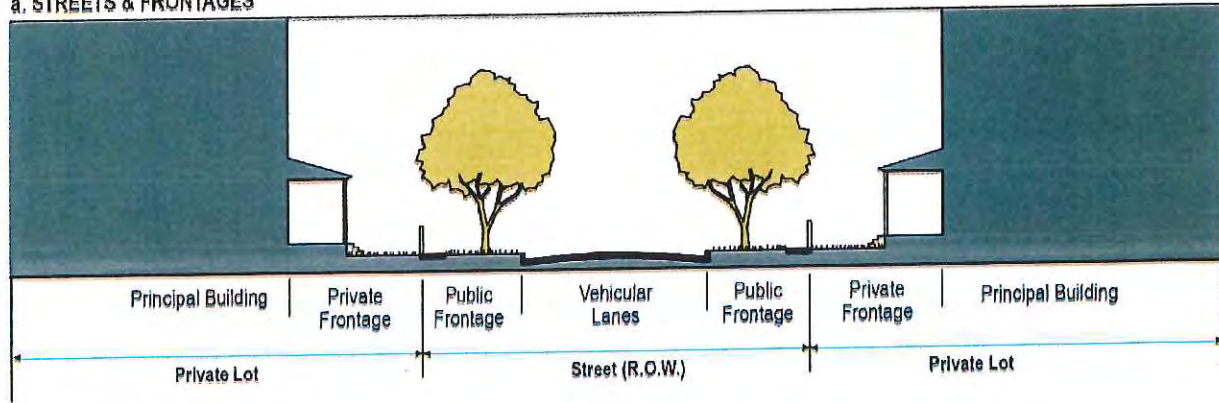
*YARD, SIDE* means a yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.275.4b. Setback Designations.

*ZERO LOT LINE* means the location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.275.4~~de~~. Frontage & Lot Lines.

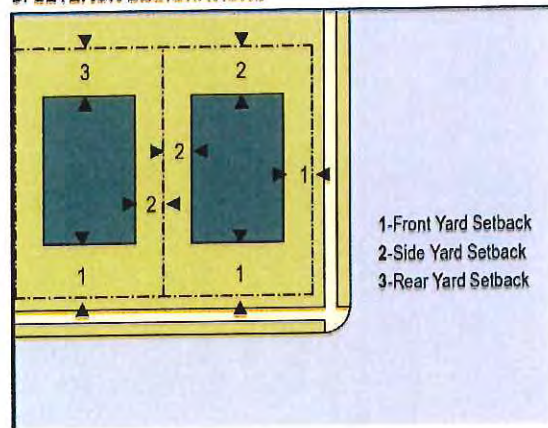


**TABLE 14.275.4 DEFINITIONS ILLUSTRATED**

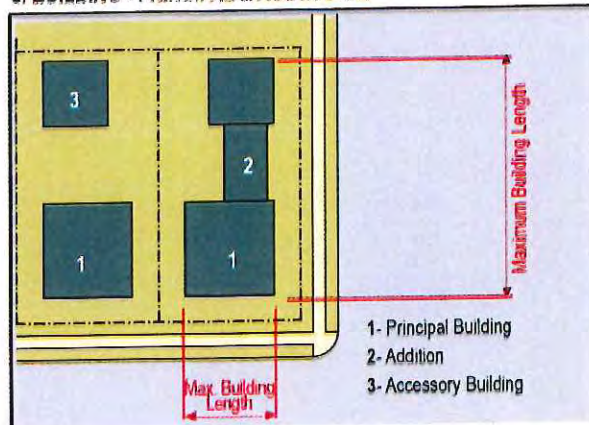
**a. STREETS & FRONTAGES**



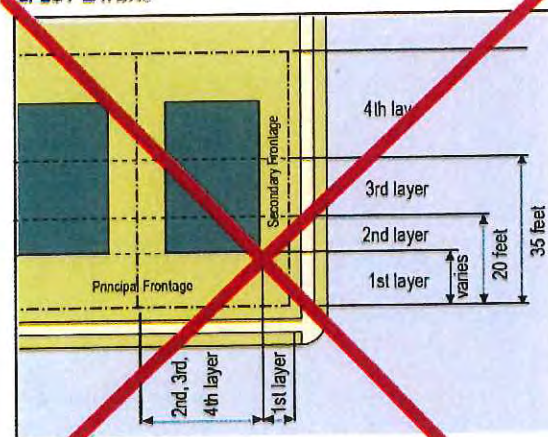
**b. SETBACK DESIGNATIONS**



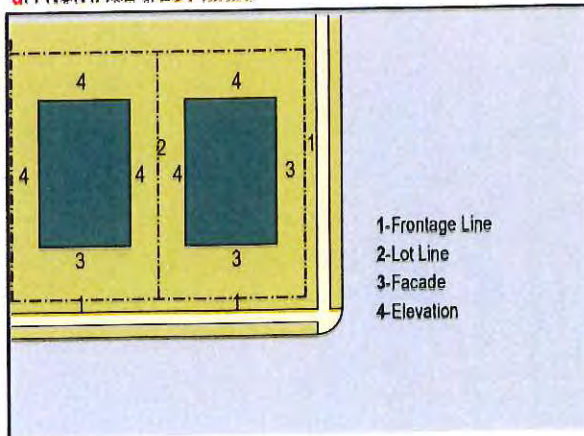
**c. BUILDING - PRINCIPAL & ACCESSORY**



**d. LOT LAYERS**



**d. FRONTAGE & LOT LINES**

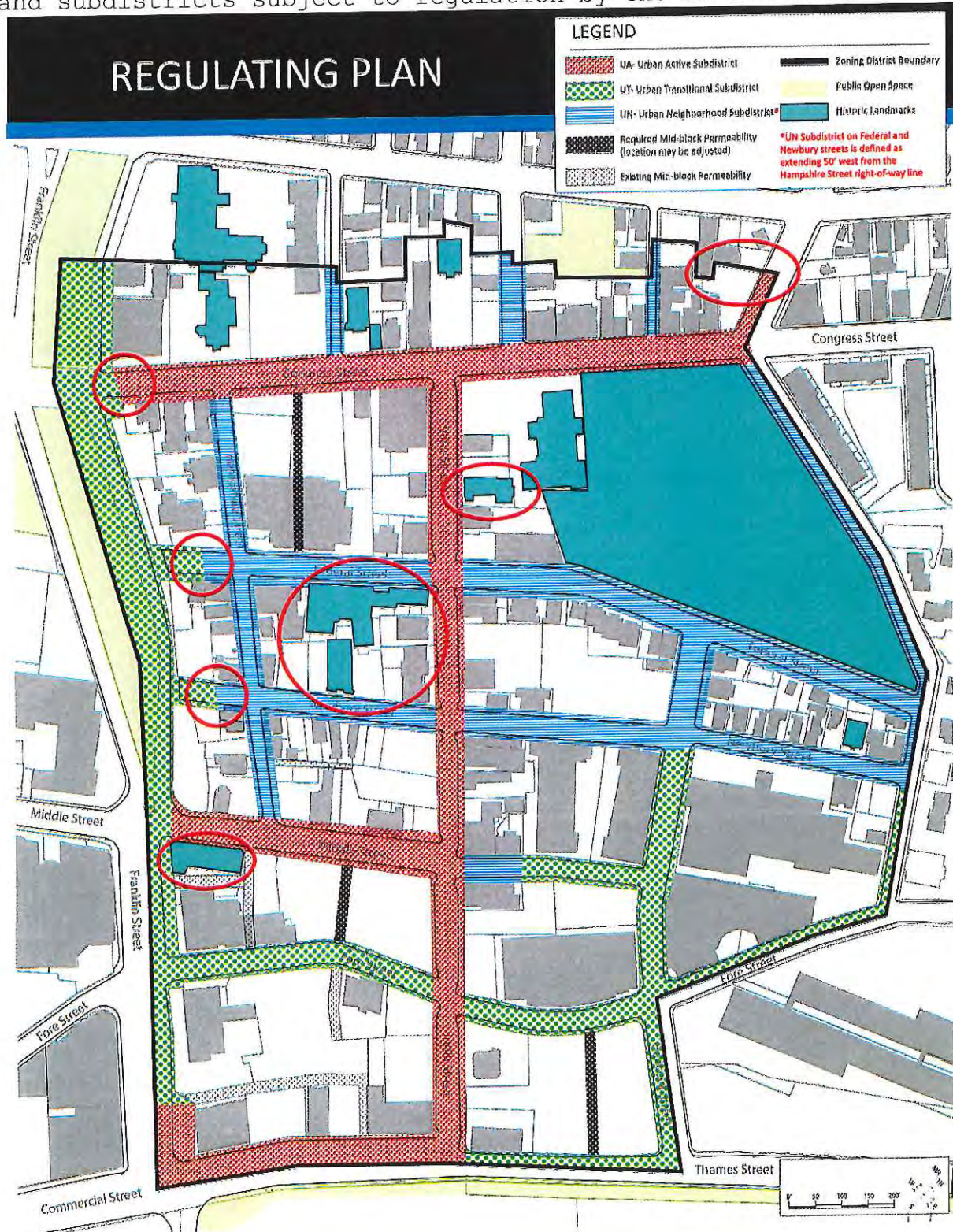


(Ord. 83-15/16, 11-2-2015)



## Sec. 14-275.5. Regulating Plan.

The REGULATING PLAN shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC zone.





**Sec. 14-275.6. General development standards.**

The following standards apply to all subdistricts unless expressly stated otherwise.

(a) *Prohibited uses* - uses not to be established in the India Street Form-based Code Zone include:

...

(b) *Siting standards.*

1. MID-BLOCK PERMEABILITY.

...

2. Frontage requirements—

a. Minimum street frontage = 30'

b. Building length measurement shall not include porches, decks, or balconies that are appended to the principal structure.

a.c. In the case of a corner lot or lot bounded by at least three streets, maximum building lengths may not be exceeded in order to meet front yard setbacks.

b.d. Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

1. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.275.7d Additional Building Length - ATTACHED BUILDINGS).

2. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.275.7f Additional Building Length - Ground Floor Partitions)

1.i. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.

2.ii. Partitions must be architecturally expressed on the building exterior.

3.iii. Each module created by partition must have at least one functional, street-facing entry.

iv. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.

i.v. In the UA subdistrict, number of modules are required based on building length:

Building length >50' but <100' = at least 2 modules

Building length >100' but ≤150' = at least 3 modules

3. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back ~~to the 3<sup>rd</sup> LOT LAYER~~ (at least 20') (see Table 14.275.7e Additional Building Length - Massing Variation).

4. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

| Additional Building Length |                    |                                      |                   |                              |
|----------------------------|--------------------|--------------------------------------|-------------------|------------------------------|
| Subdistrict                | ATTACHED BUILDINGS | Ground Floor Partitions              | Massing Variation | Structured Parking Exception |
| UN                         | unlimited run      | Not allowed                          | Not allowed       | Not allowed                  |
| UT                         | unlimited run      | 200' max. length;<br>2 modules       | 200' max. length  | 200' max. length             |
| UA                         | unlimited run      | 150' max. length;<br>Up to 3 modules | Not allowed       | 150' max. length             |



3. Setbacks.

- a. Side Yard Setbacks for Small Lots - Lots with a street frontage of less than 35' are exempt from providing side yards but only where required yard is perpendicular to the frontage that is less than 35'. -not required to have side yards.
- b. Where new construction or BUILDING ADDITION creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement. Corner lots may only apply the side yard reduction to one required side yard.
- c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.
- d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

4. Landscaping and screening.

- a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.
- b. Wall/Fence Dimensional Requirements

| Wall/Fence Dimensional Requirements |         |                        |
|-------------------------------------|---------|------------------------|
| LocationLOT<br>LAYER                | Height  | Visual Permeability    |
| Within front                        | 6' max. | Required above 2' from |

|                                                                          |         |                |
|--------------------------------------------------------------------------|---------|----------------|
| yard <del>1<sup>ST</sup></del>                                           |         | sidewalk grade |
| Side or rear<br>yard <del>2<sup>ND</sup></del> <del>4<sup>TH</sup></del> | 8' max. | n/a            |

5. BUILDING ADDITIONS.

- a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.

b. Exemptions

1. Building Length: A BUILDING ADDITION may not cause the building to exceed the maximum building length requirement except in the case that the BUILDING ADDITION is located between a street frontage and an existing building with a legally non-conforming length. In such an instance, aA BUILDING ADDITION length may match but not exceed the legally non-conforming length of the existing building to which it is an addition. — All other Subdistrict Dimensional Requirements shall apply. (See Table 14.275.7b. Addition)
2. Building Height in Stories: BUILDING ADDITIONS are exempt from story minimums or maximums in order to may match existing building in number and height—of stories. All other Subdistrict Height Standards shall apply including height minimum and maximums in feet.

(c) Height standards.

1. Height bonus.
  - a. Applicability:

1. If principal—a frontage faces a UT street, UN street, or Congress Street, then the portion of the building facing that street is eligible for a height bonus. For lots with multiple



frontages where a frontage faces an ineligible street, bonus story must be stepped back at least 35' from ineligible street line (see Sec. 14-275.7 (d) Corner conditions diagram UA intersects UT for illustration).

2. Only one height bonus may be applied per structure.
- b. One (1) additional story of up to 12 feet in height is allowed if one of the following provisions is met:

...

**Sec. 14-275.7. Subdistrict dimensional requirements.**

- (a) Urban Neighborhood (UN) subdistrict.

Intent: The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets tend to be narrow.

## SITING STANDARDS

|                                              |                           |
|----------------------------------------------|---------------------------|
| Orientation - Principal Frontage             | determined by applicant   |
| Lot Coverage                                 | 90% max                   |
| <b>FRONTAGE REQUIREMENTS (1st LOT LAYER)</b> |                           |
| Building Length - Principal facade           | 50' max.                  |
| Building Length - Secondary fac.             | 50' max.                  |
| BLANK FACADE length (max)                    | 15'                       |
| Additional Building Length                   | (see also Table 14.275.7) |
| ATTACHED BUILDINGS                           | unlimited run             |
| Ground Floor Partitions                      | not allowed               |
| Massing Variation                            | not allowed               |
| Structured Parking Exception                 | not allowed               |

## SETBACKS

|                                               |                                                                                                |
|-----------------------------------------------|------------------------------------------------------------------------------------------------|
| <b>Principal Building</b>                     |                                                                                                |
| (a) Front Yard (1st LOT LAYER)                | 5' max.                                                                                        |
| Setback Applicability (see Table 14.275.7 c.) | 75% of total building length must meet front yard setback                                      |
| (b) Side Yard*                                | 5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                                 | 10' min.                                                                                       |
| <b>Accessory Building Front Yard</b>          |                                                                                                |
| Side Yard                                     | 2nd thru 4th LOT LAYERS 5' min.                                                                |
| Rear Yard                                     | 5' min.                                                                                        |

## BUILDING ENTRIES (SEE ALSO BDS)

|                           |                         |
|---------------------------|-------------------------|
| Frequency at frontage     | at least 36"            |
| <b>Principal Entries</b>  |                         |
| Orientation               | any orientation allowed |
| Elevated Stoop (> 1 step) | allowed                 |

## HEIGHT STANDARDS

|                           |                         |
|---------------------------|-------------------------|
| <b>Principal Building</b> |                         |
| Building Height Min.      | 25', at least 2 stories |
| Building Height Max.      | 45', up to 4 stories    |
| Ground Story Height       | n/a                     |
| <b>Accessory Building</b> |                         |
| Building Height Max       | 25'                     |

## PARKING STANDARDS

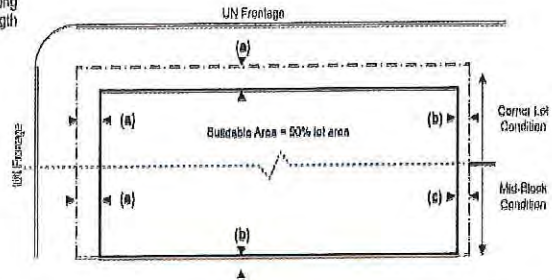
|                                                  |                                                                 |
|--------------------------------------------------|-----------------------------------------------------------------|
| Surface Parking Location                         | 35' min. setback from street                                    |
| Within Side Yard                                 | 20' max in width per lot; may not exceed 50% of frontage length |
| Rear Yard                                        | 4th LOT LAYER only                                              |
| <b>Garage at frontage (attached or detached)</b> |                                                                 |
| Garage Door Setback (min)                        | 2nd LOT LAYER 5'                                                |
| Garage Door Opening (max)                        | 9' up to 40% of facade length                                   |
|                                                  | 20' max. limit                                                  |

## Notes and Exceptions

\* Reduced side yards and zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

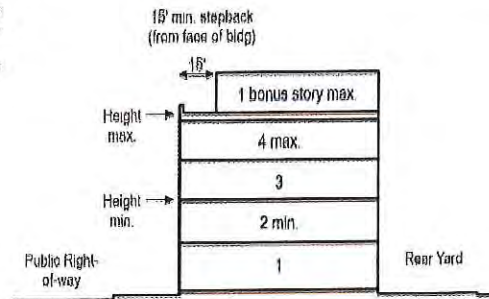
## SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



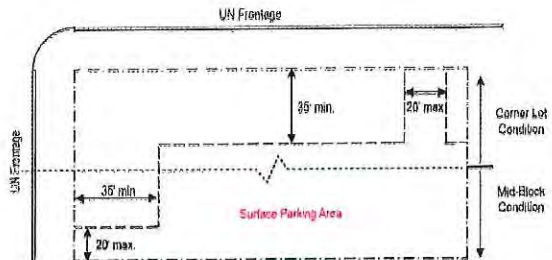
## HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14.47 Definitions "Building height of"
- Number of Stories excludes attics and raised basements.



## PARKING STANDARDS

- Surface parking areas may be provided within the shaded area shown.





(b) Urban Transitional (UT) subdistrict.

**Intent:** The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

**UT**

**SITING STANDARDS**

|                                              |                           |
|----------------------------------------------|---------------------------|
| Orientation - Principal Frontage             | determined by applicant   |
| Lot Coverage                                 | 90% max                   |
| <b>FRONTAGE REQUIREMENTS (1st LOT LAYER)</b> |                           |
| Building Length                              | 100' max.                 |
| BLANK FACADE length (max)                    | 30'                       |
| Additional Building Length                   | (see also Table 14.275.7) |
| ATTACHED BUILDINGS                           | unlimited run             |
| Ground Floor Partitions                      | 200' max., 2 modules      |
| Massing Variation                            | 200' max.                 |
| Structured Parking Exception                 | 200' max.                 |

**SETBACKS**

|                                               |                                                                                                 |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------|
| <b>Principal Building</b>                     |                                                                                                 |
| (a) Front Yard (1st Lot Layer)                | 10' max.                                                                                        |
| Setback Applicability (see Table 14.275.7 c.) | 75% of total building length must meet front yard setback                                       |
| (b) Side Yard*                                | 10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20' |
| (c) Rear Yard                                 | 10' min.                                                                                        |
| (d) STEPBACK (adjacent to UN)                 | 10' min. setback after 45' height                                                               |
| <b>Accessory Building</b>                     |                                                                                                 |
| Side Yard                                     | 5' min.                                                                                         |
| Rear Yard                                     | 5' min.                                                                                         |

**BUILDING ENTRIES (SEE ALSO BDS)**

|                          |              |
|--------------------------|--------------|
| Frequency at frontage    | at least 95' |
| <b>Principal Entries</b> |              |
| Orientation              | any allowed  |
| Elevated Stoop (>1 step) | allowed      |

**HEIGHT STANDARDS**

|                           |                      |
|---------------------------|----------------------|
| <b>Principal Building</b> |                      |
| Building Height Min.      | 3 stories            |
| Building Height Max.      | 66', up to 6 stories |
| Ground Story Height       | n/a                  |
| <b>Accessory Building</b> |                      |
| Building Height Max.      | 25'                  |

**PARKING STANDARDS**

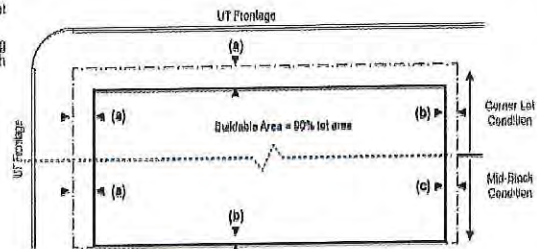
|                                                  |                               |
|--------------------------------------------------|-------------------------------|
| Surface Parking Location                         | 35' min. setback from street  |
| <b>Garage at frontage (attached or detached)</b> |                               |
| Garage Door Setback (min)                        | 2nd LOT LAYER 10'             |
| Garage Door Opening (max)                        | 9' up to 40% of facade length |
|                                                  | 20' max. limit                |

**Notes and Exceptions**

\* Reduced side yards and zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

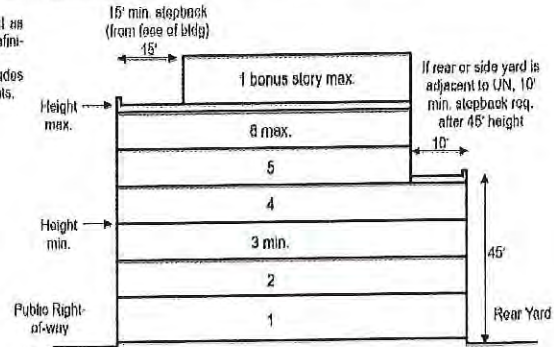
**SITING STANDARDS**

- The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



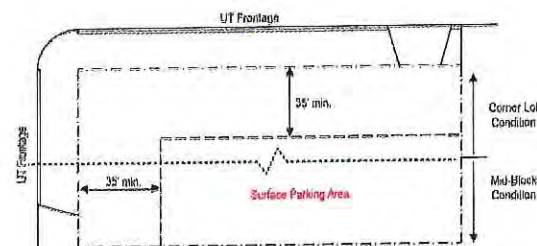
**HEIGHT STANDARDS**

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



**PARKING STANDARDS**

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.





(c) Urban Active (UA) subdistrict.

**Intent:** The intent of this subdistrict is to maintain and promote a moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

**UA**

### SITING STANDARDS

|                                              |                              |
|----------------------------------------------|------------------------------|
| Orientation - Principal Frontage             | face a UA street             |
| Lot Coverage                                 | 80% max                      |
| <b>FRONTAGE REQUIREMENTS (4th LOT LAYER)</b> |                              |
| Building Length                              | 50' max.                     |
| BLANK FACADE length (max)                    | 15'                          |
| Additional Building Length                   | (see also Table 14.275.7)    |
| ATTACHED BUILDINGS                           | unlimited run                |
| Ground Floor Partitions                      | 150' max., up to 3 modules   |
| Massing Variation                            | not allowed                  |
| Structured Parking Exception                 | 150' max.                    |
| Fenestration, ground floor                   | 60-90% (see BDS) facade area |

### SETBACKS

|                                               |                                                                                                |
|-----------------------------------------------|------------------------------------------------------------------------------------------------|
| <b>Principal Building</b>                     |                                                                                                |
| (a) Front Yard* (4th LOT LAYER)               | 5' max.                                                                                        |
| Setback Applicability (see Table 14.275.7 c.) | 75% of total building length must meet front yard setback                                      |
| (b) Side Yard**                               | 5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                                 | 10' min.                                                                                       |
| Accessory Building Front Yard                 | 2nd thru 4th LOT LAYERS 5' min.                                                                |
| Side Yard                                     | 5' min.                                                                                        |
| Rear Yard                                     | 5' min.                                                                                        |

### BUILDING ENTRIES (SEE ALSO BDS)

|                          |                                       |
|--------------------------|---------------------------------------|
| Frequency at frontage    | at least 40'                          |
| <b>Principal Entries</b> |                                       |
| Orientation              | at least 1 facing UA street or corner |
| Elevated Stoop (>1 step) | not allowed                           |

### HEIGHT STANDARDS

|                           |                      |
|---------------------------|----------------------|
| <b>Principal Building</b> |                      |
| Building Height Min.      | 3 stories            |
| Building Height Max.      | 50', up to 4 stories |
| Ground Story Height       | 12'-0" min. clear    |
| <b>Accessory Building</b> |                      |
| Building Height Max.      | 25'                  |

### PARKING STANDARDS

|                                                  |                                    |
|--------------------------------------------------|------------------------------------|
| Surface Parking Location                         | 4th LOT LAYER only 35' from street |
| <b>Garage at frontage (attached or detached)</b> |                                    |
| Garage Door Setback                              | 3rd LOT LAYER 20' from street      |
| Garage Door Opening (max)                        | n/a                                |

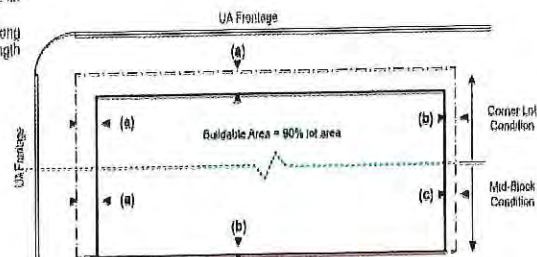
### Notes and Exceptions

\* Up to 10'-0" max. front yard setback is allowed if ground plane at frontage is a continuation of the accessible public right-of-way

\*\* Reduced side yards and zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

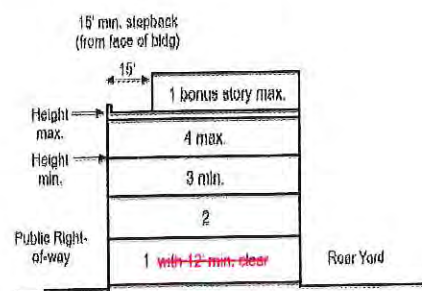
### SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



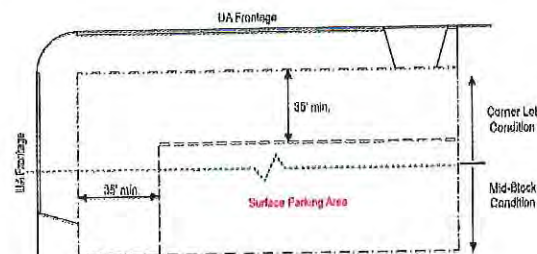
### HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of stories excludes attics and raised basements.



### PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



(d) Corner conditions.

For corner lots where two subdistricts intersect at a street corner, the *Dimensional Requirements* and *Building Design Standards* of the "dominant" subdistrict shall apply ~~from the 1<sup>st</sup> through 3<sup>rd</sup> LOT LAYER~~ (35 feet deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, *Dimensional Requirements* shall be according to the subdistrict onto which the building FAÇADE faces.



## ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage\*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street\*

## SETBACKS

- (a) Front Yard (1st Lot Layer) according to subdistrict  
(b) Side Yard according to subdistrict

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments.

## UA INTERSECTS UT

|                                                                          |                                       |
|--------------------------------------------------------------------------|---------------------------------------|
| Dominant Subdistrict (35' deep)                                          | UA                                    |
| Orientation - Principal Frontage                                         | UA street                             |
| Dominant Building Design Standards (applicable 35' deep)                 |                                       |
| Ground-Story Height                                                      | 42'-min-clear                         |
| Entry, Frequency at frontage                                             | at least 40'                          |
| Entry, Orientation                                                       | at least 1 facing UA street or corner |
| Entry, Elevated Stoop (> 1 step)                                         | not allowed on principal UA entry     |
| BLANK FACADE, max. length                                                | 15'                                   |
| Fenestration, ground floor                                               | 60-90% (see BDS) facade area          |
| (measured as a percentage of the FACADE that is 2' above sidewalk grade) |                                       |

## UA INTERSECTS UN

|                                                                          |                                       |
|--------------------------------------------------------------------------|---------------------------------------|
| Dominant Subdistrict (35' deep)                                          | UA                                    |
| Orientation - Principal Frontage                                         | UA street                             |
| Building Length - UN FACADES                                             | 100' max.                             |
| Dominant Building Design Standards (applicable 35' deep)                 |                                       |
| Ground-Story Height                                                      | 42'-min-clear                         |
| Entry, Frequency at frontage                                             | at least 40'                          |
| Entry, Orientation                                                       | at least 1 facing UA street or corner |
| Entry, Elevated Stoop (> 1 step)                                         | not allowed on principal UA entry     |
| BLANK FACADE, max. length                                                | 15'                                   |
| Fenestration, ground floor                                               | 60-90% (see BDS) facade area          |
| (measured as a percentage of the FACADE that is 2' above sidewalk grade) |                                       |

## UT INTERSECTS UN

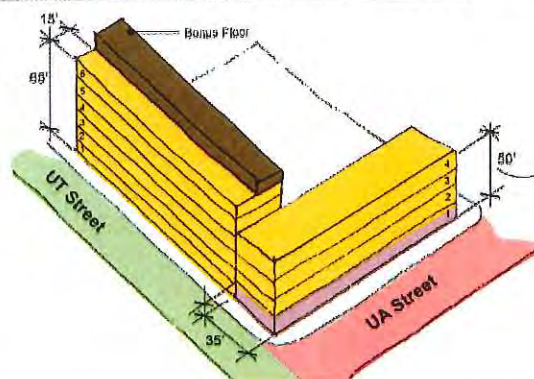
|                                                                                                            |                         |
|------------------------------------------------------------------------------------------------------------|-------------------------|
| Dominant Subdistrict (35' deep)                                                                            | UN                      |
| Orientation - Principal Frontage                                                                           | determined by applicant |
| • Corner lots shall be treated as having street frontage on all streets regardless of building orientation |                         |

## Notes and Exceptions

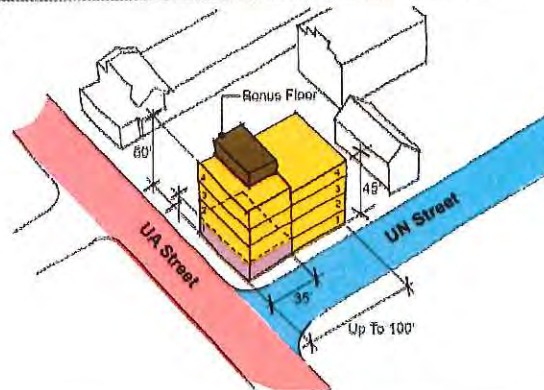
- \* Does not have to correspond to legal building address

# CORNER

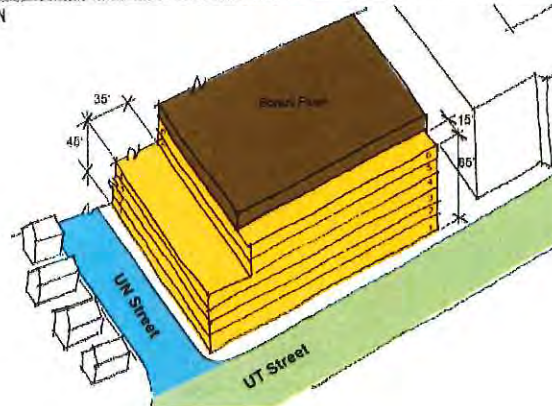
UA INTERSECTS UT  
(example only)



UA INTERSECTS UN  
(example only)

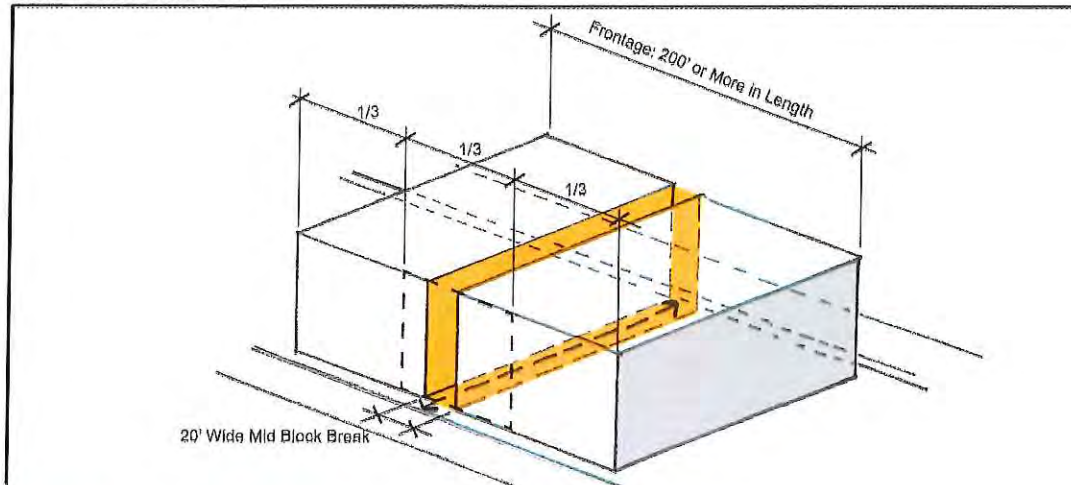


UT INTERSECTS UN  
(example only)

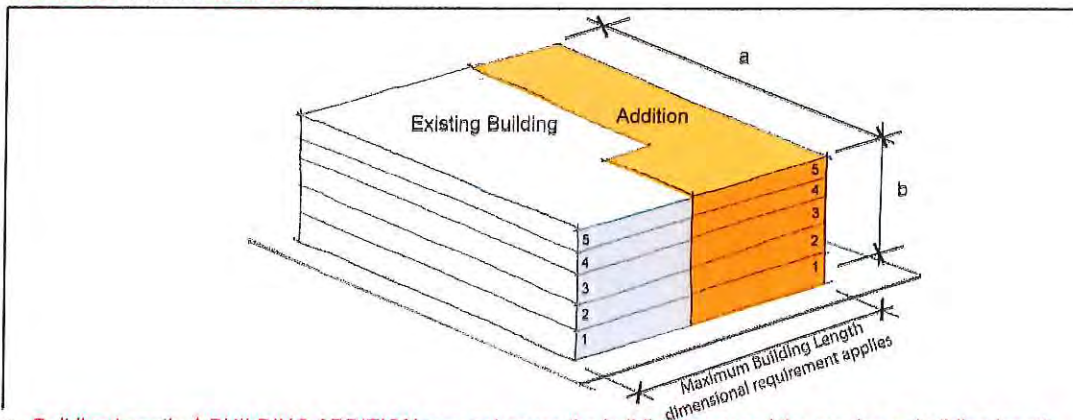


**TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED**

**a. MID-BLOCK PERMEABILITY**

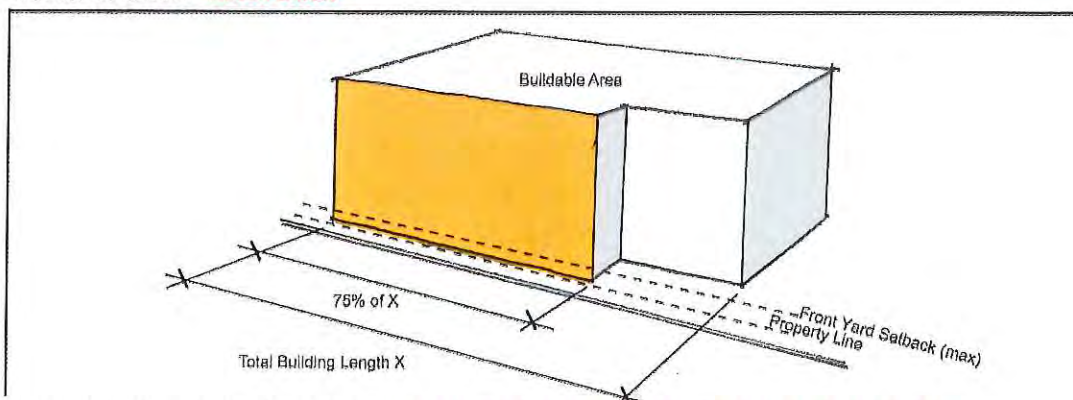


**b. BUILDING ADDITION EXEMPTIONS**



- a - Building Length:** A BUILDING ADDITION may not cause the building to exceed the maximum building length requirement except in the case that the BUILDING ADDITION is located between a street frontage and an existing building with a non-conforming length. In such an instance, a BUILDING ADDITION length may match but not exceed the legally non-conforming length of the existing building to which it is an addition.
- b - Building Height in Stories:** BUILDING ADDITIONS are exempt from story minimums or maximums in order to match existing building in number of stories. All other Subdistrict Height Standards shall apply including height minimum and maximums in feet.

**c. BUILDING LENGTH - 1st LOT LAYER**

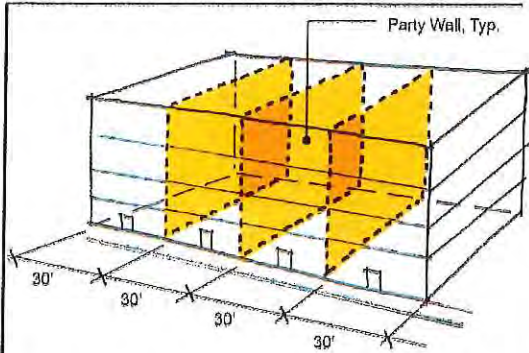


At least 75% of the total building length must meet the front yard setback dimensional requirements.



**TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED (CONTINUED)**

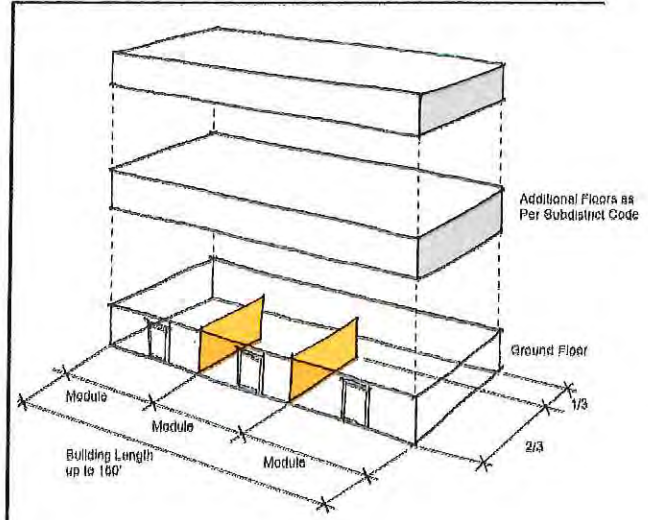
**d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS**



An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

A PARTY WALL condition is required at least every 30' and for the entire height of each building.

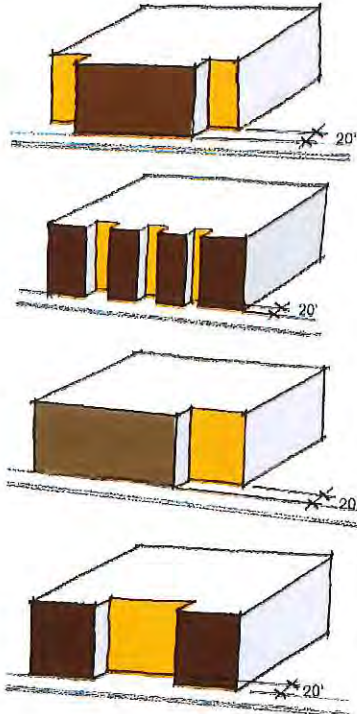
**f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)**



Additional Building Length is permitted up to 150' with the provision of a least two Ground Floor Partitions

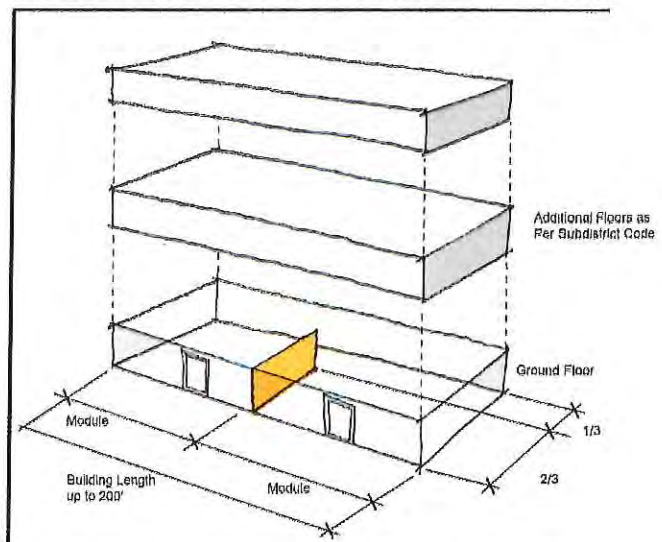
See General Development Standards and BDS for additional requirements.

**e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)**



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback at least ~~to the 3rd LOT LAYER~~ 20'.

**f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)**



Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

**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:** August 18, 2017

**SUBJECT:** Amendments to India Street Zoning Ordinance

**SPONSOR:** Beth Boepple, Chair, Portland Planning Board  
Planning Board Hearing 8/8/17 – Unanimous Recommendation to Adopt Amendments Vote: 6-0  
Mazor absent

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
1<sup>st</sup> reading 9/6/17 Final Action 9/18/17

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

**PRESENTATION: (List the presenter(s), type and length of presentation)**  
Brief presentation by Beth Boepple, Chair of the Planning Board and Planning Staff (if necessary)

**I. ONE SENTENCE SUMMARY**

Amendments are being proposed to Division 15.2 Section 14-275 India Street Form-based Code zone to clarify intent, revise some dimensional standards, add a waiver provision, and revise and better define the extent of the boundary of the Urban Transition subdistrict between Franklin and Hampshire streets.

**II. AGENDA DESCRIPTION**

The intent of the Form-Based Code (IS-FBC) text and map amendments is to address three issues:

- Items in the code where there is a need for clarity of interpretation to meet the original intent
- Adding content that addresses oversights or omissions in the original zoning
- Adding some flexibility by revising dimensional requirements that are too difficult to meet or are inappropriate and adding a partial waiver option

**III. BACKGROUND**

Staff is requesting revisions to the ISFBC based on the experience of applying the code to Site Plan and Building Permit applications over the last year and a half. As a new code with a format different from the other zones in Chapter 14, there are some parts of the code that are unclear or could be interpreted differently from the original intent. The amendments proposed seek to address these interpretation issues and provide clarity to the zoning language and *Regulating*

*Plan*. Additionally, the proposed changes reiterate all *Building Design Standards* that have dimensional requirements into the zoning code. Finally, a waiver provision is proposed to add some flexibility to the zone.

The Planning Board Report (Attachment 1) gives a summary of all the proposed amendments. Attachments 2, 3, and 4 show the amended documents in markup.

#### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

The goal is to improve, clarify, and simplify the zoning code to remove barriers to development and development review process.

#### **V. FINANCIAL IMPACT**

None currently anticipated.

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

The proposed amendments are subject to compatibility with two policy documents:

- *Portland's Plan 2030*
- *India Street Sustainable Neighborhood Plan (ISSNP)*

The newly adopted Comprehensive Plan identifies in the Future Land Use map the India Street neighborhood as an area to be enhanced. Making these adjustments to the zone allow for the development, renovation, and enhancement of this part of the city to continue. The Comprehensive Plan also states as a goal to simplify and clarify the land use code – the India Street Form-based Code was crafted with this goal in mind. The proposed amendments further refine the zone to clarify and simplify that policy document.

The text amendments proposed for Division 15.2 are intended to adjust language for interpretation, amend some dimensional requirements for feasibility, and provide some flexibility in the zone through a waiver provision. These amendments do not alter the intent of the zone or Chapter 14, and therefore the zone continues to meet the policy goals of the Comprehensive Plan and ISSNP.

The map amendments proposed for Division 15.2 ISFBC are to more clearly define the boundary between the UT and UN subdistricts on Federal and Newbury streets. This amendment does not change the intent of the subdistrict placement or boundaries. The amendment does result in a 50' shift in the boundary location on Federal Street, the impacts of which staff consider to be marginal.

The other map amendment proposed changes the subdistrict on Congress Street at the corner of Franklin Street to have the UA subdistrict apply the full length of the block, removing the UT subdistrict designation. This results in a reduction in height allowed on two parcels by 15' and two stories. However, this down zoning has little to no practical implications because the parcels affected are within the historic district and are occupied by contributed buildings unlikely to ever be demolished. The change would impact the height of a potential building addition. Staff does not consider this change to be in conflict with the goals or policies of the Comprehensive Plan or



ISSNP and believes this zone changes brings the parcels more in conformance with the historic district and preservation goals.

#### **VII. RECOMMENDATION**

The Planning Board voted unanimously to recommend the proposed Zoning text and map amendments to Division 15.2 IS-FBC zone, Regulating Plan, and Building Design Standards as presented in Attachments 2, 3, and 4.

#### **VIII. LIST ATTACHMENTS**

1. Planning Board Report 8.8.17
2. Ch. 14 Div 15.2 India Street Form-based Code draft text amendments
3. Regulating Plan map amendments – proposed amendments and as adopted 2015
4. Building Design Standards – Standard 7.2
5. Map – potentially non-conforming lots
6. Public Comment

Prepared by: Caitlin Cameron, Urban Designer  
Date: August 18, 2017



## PLANNING BOARD REPORT PORTLAND, MAINE

India Street Form-based Code Zone  
Zoning Text & Map Amendment  
City of Portland, Applicant

|                                       |                                              |
|---------------------------------------|----------------------------------------------|
| Submitted to: Portland Planning Board | Prepared by: Caitlin Cameron, Urban Designer |
| Public Hearing Date: August 8, 2017   | Date: August 4, 2017                         |

### I. INTRODUCTION

The intent of the Form-Based Code (IS-FBC) text and map amendments is to address three issues:

- Items in the code where there is a need for clarity of interpretation to meet the original intent
- Adding content that addresses oversights or omissions in the original zoning
- Adding some flexibility by revising dimensional requirements that are too difficult to meet or are inappropriate and adding a partial waiver option

Staff is requesting revisions to the ISFBC based on the experience of applying the code to Site Plan and Building Permit applications over the last year and a half. As a new code with a format different from the other zones in Chapter 14, there are some parts of the code that are unclear or could be interpreted differently from the original intent. The amendments proposed seek to address these interpretation issues and provide clarity to the zoning language and *Regulating Plan*. Additionally, the proposed changes reiterate all *Building Design Standards* that have dimensional requirements into the zoning code. Finally, a waiver provision is proposed to add some flexibility to the zone.

This is Planning Board public hearing on the revisions to the zoning code and subdistrict map after one workshop was held July 25, 2017. The workshop included comments and questions from six members of the public on the topics of enforcing active frontages, appropriate scale transition from Franklin Street to Hampshire Street, clarification on height bonus applicability, and the implications of non-conformity.

One public comment was received just before the workshop on the topic of the new waiver (Attachment 5). Staff sent proposed amendments to the former members of the India Street Neighborhood Advisory Committee and interested parties list for review and comment. Staff also received inquiries from two property owners on Hampshire Street with questions about the nature of the map amendment.

## II. SUMMARY OF REVISIONS (Attachment 1)

**14-275.2 Applicability** – Add a waiver provision for specific quantitative requirements within the code – Due to site constraints, some quantitative requirements have been difficult for projects to achieve such as number of modules for additional building length, building entry elevation, length of blank façade, entry orientation. Staff suggests that these aspects of the IS-FBC be eligible for a partial waiver under specific conditions. The waiver would be granted by the Planning Authority and certain conditions would need to be met by the applicant for consideration. The intent of the waiver would be to allow flexibility of dimensional requirements, not to exempt a project from meeting the requirement all together.

The following zoning requirements are only those eligible for partial waiver:

- Building orientation
- Blank façade length
- Building entry frequency, orientation, or elevation
- Garage door setback or width
- Additional Building Length – ground floor partition or module requirements

**Sec 14-275.4 Definitions** – Some definitions removed as superfluous and not needed special definition. LOT LAYER concept is also proposed to be removed from the zoning – this system is a variation on the idea of setbacks that divides a lot into zones where different building activity can happen. This system does not exist in other zones and has been difficult to explain and enforce.

- Removed = Alteration, Buildable Area, Expression Line, Lot Layer

### **Table 14.275.4 Definitions Illustrated**

- Removed = LOT LAYER illustration – no longer applicable
- Revised = label explaining *Maximum Building Length* also applies to building additions

### **Sec. 14-275.5 Regulating Plan (Map Amendment)**

- Revise ISFBC boundary to reflect 2016 map amendment on Washington Avenue
- Depict new historic landmarks for reference
- Extend UA subdistrict to occupy whole length of Congress Street – this results in an extension of the UA subdistrict and its dimensional standards 50' to 108' on either side of Congress Street to the Franklin Street intersection. Staff believes this subdistrict revision would result in very little change on the affected properties because those properties are contributing buildings in the new India Street Historic District and are very unlikely to be redeveloped. The most substantive change is the maximum height allowed which will be reduced from 65' and 6 stories to 50' and 4 stories.
- Define UN boundary on Federal Street, and Newbury Street to end 50' from Hampshire Street line – the original zone shows the UT boundary drawn two parcel depths in from Franklin Street without written description of the boundary. Due to the changing nature of the parcel lines, staff is recommending that this boundary where UN ends and UT starts should be better defined and independent of the parcel lines and to reflect the depth of one lot facing Hampshire Street.

The original intent was for the half of the block facing Franklin Street would be allowed to be developed with consistent UT subdistrict dimensional requirements and that the half

of the block facing Hampshire Street would have the UN subdistrict requirements to help preserve the small-scale character of that street.

The practical implication is that the UT boundary is extended only in one location – 50' extension on the north side of Federal Street towards Hampshire Street. In all other locations this does not result in an extension of the UT boundary.

The revisions include adjustment of the drawing and the addition of a note defining this boundary (see LEGEND). See Attachment 2 to compare the proposed with existing Regulating Plan.

#### **Sec. 14-275.6 General Development Standards - Remove references to LOT LAYERS**

##### **(b) Siting Standards**

###### **2. Frontage Requirements**

- a. Add a minimum lot frontage of 30' – to ensure that new subdivisions result in buildable lots. This change would result in approximately 17 legally non-conforming lots. (Attachment 4)
- b. Clarify that Building Length measurement does not include decks, porches, or balconies.
- c. Building length vs. setback requirements - Clarifies that building length requirements take precedent over setbacks in the case of full-block lots.
- d. Additional Building Length – “module” is better defined to clarify how the standard should be applied.

###### **3. Setbacks**

- a. Side Yard Setbacks for Small Lots – clarify that side yard exemption applies to any frontage of less than 35', rather than total frontage. This change affects approximately 26 existing lots (Attachment 4).
- b. Reduced Side Yard Setbacks – clarify that this may only be applied to one side yard for a corner lot.

###### **5. Building Additions b. Exemptions**

1. Building Addition Length – clarify that building length maximums apply except when the existing building is legally non-conforming in length and addition has street frontage.
2. Building Addition Height in Stories – clarify that building height minimums and maximums apply except when the existing building is legally non-conforming in number of stories.

##### **(c) Height Standards 1. Height Bonus**

- a) Applicability – clarify that height bonuses are allowed on buildings with frontage facing a UT, UN street, or Congress Street and how height bonuses apply to corner conditions.
- b) Provision 3 – Clarify that the 20% affordability requirement means number of units and that units must be of equivalent size as market rate units

#### **Sec. 14-275.7 Subdistrict Dimensional Requirements - Remove references to LOT LAYERS**

- Frontage Requirements (all subdistricts) – Add reference to *Blank Façade* length requirements from *Building Design Standards*
- Height Standards (UA subdistrict) - Ground Story Height – 12' clear requirement removed.

In practice, this standard has been difficult to meet, especially on sloped sites. The rigidity of a quantitative height in this situation has also prevented some buildings from being contextual with its historic neighbors in the datum and expression lines. Removing this requirement will not preclude the intent of UA frontages having an active ground floor – other requirements remain that will produce this result (% of fenestration required, stoop elevation cannot be more than one step above sidewalk).

- Parking Standards (all subdistricts) - LOT LAYERS translated to setbacks
- Corner Conditions
  - LOT LAYER references removed and translated to setbacks
  - Quantitative requirements reiterated where applicable (Entry frequency, orientation, stoop elevation, blank façade length)
  - UA Ground Story Height – requirement removed

**Table 14-25.7 Dimensional Requirements Illustrated** – Existing diagrams were updated to reflect the above-mentioned text changes:

- a. Building Addition Exemptions – clarifying language regarding length + height requirements
- b. Building Length – LOT LAYERS translated to setbacks
- e. Additional Building Length – Massing Variation (UT) – LOT LAYER reference removed

### Other Revisions

#### *Building Design Standards (BDS)*

- Standard 3.3 Blank Facades = add BLANK FAÇADE length maximums to the zone
- Standard 7.2 = revised to say “All simple roof forms are allowed in all Subdistricts.” – Though the neighborhood includes a mix of roof forms, the predominant, character-defining forms are simple, rather than compound or complex, roof forms. Changing this standard is requested in order to emphasize that neighborhood design characteristic and be able to strengthen the ability to enforce the intent to preserve the neighborhood character. (Attachment 3)

### III. COMPREHENSIVE PLAN ANALYSIS

The proposed amendments are subject to compatibility with two policy documents:

- *Portland's Plan 2030*
- *India Street Sustainable Neighborhood Plan (ISSNP)*

The newly adopted Comprehensive Plan identifies in the Future Land Use map the India Street neighborhood as an area to be enhanced. Making these adjustments to the zone allow for the development, renovation, and enhancement of this part of the city to continue. The Comprehensive Plan also states as a goal to simplify and clarify the land use code – the India Street Form-based Code was crafted with this goal in mind. The proposed amendments further refine the zone to clarify and simplify that policy document.

#### **Division 15.2 IS-FBC zone Text Amendments**

The text amendments proposed for Division 15.2 are intended to adjust language for interpretation, amend some dimensional requirements for feasibility, and provide some

flexibility in the zone through a waiver provision. These amendments do not alter the intent of the zone or Chapter 14, and therefore the zone continues to meet the policy goals of the Comprehensive Plan and ISSNP.

#### **Division 15.2 IS-FBC zone Map Amendments**

The map amendments proposed for Division 15.2 ISFBC are to more clearly define the boundary between the UT and UN subdistricts on Federal and Newbury streets. This amendment does not change the intent of the subdistrict placement or boundaries. The amendment does result in a 50' shift in the boundary location on Federal Street, the impacts of which staff consider to be marginal.

The other map amendment proposed changes the subdistrict on Congress Street at the corner of Franklin Street to have the UA subdistrict apply the full length of the block, removing the UT subdistrict designation. This results in a reduction in height allowed on two parcels by 15' and two stories. However, this down zoning has little to no practical implications because the parcels affected are within the historic district and are occupied by contributed buildings unlikely to ever be demolished. The change would impact the height of a potential building addition. Staff does not consider this change to be in conflict with the goals or policies of the Comprehensive Plan or ISSNP and believes this zone changes brings the parcels more in conformance with the historic district and preservation goals.

#### **IV. MOTIONS FOR THE BOARD TO CONSIDER**

On the basis of plans and materials submitted by the applicant, the policies of the IS-FBC Zone, Comprehensive Plan analysis, public comment, the information provided in public hearing on August 8, 2018 and/or other findings as follows:

##### **1. Text Amendments to Division 15.2 IS-FBC Zone**

The Planning Board finds that the proposed text amendment to *Division 15.2 India Street Form-based Code Zone (IS-FBC)* presented in Attachment 1 of this report, **[is or is not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[recommends or does not recommend]** to the City Council approval of the zoning text amendment to Division 15.2 India Street Form-based Code Zone (IS-FBC).

##### **2. Map Amendments to IS-FBC Zone Subdistricts**

The Planning Board finds that the proposed map amendments to *Section 14-275.5 Regulating Plan* presented in Attachment 2 of this report, **[is or is not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[recommends or does not recommend]** to the City Council approval of the zoning map amendments to Section 14-275.5 Regulating Plan.

##### **3. Amendment to City of Portland Design Manual IS-FBC Building Design Standards**

The Planning Board finds that the proposed amendment to the *City of Portland Design Manual Building Design Standards (IS-FBC)* presented in Attachment 3 of this report, **[is or is not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[approves or does not approve]** the text amendment to the *City of Portland Design Manual IS-FBC Building Design Standards (BDS)*.

### **Attachments**

1. Ch. 14 Div 15.2 India Street Form-based Code draft text and map amendments
2. Regulating Plan – revised and as adopted 2015
3. Building Design Standards – Standard 7.2
4. Map – potentially non-conforming lots
5. Public Comment

DIVISION 15.2. INDIA STREET FORM-BASED CODE ZONE (IS-FBC)

Sec. 14-275.1 Purpose.

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code Zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

(a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.

1. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.
2. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.
3. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept away from the street. Shared infrastructure, to the extent practicable, including, but not limited



to, service alleys, parking areas, stormwater treatment, public transportation facilities, and driveways, shall be utilized.

4. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the subdistrict which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.
5. Respect historic character. If a property is within the India Street Historic District, Article IX Historic Preservation is applicable. New construction, BUILDING ADDITIONS, or ALTERATIONS alterations in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

(Ord. 83-15/16, 11-2-2015)

#### Sec. 14-275.2. Applicability.

The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN. The Planning Authority may grant a partial waiver from the strict adherence to the following zoning requirements:

- (a) Building orientation
- (b) BLANK FAÇADE length (max)
- (c) Building entry frequency, orientation, or elevation
- (d) Garage door setback or width
- (e) Additional Building Length - ground floor partition or module requirements

if it can be demonstrated that the waiver meets the intent of the ISFBC zone as stated in Sec. 14.27.1 Purpose and Sec. 14-275.7 Subdistrict dimensional requirements, and that at least one of the following applies:

- (a) The proposed alternative better achieves the zone and subdistrict intent; or
- (b) The zone or subdistrict intent will not be met by applying the requirement in this particular circumstance; or

- (c) There is a legal or practical necessity for unique conditions; or
- (d) Unique site factors make the zoning requirement impractical or cost prohibitive.

The following waiver conditions apply:

- a. The waiver shall be of the least adjustment reasonable necessary to satisfy the practical, programmatic, or functional needs of the proposed development; and
- b. The applicant shall demonstrate the need for the waiver to the satisfaction of the Planning Authority.

(Ord. 83-15/16, 11-2-2015)

#### **Sec. 14-275.3. Establishment of subdistricts.**

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts:

- (a) Urban Neighborhood (UN) Subdistrict;
- (b) Urban Transitional (UT) Subdistrict; and
- (c) Urban Active (UA) Subdistrict.

(Ord. 83-15/16, 11-2-2015)

#### **Sec. 14-275.4. Definitions.**

Terms used throughout this India Street Form-based Code Zone may be defined in Section 14-47 or elsewhere in Article III, Zoning. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in this section and those in Section 14-47, or any other sections of Article III, Zoning, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this India Street Form-based Code Zone shall take precedence.

~~ALTERATION means a change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.~~

**BUILDING ADDITION** means any increase to footprint or volume of an existing structure. See Table 14.275.4c. Building - Principal & Accessory

~~BUILDABLE AREA means the area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.~~

**BUILDING, ACCESSORY** means detached structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building. See Table 14.275.4c. Building - Principal & Accessory.

**BUILDING, PRINCIPAL** means the main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.275.4c. Building - Principal & Accessory.

**BUILDINGS, ATTACHED** means two or more independent buildings that share at least one common PARTY WALL but have full building separation and independent PRINCIPAL ENTRIES; not free-standing. Attached buildings may or may not have common ownership.

**BUILDING DESIGN STANDARD (BDS)** means the basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

**ELEVATION** means an exterior wall of a building not along a frontage line. See FAÇADE and Table 14.275.4de. Frontage & Lot Lines.

**ENTRANCE, PRINCIPAL** means the main point of access for pedestrians into a building. A building may have more than one principal entrance.

~~EXPRESSION LINE means a line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.~~

**FAÇADE** means any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.275.4de. Frontage & Lot Lines.

**FAÇADE, BLANK** means a building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

City of Portland  
Code of Ordinances  
Sec. 14-275.4

Land Use  
Chapter 14  
Rev. 11-2-2015

**GREEN ROOF** means a roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

~~**LOT LAYER** means a range of depth of a lot within which certain elements are permitted. See Table 14.275.4d. Lot Layers.~~

**MID-BLOCK PERMEABILITY** means a continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

**PARTY WALL** means any partition wall common to two adjacent or attached buildings.

**REGULATING PLAN** means a zoning map that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

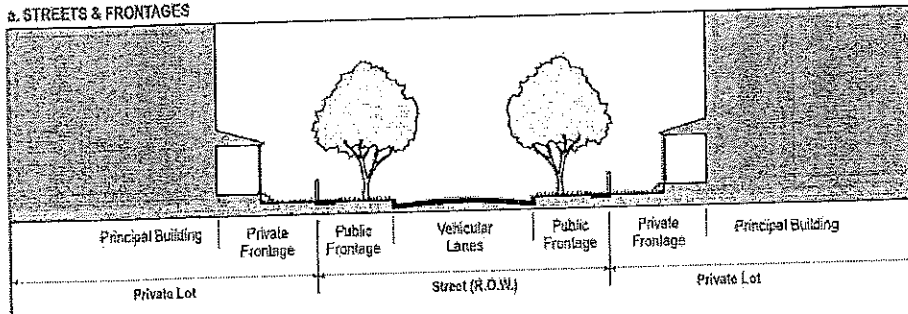
**STEPBACK** means a building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground and excludes the minimum necessary housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy.

**YARD, SIDE** means a yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.275.4b. Setback Designations.

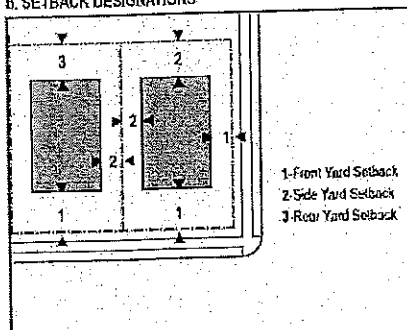
**ZERO LOT LINE** means the location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.275.4de. Frontage & Lot Lines.

**TABLE 14.275.4 DEFINITIONS ILLUSTRATED**

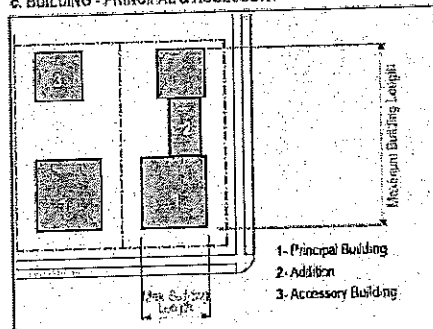
**a. STREETS & FRONTAGES**



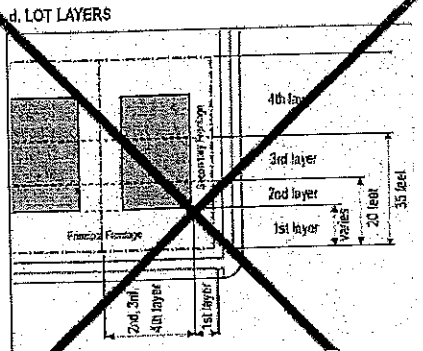
**b. SETBACK DESIGNATIONS**



**c. BUILDING - PRINCIPAL & ACCESSORY**

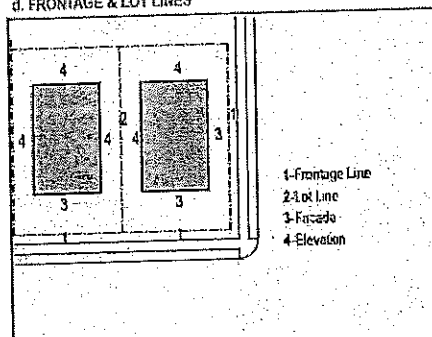


**d. LOT LAYERS**



(Ord. 83-15/16, 11-2-2015)

**d. FRONTAGE & LOT LINES**

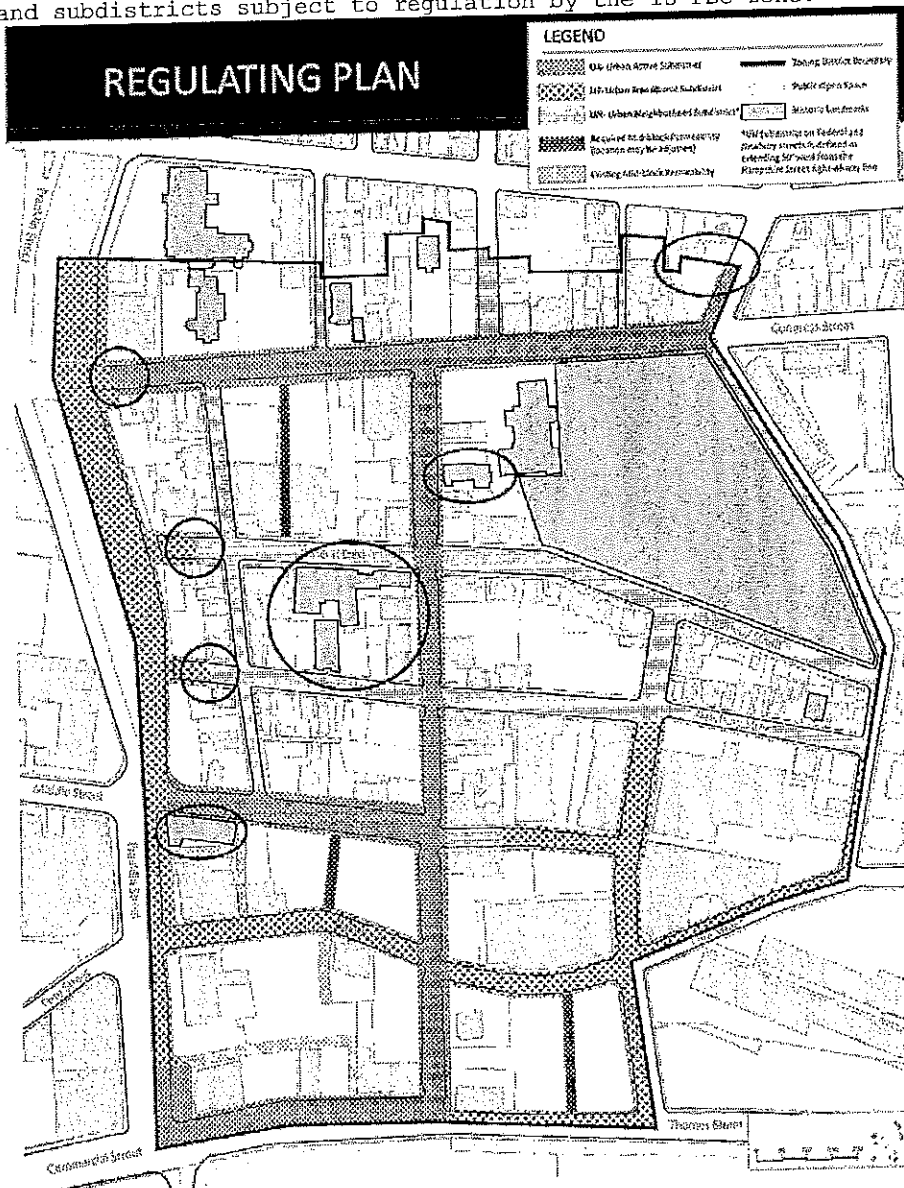


City of Portland  
Code of Ordinances  
Sec. 14-275.5

Land Use  
Chapter 14  
Rev. 11-2-2015

Sec. 14-275.5. Regulating Plan.

The REGULATING PLAN shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC zone.



**Sec. 14-275.6. General development standards.**

The following standards apply to all subdistricts unless expressly stated otherwise.

(a) *Prohibited uses* - uses not to be established in the India Street Form-based Code Zone include:

1. Correctional facilities;
2. Cremation facilities;
3. Drive-through facilities;
4. High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e - y), (aa);
5. Major/minor auto-service station;
6. Truck terminals;
7. Waste related services; and
8. Storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.

(b) *Siting standards.*

1. MID-BLOCK PERMEABILITY.

- a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200 feet in street line length of lot, a full break between structures of at least 20 feet in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (see Table 14.275.7a. Mid-Block Permeability)

- b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.
- c. Any development providing MID-BLOCK PERMEABILITY with public access between two streets is eligible for one (1) additional story of up to 12' in height (see Sec. 14-275.6(c) Height Standards). Public access shall be defined through a legal agreement such as an easement or license.
- d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.

2. Frontage requirements--

- a. Minimum street frontage = 30'
- b. Building length measurement shall not include porches, decks, or balconies that are appended to the principal structure.
- a-c. In the case of a corner lot or lot bounded by at least three streets, maximum building lengths may not be exceeded in order to meet front yard setbacks.
- b-d. Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

1. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.275.7d Additional Building Length - ATTACHED BUILDINGS).

2. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.275.7f Additional Building Length - Ground Floor Partitions)

- i. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.

Formatted



- ii. Partitions must be architecturally expressed on the building exterior. Formatted
- iii. Each module created by partition must have at least one functional, street-facing entry. Formatted
- iv. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.
- 4.v. In the UA subdistrict, number of modules are required based on building length:

Building length >50' but <100' = at least 2 modules

Building length >100' but ≤150' = at least 3 modules

3. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3<sup>rd</sup> LOT LAYER (at least 20') (see Table 14.275.7e Additional Building Length - Massing Variation).
4. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

| Additional Building Length |                    |                                      |                   |                              |
|----------------------------|--------------------|--------------------------------------|-------------------|------------------------------|
| Subdistrict                | ATTACHED BUILDINGS | Ground Floor Partitions              | Massing Variation | Structured Parking Exception |
| UN                         | unlimited run      | Not allowed                          | Not allowed       | Not allowed                  |
| UT                         | unlimited run      | 200' max. length;<br>2 modules       | 200' max. length  | 200' max. length             |
| UA                         | unlimited run      | 150' max. length;<br>Up to 3 modules | Not allowed       | 150' max. length             |

3. Setbacks.

- a. Side Yard Setbacks for Small Lots - Lots with a street frontage of less than 35' are exempt from providing side yards but only where required yard is perpendicular to the frontage that is less than 35'. ~~not required to have side yards.~~
- b. Where new construction or BUILDING ADDITION creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement. Corner lots may only apply the side yard reduction to one required side yard.
- c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.
- d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

4. Landscaping and screening.

- a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.
- b. Wall/Fence Dimensional Requirements

| Wall/Fence Dimensional Requirements |         |                                          |
|-------------------------------------|---------|------------------------------------------|
| LocationLOT<br>LAYER                | Height  | Visual Permeability                      |
| Within front<br>yard1 <sup>ST</sup> | 6' max. | Required above 2' from<br>sidewalk grade |

|                                                       |         |     |
|-------------------------------------------------------|---------|-----|
| Side or rear<br>yard <sup>2ND</sup> — 4 <sup>TH</sup> | 8' max. | n/a |
|-------------------------------------------------------|---------|-----|

5. BUILDING ADDITIONS.

- a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.

b. Exemptions

1. Building Length: A BUILDING ADDITION may not cause the building to exceed the maximum building length requirement except in the case that the BUILDING ADDITION is located between a street frontage and an existing building with a legally non-conforming length. In such an instance, a BUILDING ADDITION length may match but not exceed the legally non-conforming length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.275.7b. Addition)
2. Building Height in Stories: BUILDING ADDITIONS are exempt from story minimums or maximums in order to may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply including height minimum and maximums in feet.

(c) Height standards.

1. Height bonus.

a. Applicability:

1. If principal a frontage faces a UT street, UN street, or Congress Street, then the portion of the building facing that street is eligible for a height bonus. For lots with multiple frontages where a frontage faces an ineligible

street, bonus story must be stepped back at least 35' from ineligible street line (see Sec. 14-275.7 (d) Corner conditions diagram UA intersects UT for illustration).

2. Only one height bonus may be applied per structure.
- b. One (1) additional story of up to 12 feet in height is allowed if one of the following provisions is met:
  1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor);
  2. For any development providing a GREEN ROOF, where:
    - i At least 50% of the cumulative lot area is pervious; and
    - ii At least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.
  3. For residential development where 20% of the number of units meets the definition of either "Workforce Housing Unit for Sale" or "Low-income Housing Unit for Rent" as per Section 14-485 and shall meet the equivalency standards as per Section 14-485.

| Height Bonuses |                       |                                              |              |            |                   |                      |                             |
|----------------|-----------------------|----------------------------------------------|--------------|------------|-------------------|----------------------|-----------------------------|
| Sub-district   | Max. Pre-bonus Height | MID-BLOCK PERMEABILITY (publicly accessible) | Res. Density | GREEN ROOF | Afford. Housing   | Max. Height w/ Bonus | Min. Bonus Floor Stepback * |
| UN             | 45' and 4 stories     | n/a                                          | n/a          | n/a        | 1 story Up to 12' | 57' up to 5 stories  | 15'                         |

City of Portland  
Code of Ordinances  
Sec. 14-275.6

Land Use  
Chapter 14  
Rev. 07-25-2017

|                                     |                         |                      |                         |                            |                         |                              |     |
|-------------------------------------|-------------------------|----------------------|-------------------------|----------------------------|-------------------------|------------------------------|-----|
| UT                                  | 65' and<br>6<br>stories | 1 story<br>Up to 12' | 1 story<br>Up to<br>12' | 1<br>story<br>Up to<br>12' | 1 story<br>Up to<br>12' | 77'<br>up to<br>7<br>stories | 15' |
| UA<br>(Congres<br>s Street<br>only) | 50' and<br>4<br>stories | 1 story<br>Up to 12' | 1 story<br>Up to<br>12' | 1<br>story<br>Up to<br>12' | 1 story<br>Up to<br>12' | 62'<br>up to<br>5<br>stories | 15' |

\*measured from the ground floor building edge facing any public right-of-way

(d) Parking standards.

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. Structured parking must meet the BDS for *Structured Parking* (see *City of Portland Design Manual*).
3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

(Ord. 83-15/16, 11-2-2015)

Sec. 14-275.7. Subdistrict dimensional requirements.

(a) Urban Neighborhood (UN) subdistrict.

Intent: The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets tend to be narrow.

# UN

## SITING STANDARDS

|                                           |                           |
|-------------------------------------------|---------------------------|
| Orientation - Principal Frontage          | Determined by applicant   |
| Lot Coverage                              | 100% max                  |
| <b>FRONTAGE REQUIREMENTS (HOLLOWAYER)</b> |                           |
| Building Length - Principal Frontage      | 50' max                   |
| Building Length - Secondary Fac.          | 50' max                   |
| Blank Facade Length (max)                 | 10'                       |
| Additional Building Length                | (see also Table 14.275.7) |
| Attached Buildings                        | unlimited con             |
| Ground Floor Porticos                     | not allowed               |
| Massing Variations                        | not allowed               |
| Sheltered Parking Exception               | not allowed               |

## SETBACKS

|                                              |                                                                                              |
|----------------------------------------------|----------------------------------------------------------------------------------------------|
| Principal Building                           |                                                                                              |
| (a) Front Yard (setback)                     | 5' max.                                                                                      |
| Setback Applicability (see Table 14.275.7 c) | 75% of total building length must meet front setback                                         |
| (b) Side Yard*                               | 5' min. May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                                | 10' min                                                                                      |
| Accessory Building Front Yard                | 2nd story 4 ft. 0 in. 1st story 5' min.                                                      |
| Side Yard                                    | 5' min.                                                                                      |
| Rear Yard                                    | 5' min.                                                                                      |

## BUILDING ENTRIES (SEE ALSO BDS)

|                            |                         |
|----------------------------|-------------------------|
| Frequency of Entries       | at least 35'            |
| Placement of Entries       |                         |
| Orientation                | any orientation allowed |
| Elevated Stoop (to 1 step) | allowed                 |

## HEIGHT STANDARDS

|                       |                          |
|-----------------------|--------------------------|
| Principal Building    |                          |
| Building Height Min   | 25' (at least 2 stories) |
| Building Height Max   | 45', up to 4 stories     |
| Maximum Storey Height | 12'                      |
| Accessory Building    |                          |
| Building Height Max   | 25'                      |

## PARKING STANDARDS

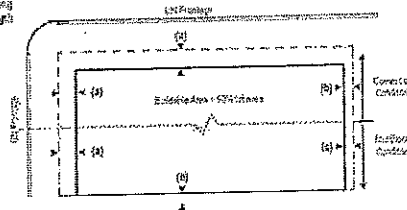
|                                                  |                                                                 |
|--------------------------------------------------|-----------------------------------------------------------------|
| Surface Parking Location                         | 10' min setback from street                                     |
| Max in Side Yard                                 | 20' max in width per lot, may not exceed 50% of frontage length |
| Front Yard                                       | 45' + 10' + 25' = 80' only                                      |
| <b>Garage at Frontage (attached or detached)</b> |                                                                 |
| Garage Door Setback (min)                        | 7' to 10' + 5'                                                  |
| Garage Door Opening (max)                        | 9' up to 100% of frontage length                                |
|                                                  | 20' max, total                                                  |

## Notes and Exceptions

\* Reduced side yards and zero lot area are allowed under certain conditions (see Sec. 14.275.6(b) 3 Setbacks)

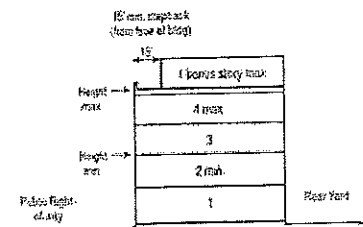
## SITING STANDARDS

- 1 The FACADES and ELEVATIONS of Principal Buildings shall be setback from the lot lines as shown.
- 2 FACADES shall be built along the frontage lines to the length specified in the table.



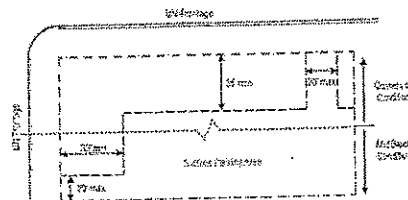
## HEIGHT STANDARDS

- 1 Height shall be measured as specified in Sec. 14.275.6(b) Building Height.
- 2 Number of stories excludes attic and covered terraces.



## PARKING STANDARDS

- 1 Surface parking area may be provided within the shaded area shown.



(b) Urban Transitional (UT) subdistrict.

*Intent:* The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

## UT

## SITING STANDARDS

|                                                 |                         |
|-------------------------------------------------|-------------------------|
| Orientation - Principal Facade                  | determined by applicant |
| Lot Coverage                                    | 30% max.                |
| <b>FRONTAGE REQUIREMENTS (max LOT COVERAGE)</b> |                         |
| Building Length                                 | 100' max.               |
| Min. AMP and Building Height                    | 3' 30'                  |
| Adjusted Building Length                        | (see also 14.216.1)     |
| ATTACHED BUILDINGS                              | unlimited len.          |
| Ground Floor Protrusions                        | 250' max., 2 responses  |
| Roofing Materials                               | 200' max.               |
| Structural Parking Reception                    | 200' max.               |

## SETBACKS

|                           |                                                                   |
|---------------------------|-------------------------------------------------------------------|
| <b>Principal Building</b> |                                                                   |
| (a) Front Yard Setback    | 10' max                                                           |
| (b) Side Yard Setback     | 75% of total building length must be set back; 10' and 5' min.    |
| (c) Rear Yard Setback     | 10' min. - May be reduced and set back grade is not less than 20' |
| (d) Side Yard Setback     | 10' min                                                           |
| (e) Accessory Building    | 10' min. setback from 45' height                                  |
| (f) Side Yard Setback     | 5' min. - 10' max. - 10' min. - 10' min.                          |
| (g) Rear Yard Setback     | 5' min.                                                           |
| (h) Side Yard Setback     | 5' min.                                                           |
| (i) Rear Yard Setback     | 5' min.                                                           |

**BUILDING ENTRIES (SEE ALSO BDS)**

|                           |              |
|---------------------------|--------------|
| Frequency of footings     | at least 08' |
| Principal Drains          |              |
| Orientation               | any desired  |
| Extended Slope (> 1 step) | 2000:1       |

## HEIGHT STANDARDS

|                           |                     |
|---------------------------|---------------------|
| <b>Principal Building</b> |                     |
| Building Height Min.      | 3 stories           |
| Building Height Max.      | 65' up to 8 stories |
| Ground Story Height       | n/a                 |
| <b>Accessory Building</b> |                     |
| Building Height Max.      | 25'                 |

## PARKING STANDARDS

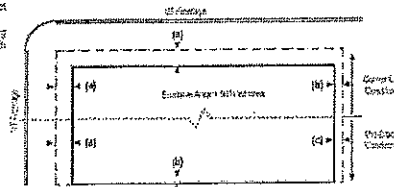
|                                           |                               |
|-------------------------------------------|-------------------------------|
| Surface Paving Location                   | 37 mls. south of town limit   |
| Garage at Frontage (attached or detached) |                               |
| Garage Door Soft-back (mils)              | 2004-2005-2006-2007-2008      |
| Garage Door Opening (mils)                | 9' up to 20% of facade length |
|                                           | 26 mls. limit                 |

## Notes and Exceptions

\* Reduced rate: yards and zero fee from an allowed under certain conditions (see Sec. 14.274) 2. Substantia

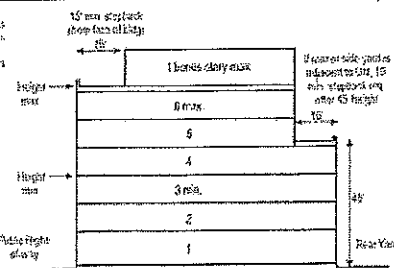
## SETTING STANDARDS

1. The FACTORS and EFFECTS of thought structure shall be discussed from the 1930s to 1950s.
2. FACTORS shall be dealt with the thought lines to the thought specified in the 1930s



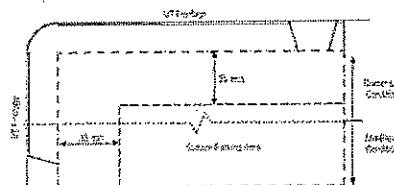
### HEIGHT STANDARDS

- 1 Height this be measured as  
specified in Sec. 14-12 Ordm.  
C.A. 1961, Sec. 14-12  
2 Number of Station, includes  
area and raised embankment



## MARKING STANDARDS

4. Surface painting areas only  
be painted within the 48  
hr. after the 1983 season  
is over.



(c) Urban Active (UA) subdistrict.

**Intent:** The intent of this subdistrict is to maintain and promote a moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

## UA

### SITING STANDARDS

|                                  |                  |
|----------------------------------|------------------|
| Orientation - Principal Frontage | Face a UA street |
| Lot Coverage                     | 80% max          |

### FRONTAGE REQUIREMENTS (SEE ALSO TABLE 14.275.7)

|                            |                                  |
|----------------------------|----------------------------------|
| Building Length            | 25 max                           |
| Blank Frontage Length      | 15                               |
| Additional Building Length | (see also Table 14.275.7)        |
| Attached Buildings         | unlimited run                    |
| Ground Floor Windows       | 15% min, no 3' modules           |
| Missing Windows            | not allowed                      |
| Signified Parking Coverage | 10% max                          |
| Penetration, ground floor  | 100-150' (see BDS) frontage area |

### SETBACKS

|                    |  |
|--------------------|--|
| Principal Building |  |
|--------------------|--|

|                        |        |
|------------------------|--------|
| (a) Front Yard Setback | 5' max |
|------------------------|--------|

|                                            |                                                    |
|--------------------------------------------|----------------------------------------------------|
| Setback Applicability (see Table 14.275.7) | 75% of total building length must maintain setback |
|--------------------------------------------|----------------------------------------------------|

|               |                                                                                             |
|---------------|---------------------------------------------------------------------------------------------|
| (b) Side Yard | 5' min. May be reduced to zero provided that the combined side yard setback is at least 15' |
|---------------|---------------------------------------------------------------------------------------------|

|               |         |
|---------------|---------|
| (c) Rear Yard | 10' min |
|---------------|---------|

|                               |                           |
|-------------------------------|---------------------------|
| Accessory Building Front Yard | 5' min, 10' max (see BDS) |
|-------------------------------|---------------------------|

|           |        |
|-----------|--------|
| Side Yard | 5' min |
|-----------|--------|

|           |        |
|-----------|--------|
| Rear Yard | 5' min |
|-----------|--------|

### BUILDING ENTRIES (SEE ALSO BDS)

|                       |              |
|-----------------------|--------------|
| Frequency of frontage | at least 40' |
|-----------------------|--------------|

|                   |  |
|-------------------|--|
| Principal Entries |  |
|-------------------|--|

|             |                                   |
|-------------|-----------------------------------|
| Orientation | aligned facing UA street corridor |
|-------------|-----------------------------------|

|                           |             |
|---------------------------|-------------|
| Elevated Stoop (≥ 1 step) | not allowed |
|---------------------------|-------------|

### HEIGHT STANDARDS

|                    |  |
|--------------------|--|
| Principal Building |  |
|--------------------|--|

|                     |           |
|---------------------|-----------|
| Building Height Min | 3 stories |
|---------------------|-----------|

|                     |                      |
|---------------------|----------------------|
| Building Height Max | 50', up to 4 stories |
|---------------------|----------------------|

|                     |                  |
|---------------------|------------------|
| Second Story Height | 12'-0" min clear |
|---------------------|------------------|

|                    |  |
|--------------------|--|
| Accessory Building |  |
|--------------------|--|

|                     |     |
|---------------------|-----|
| Building Height Max | 25' |
|---------------------|-----|

### PARKING STANDARDS

|                          |                            |
|--------------------------|----------------------------|
| Surface Parking Location | 40' to 140' from UA street |
|--------------------------|----------------------------|

|                                           |  |
|-------------------------------------------|--|
| Garage at frontage (attached or detached) |  |
|-------------------------------------------|--|

|                     |                        |
|---------------------|------------------------|
| Garage Door Setback | 20' min from UA street |
|---------------------|------------------------|

|                           |     |
|---------------------------|-----|
| Garage Door Opening (min) | 10' |
|---------------------------|-----|

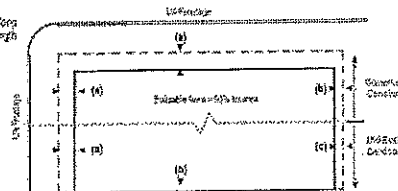
### Notes and Exceptions

\* Up to 100' max. front yard setback is allowed if ground plane at frontage is a combination of the accessible public right-of-way

\* Reduced side yard and rear yard setbacks are allowed under certain conditions (see Sec. 14.275.7(3) & Setbacks)

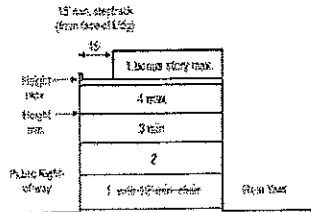
### SITING STANDARDS

1. The FACADES and BUILDINGS of Principal Buildings shall be oriented toward the street as shown.
2. FACADES shall be built along the frontage lines to the length specified in the BDS.



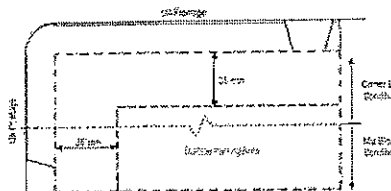
### HEIGHT STANDARDS

1. Height shall be maintained as specified in Sec. 14.47. Excess height shall be maintained.
2. Number of stories exceeds 100' and 150' maximum.



### PARKING STANDARDS

1. Surface parking areas may be provided within the 40' to 140' from UA street as shown.





For corner lots where two subdistricts intersect at a street corner, the *Dimensional Requirements* and *Building Design Standards* of the "dominant" subdistrict shall apply from the 1<sup>st</sup> through 3<sup>rd</sup> LOT LAYER (35 feet deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, *Dimensional Requirements* shall be according to the subdistrict onto which the building FAÇADE faces.

## ORIENTATION

- Corners lots must be treated as having street frontage on all streets adjacent to building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage\*
- In the case of a corner lot having 2 street frontage, the Principal Frontage must face a US street

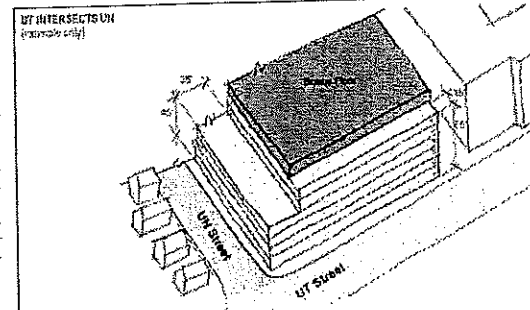
|                              |                          |
|------------------------------|--------------------------|
| (a) Front Yard (Side/Corner) | according to residential |
| (b) Side Yard                | according to suburban    |

Existing facades within 10' of a corner are exempt from setback requirements in order to allow special treatment of the elements.

[illegible][illegible]

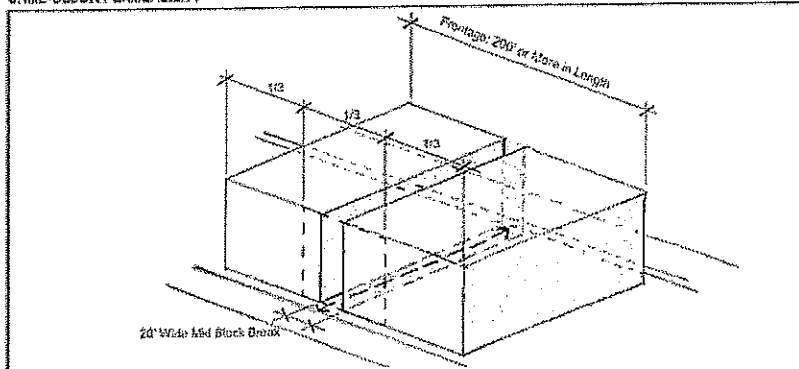
• Corner lots shall be treated as having street frontage on a street regardless of building orientation

\* Does not have to correspond to legal building address

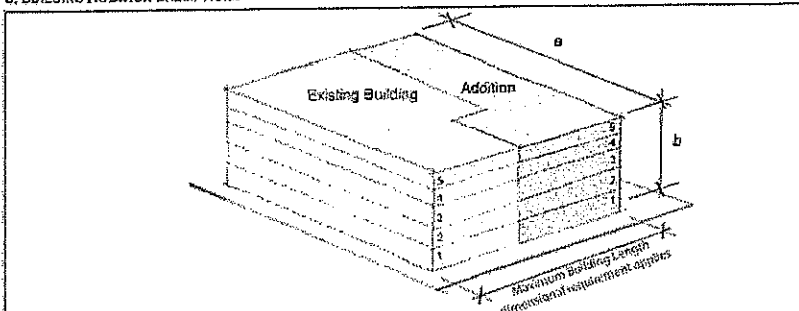


**TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED**

**a. MID-BLOCK PERMEABILITY**

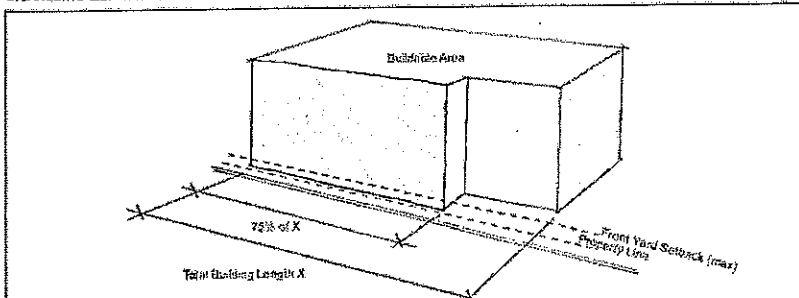


**b. BUILDING ADDITION EXEMPTIONS**



**a - Building Length:** A BUILDING ADDITION may not cause the building to exceed the maximum building length requirement except in the case that the BUILDING ADDITION is located between a street frontage and an existing building with a non-conforming length. In such an instance, a BUILDING ADDITION length may match but not exceed the legally non-conforming length of the existing building to which it is an addition.  
**b - Building Height in Stories:** BUILDING ADDITIONS are exempt from story minimums or maximums in order to match existing building in number of stories. All other Subdistrict Height Standards shall apply including height minimum and maximums in feet.

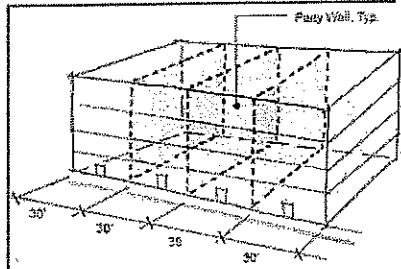
**c. BUILDING LENGTH - 1st LOT LAYER**



At least 75% of the total building length must meet the front yard setback dimensional requirements.

**TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED (CONTINUED)**

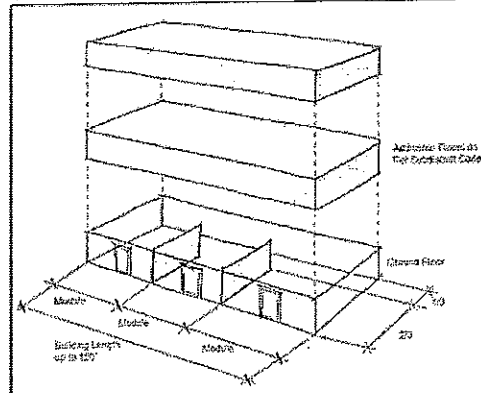
**d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS**



An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

A PARTY WALL condition is required at least every 30' and for the entire height of each building.

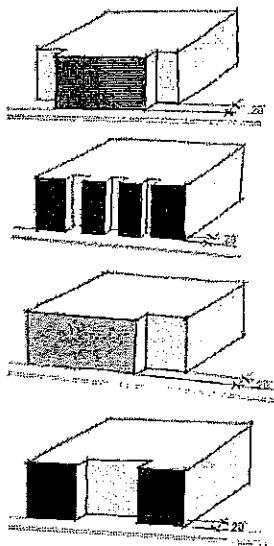
**f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)**



Additional Building Length is permitted up to 150' with the provision of at least two Ground Floor Partitions.

See General Development Standards and BCS for additional requirements.

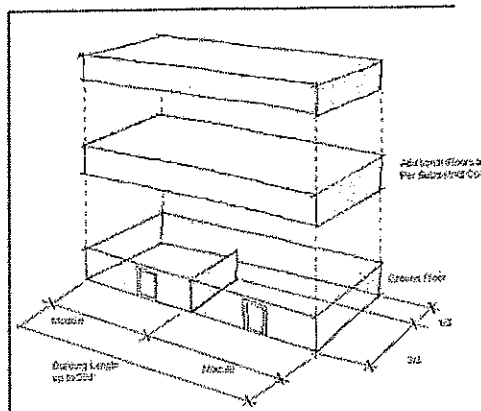
**e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)**



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback at least to the 3rd LOT LAYER 20'.

(Ord. 83-15/16, 11-2-2015)

**f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)**



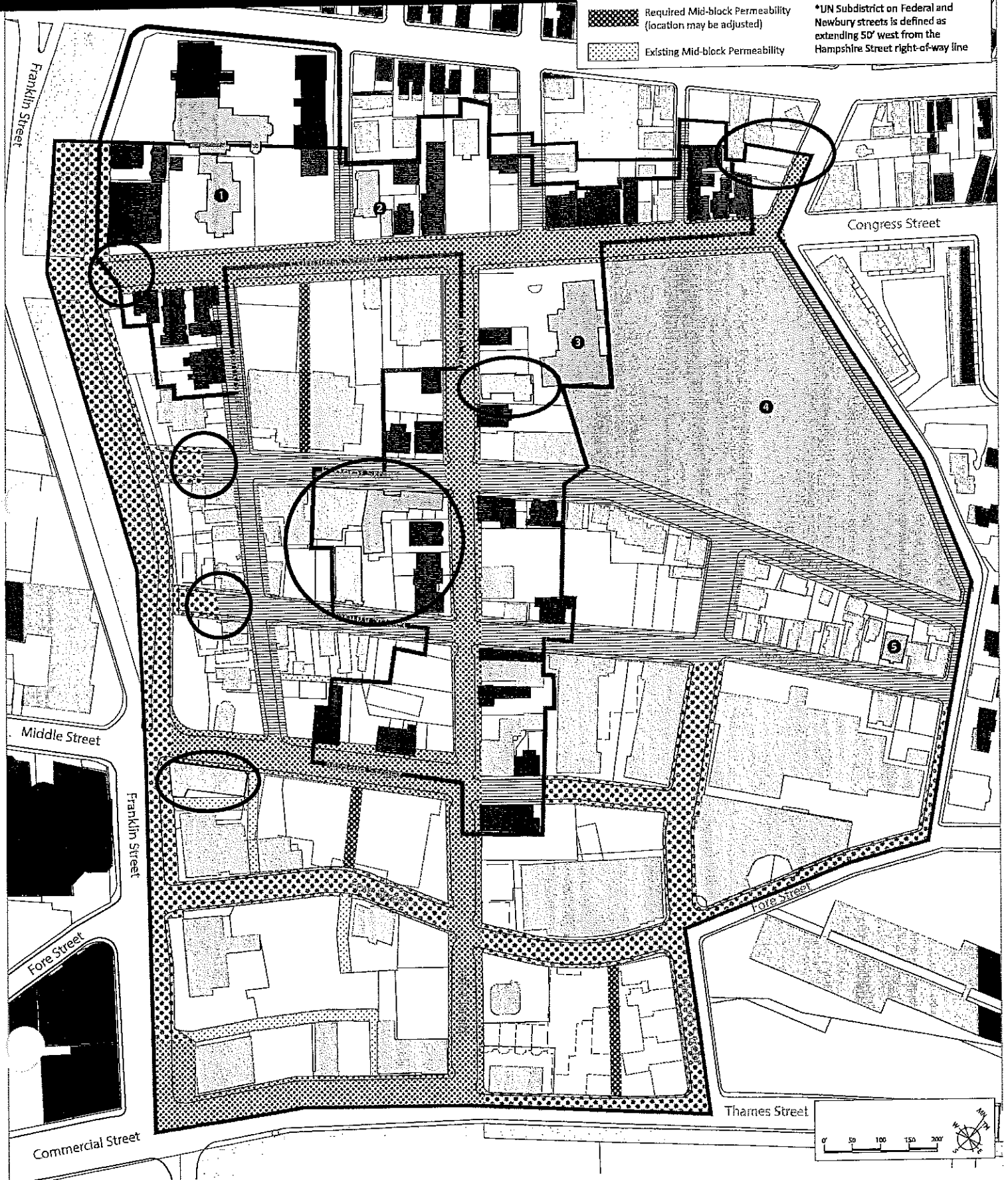
Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BCS for additional requirements.

# IS-FBC ZONE - MAP A

## LEGEND

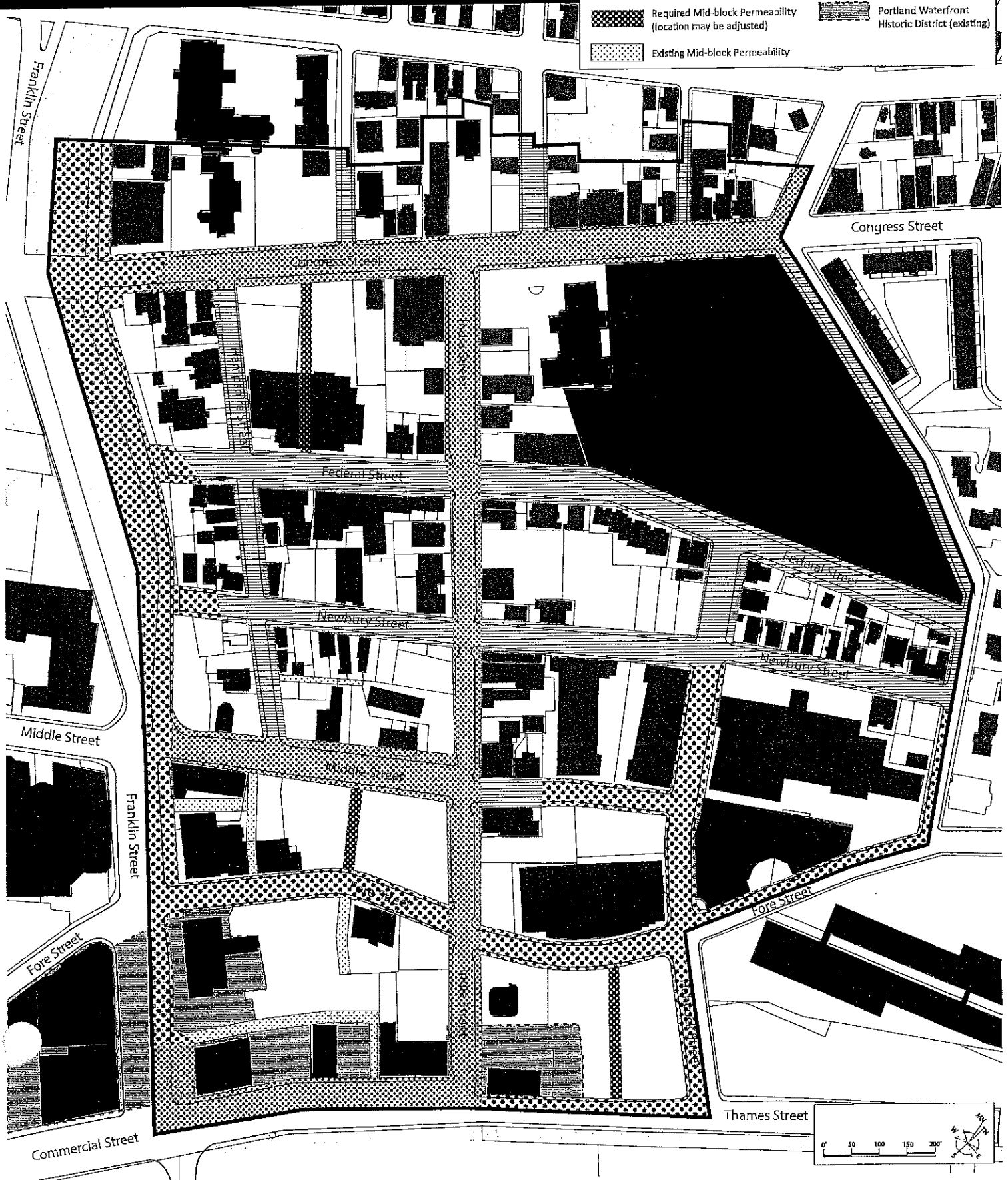
- |                                                                                   |                                                               |                                                                                                                                      |                          |
|-----------------------------------------------------------------------------------|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
|  | UA- Urban Active Subdistrict                                  |                                                   | Zoning District Boundary |
|  | UT- Urban Transitional Subdistrict                            |                                                   | Public Open Space        |
|  | UN- Urban Neighborhood Subdistrict*                           |                                                   | Historic Landmarks       |
|  | Required Mid-block Permeability<br>(location may be adjusted) | *UN Subdistrict on Federal and<br>Newbury streets is defined as<br>extending 50' west from the<br>Hampshire Street right-of-way line |                          |
|  | Existing Mid-block Permeability                               |                                                                                                                                      |                          |



# REGULATING PLAN

## LEGEND

- |                                                                                                                                              |                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
|  UA- Urban Active Subdistrict                               |  Zoning District Boundary                         |
|  UT- Urban Transitional Subdistrict                         |  Public Open Space                                |
|  UN- Urban Neighborhood Subdistrict                         |  Historic Landmarks                               |
|  Required Mid-block Permeability (location may be adjusted) |  Portland Waterfront Historic District (existing) |
|  Existing Mid-block Permeability                            |                                                                                                                                      |



## BUILDING DESIGN STANDARDS (CONTINUED)

# IS-FBC

### 7. Roof Lines

#### Intent

- Integrate all building systems within a complete architectural form
- Respect the character of and views from the surrounding context
- Make a positive contribution to the Portland skyline

#### Guidelines

- The architecture of the building's upper floors and termination should complete the building form within an overall design concept for the base, middle, and top that works in concert with the Section 3. Articulation & Composition requirements.
- Roof forms should consider and respect the context in which it is viewed in terms of height, proportions, form, and materials, whether the context is surrounding buildings, view corridors, or the waterfront.

#### Standards

- 7.1 All rooftop building systems shall be incorporated into the building form in a manner integral to the building architecture in terms of form and material. All mechanical, electrical, and telecommunications systems shall be screened from view of surrounding streets and structures.
- 7.2 All simple roof forms are allowed in all Subdistricts.

### 8. Structured Parking

#### Intent

- Minimize the visual impact of parking structures on adjacent development and the street environment
- Minimize the impact of vehicle noise and headlights from within parking structures on adjacent streets
- Activate street level garage frontage (**especially in the UA Subdistrict**)

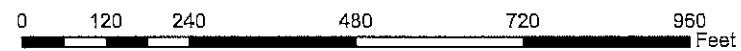
#### Guidelines

- Structured parking should not dominate (exceed 50% in length) any FACADE along a UA street. (**UA subdistrict**)
- Parking structures should use materials and architectural detailing found in the primary development being served.

#### Standards

- 8.1 Parking structures shall conform to the BDS for Section 3. Articulation & Composition and Section 5. Building Materials.
- 8.2 Parking structures shall be designed to conceal the view of parked cars and internal light sources from adjacent public rights-of-way or open space for the full height of the structure.
- 8.3 FACADE openings which face any public right-of-way or open space shall be vertically and horizontally aligned and the floors on such façades shall be level.
- 8.4 Parking structures shall provide adequate ground floor dimensions to allow use by or conversion to active uses. Adequate dimensions shall include floor-to-floor heights, structural, driving aisle, and utility layouts within 35' of the public right-of-way designed to accommodate occupancy by active uses.

IS-FBC Parcels with frontage less than 35'



**Legend**

|                                                                                     |                                                |
|-------------------------------------------------------------------------------------|------------------------------------------------|
|  | Parcels with frontage <30' (approx 17 parcels) |
|  | Parcels with frontage <35' (approx 26 parcels) |



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**RE: Attention India Street interested parties - IS-FBC amendments**

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Carol De Tine <chstudio@maine.rr.com>  
To: Caitlin Cameron <ccameron@portlandmaine.gov>

Tue, Jul 25, 2017 at 4:27 PM

Caitlin,

Thank you for sending this out to the Advisory Committee. I can't make the workshop tonight so here is a comment regarding the waiver provision.

The Staff Memo says that some zoning requirements are difficult to meet "due to site constraints" but the proposed text amendments under 14-275.2 Applicability go beyond just site constraints, which appear as item (d).

if it can be demonstrated that the waiver meets the intent of the ISFBC zone and that at least one of the following applies:

- (a) The proposed alternative better achieves the zone intent; or
- (b) The zone intent will not be met by applying the requirement in this particular circumstance; or
- (c) There is a legal or practical necessity for unique conditions; or
- (d) Unique site factors make the zoning requirement impractical or cost prohibitive.

This is quite broad and enforcement could be very subjective. I would be interested in seeing examples of existing development proposals where a, b, and c., if applied, would have resulted in a better project.

And an edit you've probably noticed already - 14-275.6 (b) 4. b. Wall/Fence Dimensional Standards - the table references Lot Layers.

Thank you,

Carol  
Carol De Tine AIA  
Maine Licensed Architect

Carriage House Studio Architects LLC  
144 Vaughan Street  
Portland Maine 04102  
207 318 0731

[www.carriagehousestudio.com](http://www.carriagehousestudio.com)

On Jul 21, 2017, at 2:50 PM, Caitlin Cameron <ccameron@portlandmaine.gov> wrote:

For those who were on the India Street Neighborhood Advisory Committee and interested parties in the India Street Form-based Code Zone process,

Planning staff is bringing forward some proposed text and map amendments to address interpretation issues and add clarity to the zone.



I am interested to hear from you on these changes - there will be a Planning Board workshop on Tuesday, July 25th at 5pm in Council Chambers regarding these changes. Please feel free to submit public comment or attend the meeting. The staff memo and proposed amendments can be found by the end of the day Friday on the City's Agenda Center here: <http://www.portlandmaine.gov/agendacenter>

--

Caitlin Cameron, AICP, Associate AIA, LEED AP  
Urban Designer  
Planning & Urban Development Department  
389 Congress Street  
Portland, ME 04101  
phone: (207) 874-8901  
email: [ccameron@portlandmaine.gov](mailto:ccameron@portlandmaine.gov)

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.

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## Fwd: Position on Hampshire Street and Federal Street Waivers

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Deb Andrews <dga@portlandmaine.gov>

Mon, Aug 7, 2017 at 10:41 AM

To: Caitlin Cameron <ccameron@portlandmaine.gov>, "Barhydt, Barbara" <bab@portlandmaine.gov>, Stuart O'Brien <sgo@portlandmaine.gov>

fyi

On Sun, Aug 6, 2017 at 10:58 AM, <schinastar@aol.com> wrote:

Dear Mrs. Deb Andrews:

As I am sure you are aware a City Planning Board meeting will be held on Tues. Aug. 8 at 7pm 4<sup>th</sup> floor of Portland City Hall to consider the current Land Use Code and add *amendments* and *waiver provisions* to revise the boundary for the Urban Transition between Franklin and Hampshire St. across from Lincoln Park. A change would be one more step toward allowing a seven story building across from Lincoln Park and towering above the historic *contributing buildings* at 60-62 Hampshire Street, a building that will be completely out of character for the neighborhood, and an anathema to the mission of the Historic Preservation Program.

Is this what we want for Portland? Six local property owners are adamantly opposed. It is with this in mind the I appeal to you uphold the spirit of the mission of your department and oppose this initiative.

Sincerely,

Judith Allen  
Timothy Robinson

---

Deb Andrews  
Historic Preservation Program Manager  
City of Portland  
389 Congress Street  
Portland, Maine 04101  
(207) 874-8726

---

## In re. proposed India Street Form-Based Code amendments

---

Matthew Kennedy <mhkennedy@gmail.com>  
To: ccameron@portlandmaine.gov

Sun, Aug 6, 2017 at 4:20 PM

Ms. Cameron,

I am a resident of Munjoy Hill with a non-professional interest in the shaping of urban space. During my years living in northern Florida I had frequent opportunity to visit the town of Seaside and to study one of the first, and still most famous, implementations of a form-based code. Given this experience, I was excited when the City of Portland implemented a form-based code to guide planning in the India Street neighborhood.

I am writing now regarding the proposed revisions to the India Street Form-Based Code (ISFBC), and to voice support for the proposed redefinition of the boundary between the UN and UT subdistricts west of Hampshire Street. As noted in your August 4, 2017 memorandum, this proposed change would reflect the "original intent" to establish consistent, small-scale UN development along Hampshire Street and consistent UT development along Franklin Street.

In the current language, the boundary between these two districts is defined not in terms of the existing urban fabric, or even in terms of a desired pattern of development. Instead, it is defined in terms of irregular lot lines, legal fictions with no constant relationship to the built environment (in particular, to the lines of area streets). As such, the current language runs counter to the "general guiding principles" of the ISFBC, and risks undercutting those principles' call for coherent and well-defined streetscapes characterized by consistency in development along and across streets.

The Form-Based Codes Institute has developed a checklist to help determine "if a development regulation is a form-based code and a well-crafted one." The list includes the following question:

*Does the code emphasize standards and parameters for form with predictable physical outcomes (build-to lines, frontage type requirements, etc.) rather than relying on numerical parameters (floor-area ratios, density, etc.) whose outcomes are impossible to predict?*

Defining subdistrict boundaries in terms of irregular lot lines is just the sort of dubious "numerical parameter" that form-based development seeks to avoid. I believe adoption of the proposed revision will bring the ISFBC into stronger alignment with this fundamental tenet of form-based codes.

Regards,

Matthew Kennedy  
87 Beckett Street  
Portland, ME

Order 55-17/18  
Feb 18 9-18-17

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 REFERRING AN ORDINANCE REQUIRING CITY EMPLOYERS  
TO PROVIDE PAID SICK TIME TO EMPLOYEES  
TO THE HEALTH & HUMAN SERVICES COMMITTEE**

**ORDERED,** that the City Council hereby refers the proposed Paid Sick Time Ordinance, which requires city employees to provide paid sick time to employees, attached hereto, to the Health & Human Services Committee; and

**BE IT FURTHER ORDERED,** that the Health & Human Services Committee review the proposed ordinance and provide its final recommendation on this issue to the City Council.

## Definitions

The following definitions shall apply for purposes of this Article:

*Earned paid sick time* shall mean paid sick time accrued and awarded pursuant to section X.

*Employee* shall have the same meaning as in Sec. 33.2 of this Code.

*Employer* shall have the same meaning as in Sec. 33.2 of this Code.

*Family member* shall mean: (A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor; (B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child; (C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision; (D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; (E) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or (F) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

*Health care professional* shall have the same meaning as in 26 M.R.S. § 843.

*Year* shall mean a regular and consecutive 12-month period as determined by the employer.

## Accrual of Earned Paid Sick Time

(a) All employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours of work, up to a maximum accrual of 48 hours in one year.

1. Employees who are exempt from overtime requirements under the Fair Labor Standards Act will be deemed to work 40 hours in each work week for purposes of earned paid sick time accrual, unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.
2. Employees shall begin to accrue earned paid sick time at the commencement of employment or on the date this law goes into effect, whichever is later.
3. Accrued paid sick time shall be awarded and available for use no more than eight days after it is accrued. Alternatively, an employer may award paid sick time in advance of accrual in an amount anticipated to be accrued over a year's time.

(b) Earned paid sick time shall not be automatically forfeited with the passage of time, unless the employer has a policy to pay the employee for any remaining sick time at set intervals of not less than one year.

However, nothing in this Article shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not

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been used.

(c) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within two months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

(d) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

(e) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

(f) Any employer that has a paid leave policy that makes available an amount of paid leave sufficient to meet the accrual requirements of this section, and allows that paid leave to be used for the same purposes and under the same conditions as earned paid sick time under this ordinance, is not required to provide additional paid sick time.

#### **Use of Earned Paid Sick Time**

(a) Employees may use earned paid sick time for any of the following:

1. Job protected leave provided pursuant to the Maine Employment Leave for Victims of Violence statute;
2. Leave for an employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventative medical care;
3. Leave for care of a family member's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventative medical care; or
4. Leave to attend a school meeting or meeting at a place where a family member is receiving care necessitated by the family member's health condition or disability.

(b) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(c) Employees may not use more than 48 hours of earned paid sick time in a year, unless the employer selects a higher limit.

#### **Procedures for Taking Earned Paid Sick Time**

(a) Earned paid sick time shall be provided upon the request of an employee.

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1. An employer may not require more than five days' notice for an employee to use earned paid sick time, when the need is foreseeable.
2. When the need for use of earned paid sick time is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case
3. An employer that requires notice of the need to use earned paid sick time shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.
4. When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(b) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

(c) For earned paid sick time of three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by Sec. X(a)(2) through (a)(4). An employer may not require that the documentation explain the nature of the reasons for leave. However, nothing in this section shall be construed to limit an employer's rights with respect to documentation of leave allowed under state or federal law.

1. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section.
2. If an employer requires documentation of the reasons for taking earned paid sick time, the employer is responsible for paying the employee's out-of-pocket costs for obtaining such documentation.

#### **Section 4. Exercise of Rights Protected; Retaliation Prohibited**

(a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article.

(b) It shall be unlawful for an employer or any other person to retaliate against an employee for exercising his or her rights under this Article, including requesting or using earned paid sick time; filing a complaint or otherwise complaining about an employer's alleged violation of this Article; participating in an investigation or other proceeding under this Article; or informing others of their rights under this Article.

(c) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. However, nothing in this Article shall be construed to prohibit an employer from taking disciplinary action against an employee who uses earned paid sick time for purposes other than those described in this Article.

(d) Protections of this section shall apply to any person who mistakenly but

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reasonably alleges a violation of this Article.

### **Notice of Rights**

(a) Employers shall both display a poster notifying employees of their rights under this Article, and give employees written notice at the commencement of employment or the effective date of this ordinance, whichever is later. The poster and notice shall be consistent with this section.

(b) The notice and poster shall contain the following information: that employees are entitled to earned paid sick time and the amount of earned paid sick time; the terms of its use guaranteed under this Act; that retaliation is prohibited; that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the City of Portland where questions about rights and responsibilities under this Act can be answered.

(c) The notice and poster shall be provided in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such notice has been provided by the City of Portland.

(d) The City of Portland shall create and make available to employers, in all languages spoken by more than 5% of the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters meeting the requirements of this section.

(e) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

(f) An employer who willfully violates this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

### **Recordkeeping Requirements**

(a) Employers shall retain records documenting hours worked by employees and earned paid sick time earned and taken by employees for a period of six (6) years.

(b) Employers shall allow the City of Portland access to the records required by this section, with appropriate notice and at a mutually agreeable time.

(c) When an issue arises as to an employee's entitlement to earned paid sick time under this Article, if the employer has not maintained adequate records required by this section, or does not allow the City of Portland reasonable access to such records, it shall be presumed that the employer has violated this Article, absent clear and convincing evidence otherwise.

### **Enforcement**

(a) Enforcement.

1. The City Manager or his/her designee shall enforce the provisions of this

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ordinance.

2. The City Manager shall adopt rules and regulations for the proper administration and enforcement of this ordinance.

(b) Complaint Process

1. Any Employee, including, but not limited to, a Service Employee, alleging a violation of this ordinance may file a written complaint with the City Manager's office.
2. The City Manager or his or her designee may investigate and issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.
3. If the City Manager finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, three times the amount of any back wages withheld and the payment of not less than \$100.00 to the employee as a penalty for each day that a violation of this chapter has occurred. If a violation occurred but did not result in wages being withheld, such as in the case of an employee who worked after being unlawfully denied permission to use earned paid sick time, appropriate relief shall include an additional amount of two times what the employee was paid.
4. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(c) Private Cause of Action.

1. Any Employee, including, but not limited to, a Service Employee, the City or any person aggrieved by a violation of this ordinance may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this ordinance, including, but not limited to, wages owed under this ordinance. Such action may be brought by a person aggrieved by a violation of this section without first filing a complaint with the City Manager. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.
2. Upon a judgment being rendered in favor of any employee(s), in any action brought pursuant to this ordinance, such judgment shall include, in addition to the wages adjudged to be due and any penalties assessed, any and all costs of suit including, but not limited to, reasonable attorney's fees.
3. Where applicable, remedies shall also include equitable relief, including reinstatement and back pay, and injunctive relief.
4. The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.

**Confidentiality and Nondisclosure**

If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such

information shall be treated as confidential and not disclosed except to the affected employee, with the permission of the affected employee, as required for the administration of the leave, or as otherwise required by law.

### **Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws**

(a.i.1.a) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

(a.i.1.b) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any law, regulation, contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an employee than required herein.

### **Public Education and Outreach**

The City of Portland shall develop and implement a multilingual outreach program to inform employees about the availability of earned paid sick time under this ordinance. This program shall include the distribution of notices and other written materials in English, and well as Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

### **Regulations**

The city manager, or his or her designee, shall be authorized to coordinate implementation and enforcement of this Article and shall promulgate appropriate guidelines or regulations for such purposes.

### **Severability**

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

### **Effective Date**

This Act will take effect on July 1, 2018.

**RESOURCES****Association of Paid Sick Leave Laws With Foodborne Illness Rates**

2017 | American Journal of Preventive Medicine

**Introduction**

Previous studies suggest an association between paid sick leave (PSL) and better population health, including fewer infectious and nosocomial gastrointestinal disease outbreaks. Yet few studies examine whether laws requiring employers to offer PSL demonstrate a similar association. This mixed-methods study examined whether laws requiring employers to provide PSL are associated with decreased foodborne illness rates, particularly laws that are more supportive of employees taking leave.

**Methods**

The four earliest PSL laws were classified by whether they were more or less supportive of employees taking leave. Jurisdictions with PSL were matched to comparison jurisdictions by population size and density. Using difference-in-differences, monthly foodborne illness rates (2000–2014) in implementation and comparison jurisdictions before and after the laws were effective were compared, stratifying by how supportive the laws were of employees taking leave, and then by disease. The empirical analysis was conducted from 2015–2017.

**Results**

Foodborne illness rates declined after implementation of the PSL law in jurisdictions with laws more supportive of employees taking leave, but increased in jurisdictions with laws that are less supportive. In adjusted analyses, PSL laws that were more supportive of employees taking sick leave were associated with an adjusted 22% decrease in foodborne illness rates ( $p=0.005$ ). These results are driven by campylobacteriosis.

**Conclusions**

Although the results suggest an association between more supportive PSL laws and decreased foodborne illness rates, they should be interpreted cautiously because the trend is driven by campylobacteriosis, which has low person-to-person transmission.

**Read the study.****AUTHORS:**

Study authors: Charleen Hsuan, JD, PhD, Kat DeBurgh, MPH, Dawn M. Jacobson, MD, MPH, [Suzanne Ryan-Ibarra](#)

**PRODUCED THROUGH PHIS:**

[Survey Research Group](#)

**SEE RELATED RESOURCES:**

[Health Care & Population Health](#), [Social Determinants of Health](#), [Population Health](#), [Population Data](#)

order 56-17/18  
Tab 19 9-18-17

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 REFERRING A BIKE SYSTEM ORDINANCE  
TO THE SUSTAINABILITY AND TRANSPORTATION COMMITTEE**

**ORDERED,** that the City Council hereby refers a bike system ordinance attached hereto to the Sustainability and Transportation Committee; and

**BE IT FURTHER ORDERED,** that the Sustainability and Transportation Committee review the issue and provide its final recommendation to the City Council.

**MEMORANDUM**  
**City Council Agenda Item**

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

**FROM:** Jeff Levine, Planning & Urban Development

**DATE:** 9/8/17

**SUBJECT:** Bike Share Ordinance Referral

**SPONSOR:** Jon Jennings, City Manager  
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
1<sup>st</sup> reading \_\_\_\_\_ Final Action 9/18/17

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

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

**I. ONE SENTENCE SUMMARY**

Referring a draft ordinance amendment governing bike sharing systems to the Sustainability & Transportation Committee.

**II. AGENDA DESCRIPTION**

Referral of a draft ordinance governing bike sharing systems to the Sustainability & Transportation Committee.

**III. BACKGROUND**

City completed a feasibility study for the creation of a bike sharing system for the Portland region in 2013. That study recommended a not-for-profit model for a system, and a not-for-profit called "Portland Bikeshare" has been formed. In the meantime, technology has advanced and staff is now receiving inquiries from private bikeshare systems that do not use docks, and are therefore less expensive and more feasible in the short term. Such inquiries represent interesting opportunities but also create potential issues that are best addressed through an ordinance governing such systems, as well as more traditional docked-based bike share systems. The draft ordinance would outline basic parameters governing systems, and authorize the City Manager to promulgate regulations to implement the policy framework in the ordinance.

**IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

Pedestrian crossings, stop lights, bike lanes, review existing plans, snow removal ordinance and plowing routes, transportation bonds, parking.

**V. FINANCIAL IMPACT**

No significant impact.

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

Given the rapid changing nature of bike share technology, it is important to act soon to get ahead of proposals coming forward. Otherwise, dockless systems could possibly create liability issues and potential public safety issues related to abandoned bikes and unregulated users.

**VII. RECOMMENDATION**

Approval of the referral.

**VIII. LIST ATTACHMENTS**

Draft ordinance amendments.

Prepared by: Jeff Levine

Date: Sept 8 2017

**Sec. 25-27. Fees and fines.**

(a) The following fees are hereby established for the issuance of a revocable street and sidewalk occupancy permit:

- (1) Objects other than portable signs, including but not limited to tables, chairs, barricades and bollards, eighty-eight dollars (\$88.00) for one (1) fiscal year or any portion thereof;

...

- (8) Operation of a bike sharing system (as defined in 25-31) five hundred dollars (\$500) per fiscal year plus twenty dollars (\$20) per bike and one hundred dollars (\$100) per station.

**25-31. Bike Sharing System.**

(a) A "bike sharing system" is defined as a system of bicycles, electric bicycles, or similar items designed to move one or more people that offers bicycles for rent, generally for short periods of time, and may include docks for storing bicycles when not in use.

(b) Bike sharing systems require annual revocable street occupancy permits as per this section.

(c) The City Manager or her or his designee may develop regulations to further delineate reasonable rules for operation of a bike sharing system, including limits on number of bikes, where they may be stored on public ways, requirements for insurance and bonding, responsiveness of operators, and other relevant factors to ensure safe and effective operation of such a system.

(d) The City Manager may set a cap on the number of bike sharing systems that may operate in the city at one time. If such a limit is set, the City Manager would determine operators through a competitive bidding process.

(e) In addition to the street occupancy fees in 25-27 above, the City Manager may require a bike sharing system to reimburse the City costs related to managing and overseeing bike sharing systems.

(f) The City Manager may require that bike sharing systems post a bond that would cover the cost of [collecting and disposing of] an abandoned system.

*Order 57-17/18  
Tab 28 9-18-17*

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  
THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL  
EMPLOYEES (AFSCME) LOCAL 481-00 LABOR & TRADES**

**ORDERED**, that the attached Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor & Trades for July 3, 2016 through June 30, 2019, is hereby approved.



CITY OF PORTLAND  
MEMORANDUM

To: Mayor Ethan Stirling and Members of the City Council

From: Thomas Caiazzo, Labor Relations Manager

Date: September 8, 2017

RE: Order/First Reading of AFSCME Local 481-00 Labor & Trades

City staff has reached a tentative three (3) year contract agreement with AFSCME Labor & Trades which is within guidance received from Council on June 20, 2016. AFSCME Labor and Trades represents approximately 158 Trades, Maintenance and Custodial workers.

The parties have tentatively agreed to a three (3) year contract with general wage increases of 2% effective July 3, 2016 (75% retroactive pay), 2% effective July 2, 2017, and 2% effective July 1, 2018.

The parties have also agreed to other economic provisions outlined in the attached Term Sheet.

The Union has ratified the tentative agreement and the Administration recommends your support for the agreement.

The contract term is July 3, 2016 through June 30, 2019. The total direct costs of the general wage increases and other economic updates are \$530,000.00.

Attached are the tentative agreement, cost sheet, pay plan and revised contract which are provided as backup to this memo.

This order will require a second reading at the October 2, 2017 Council meeting.

Cc: Jon Jennings – City Manager  
Danielle West-Chuhta – Corporate Counsel  
Anne Torregrossa – Associate Corporate Counsel  
Chris Branch – Public Works Director  
Paul Bradbury – Airport Director  
Sally Deluca – Director of Recreation & Facilities Management  
Gina Tapp – Human Resources Director  
Brendan O'Connell – Finance Director  
Carlene Kessler – Employment Services Manager  
Jennifer Lodge, Budget Analyst  
Lori Schools, Financial Specialist

**City of Portland Maine  
and  
AFSCME Labor & Trades, Local 481-00**

**TERM SHEET**

**August 22, 2017**

**1. Term**

3 year term – July 3, 2016 through June 30, 2019

**2. Wages**

Effective July 3, 2016 – 2% \* **75% retroactive payment**

Effective July 2, 2017 – 2% \* **Full retroactive payment**

Effective July 1, 2018 – 2%

**\*\* Any other economic increases such as differentials, stipends, clothing, etc. are effective upon Council approval of the full contract.**

3. Add Direct Deposit and paperless pay stub to Article 13

4. Change winter weekend shifts from 12 to 13 hours and update all contract language to reflect such.

5. Increase maximum comp time an employee can earn to 100 hours and add provision that any comp balance will be paid out in November of each year.

6. Increase minimum call back hours from 2 to 3 hours

7. Increase stand-by pay from \$15.00 to \$18.00 per day weekdays and \$22.50 to \$27.00 per day on weekends

8. Increase the winter meal allowance for Public Works employees and those other employees assigned on a regular basis to winter operations from \$120.00 to \$160.00 lump sum for the winter period.

9. Eliminate the Holiday credit option in 16.2.3

10. Article 17 – Vacations      Allow employees with 20 or more years of service to accumulate 200 hours of vacation, maximum payout remains at 160 hours.

11. Public Works employees will receive a paid lunch period during the winter period

12. The City reserves the right to discontinue the incentive work schedule for trash and recycling pickup

13. Increase the winter weekend shift differential to \$.50/hour (weekend days) and \$.75/hour (weekend nights)
14. Cleaned up the higher class pay language
15. Increased tool allowance \$50.00 per year in FY 2018 and FY 2019
16. Updated leaves of absence language Article 27
17. Updated Military leave language Article 28
18. Increased boot allowance from \$175.00 to \$200.00 per fiscal year
19. Upgraded all "shared" custodians grade 10 to Building Maintenance/Custodial Worker grade 14
20. Updated Winter Period Departmental Procedures in Appendix H
21. Updated Appendix J – Jetport procedures to include new pay scale and job descriptions for Airport Maintenance Worker positions, etc. All other Articles of the contract will be adjusted and/or deleted as appropriate based on the new job descriptions and pay scales. The following provisions of the contract will not include Airport Labor & Trades employees:
  - Article 30.4, 30.5, 30.7
  - Article 31.8
22. Appendix O is eliminated

**For the City:**

Tom Caiazzo



**For the Union:**

Jim Mackie (AFSCME 93)

Scott Ouillette (Local President)

Nick Giampetruzzi (Local VP)

Mike Lamb (Local Chief Steward)

Mike Higgins (Jetport Steward)

Paul Hallstrom (Fleet)

Matt Fernald (Parks, Rec & Facilities)

## - ADMINISTRATIVE RECOMMENDATION

| ITEM                          | BASE COST         | YEAR 1<br>(FY17) | % INCR      | YEAR 2<br>(FY18) | % INCR      | YEAR 3<br>(FY19) | % INCR      | NOTES:                                                   |
|-------------------------------|-------------------|------------------|-------------|------------------|-------------|------------------|-------------|----------------------------------------------------------|
| Base Wages                    | 6,759,413         | 104,124          | 1.5%        | 137,271          | 2.0%        | 140,016          | 2.0%        | 75% Retro of Actual earnings \$138,831.71                |
| Step Movement                 |                   | 20,013           | 0.3%        | 18,494           | 0.3%        | 18,559           | 0.3%        |                                                          |
| Night Shift Differential      | 9,152             |                  |             |                  |             |                  |             |                                                          |
| Meal Allowance                | 19,505            |                  |             | 1,935            | 9.9%        |                  |             | Increase from \$120 to \$160                             |
| Standby Pay                   | 50,580            |                  |             | 10,116           | 20.0%       |                  |             | Increase from \$15/\$22.50 to \$18/\$27                  |
| Reclassification              |                   |                  |             | 10,086           | 0.1%        |                  |             | Floating Custodians, 4 EE's L10 to L14                   |
| Specialty Pay                 | 100,449           | 2,080            | 2.1%        |                  |             |                  |             | Increase \$1.00/hr for Lead Heavy Equip Tech             |
| <b>Sub-Total Wages</b>        | <b>6,939,099</b>  | <b>126,217</b>   | <b>1.8%</b> | <b>177,901</b>   | <b>2.5%</b> | <b>158,575</b>   | <b>2.2%</b> |                                                          |
| Overtime                      | 941,936           | 14,510           | 1.5%        | 19,129           | 2.0%        | 19,511           | 2.0%        | Based on Increase in base wages                          |
| Call Back Pay                 | 23,155            |                  |             | 9,589            | 41.4%       |                  |             | Increase minimum call back hours from 2 to 3 hours       |
| Tool Allowance                | 7,800             |                  |             | 650              | 8.3%        | 650              | 7.7%        | Increase of \$50 FY18 & FY19                             |
| Clothing Allowance            | 52,975            | 4,075            | 7.7%        |                  |             |                  |             | Increase Boots from \$175 to \$200                       |
| <b>Total Direct Costs</b>     | <b>7,964,966</b>  | <b>144,802</b>   | <b>1.8%</b> | <b>207,269</b>   | <b>2.6%</b> | <b>178,736</b>   | <b>2.1%</b> |                                                          |
| Health Insurance              | 1,335,777         | 133,578          | 10.0%       | 146,935          | 10.0%       | 161,629          | 10.0%       | Inflationary increase only                               |
| Health Insurance-Plan Changes |                   | (44,081)         | -3.0%       | (48,489)         | -3.0%       |                  |             | Projected 9% Savings less 3% Cost of Wellness Initiative |
| Pension                       | 701,412           | 60,655           | 8.6%        | 59,811.81        | 7.8%        | 59,793           | 7.3%        | Based on increase in total wages                         |
| Workers' Compensation         | 185,968           | 2,865            | 1.5%        | 3,777            | 2.0%        | 3,852            | 2.0%        | Based on increase in total wages                         |
| <b>Total Indirect Costs</b>   | <b>2,223,157</b>  | <b>153,017</b>   | <b>6.9%</b> | <b>162,035</b>   | <b>6.8%</b> | <b>225,274</b>   | <b>8.9%</b> |                                                          |
| <b>Total</b>                  | <b>10,188,122</b> | <b>297,819</b>   | <b>2.9%</b> | <b>369,304</b>   | <b>3.5%</b> | <b>404,010</b>   | <b>3.7%</b> |                                                          |

**AFSCME Labor & Trades**

Effective July 3, 2016

2.00%

| <b>PAY<br/>GRADE</b> | <b>2<br/>6 mos-<br/>1yr</b> | <b>3<br/>1-2 yrs</b> | <b>4<br/>2-4 yrs</b> | <b>5<br/>4-6 yrs</b> | <b>6<br/>6-8 yrs</b> | <b>7<br/>8+ yrs</b>   |
|----------------------|-----------------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| 6                    | \$542.00<br>\$13.55         | \$552.40<br>\$13.81  | \$565.60<br>\$14.14  | \$580.40<br>\$14.51  | \$595.60<br>\$14.89  | \$610.00<br>\$15.25   |
| 7                    | \$598.40<br>\$14.96         | \$612.00<br>\$15.30  | \$625.20<br>\$15.63  | \$641.20<br>\$16.03  | \$658.00<br>\$16.45  | \$675.20<br>\$16.88   |
| 8                    | \$610.00<br>\$15.25         | \$622.40<br>\$15.56  | \$637.60<br>\$15.94  | \$653.60<br>\$16.34  | \$669.60<br>\$16.74  | \$686.40<br>\$17.16   |
| 10                   | \$632.40<br>\$15.81         | \$644.00<br>\$16.10  | \$661.20<br>\$16.53  | \$677.60<br>\$16.94  | \$693.20<br>\$17.33  | \$710.40<br>\$17.76   |
| 11                   | \$645.20<br>\$16.13         | \$658.00<br>\$16.45  | \$675.20<br>\$16.88  | \$691.20<br>\$17.28  | \$708.80<br>\$17.72  | \$727.20<br>\$18.18   |
| 13                   | \$660.00<br>\$16.50         | \$672.00<br>\$16.80  | \$690.00<br>\$17.25  | \$707.20<br>\$17.68  | \$724.80<br>\$18.12  | \$743.20<br>\$18.58   |
| 14                   | \$676.40<br>\$16.91         | \$689.20<br>\$17.23  | \$706.40<br>\$17.66  | \$723.60<br>\$18.09  | \$742.80<br>\$18.57  | \$759.60<br>\$18.99   |
| 15                   | \$691.20<br>\$17.28         | \$706.00<br>\$17.65  | \$723.20<br>\$18.08  | \$741.60<br>\$18.54  | \$758.80<br>\$18.97  | \$778.00<br>\$19.45   |
| 16                   | \$705.20<br>\$17.63         | \$720.40<br>\$18.01  | \$736.00<br>\$18.40  | \$755.60<br>\$18.89  | \$774.40<br>\$19.36  | \$792.40<br>\$19.81   |
| 17                   | \$722.00<br>\$18.05         | \$735.20<br>\$18.38  | \$753.60<br>\$18.84  | \$773.20<br>\$19.33  | \$791.20<br>\$19.78  | \$812.40<br>\$20.31   |
| 18                   | \$743.20<br>\$18.58         | \$756.40<br>\$18.91  | \$775.60<br>\$19.39  | \$795.60<br>\$19.89  | \$814.80<br>\$20.37  | \$835.60<br>\$20.89   |
| 19                   | \$778.80<br>\$19.47         | \$795.60<br>\$19.89  | \$815.20<br>\$20.38  | \$835.20<br>\$20.88  | \$857.20<br>\$21.43  | \$878.00<br>\$21.95   |
| 19M                  | \$877.60<br>\$21.94         | \$904.40<br>\$22.61  | \$932.00<br>\$23.30  | \$959.60<br>\$23.99  | \$988.00<br>\$24.70  | \$1,017.60<br>\$25.44 |

**AFSCME Labor & Trades**

Effective July 2, 2017

2.00%

| <b>PAY<br/>GRADE</b> | <b>2<br/>6 mos-<br/>1yr</b> | <b>3<br/>1-2 yrs</b> | <b>4<br/>2-4 yrs</b> | <b>5<br/>4-6 yrs</b> | <b>6<br/>6-8 yrs</b>  | <b>7<br/>8+ yrs</b>   |
|----------------------|-----------------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|
| 6                    | \$552.80<br>\$13.82         | \$563.60<br>\$14.09  | \$576.80<br>\$14.42  | \$592.00<br>\$14.80  | \$607.60<br>\$15.19   | \$622.40<br>\$15.56   |
| 7                    | \$610.40<br>\$15.26         | \$624.40<br>\$15.61  | \$637.60<br>\$15.94  | \$654.00<br>\$16.35  | \$671.20<br>\$16.78   | \$688.80<br>\$17.22   |
| 8                    | \$622.40<br>\$15.56         | \$634.80<br>\$15.87  | \$650.40<br>\$16.26  | \$666.80<br>\$16.67  | \$682.80<br>\$17.07   | \$700.00<br>\$17.50   |
| 10                   | \$645.20<br>\$16.13         | \$656.80<br>\$16.42  | \$674.40<br>\$16.86  | \$691.20<br>\$17.28  | \$707.20<br>\$17.68   | \$724.80<br>\$18.12   |
| 11                   | \$658.00<br>\$16.45         | \$671.20<br>\$16.78  | \$688.80<br>\$17.22  | \$705.20<br>\$17.63  | \$722.80<br>\$18.07   | \$741.60<br>\$18.54   |
| 13                   | \$673.20<br>\$16.83         | \$685.60<br>\$17.14  | \$704.00<br>\$17.60  | \$721.20<br>\$18.03  | \$739.20<br>\$18.48   | \$758.00<br>\$18.95   |
| 14                   | \$690.00<br>\$17.25         | \$702.80<br>\$17.57  | \$720.40<br>\$18.01  | \$738.00<br>\$18.45  | \$757.60<br>\$18.94   | \$774.80<br>\$19.37   |
| 15                   | \$705.20<br>\$17.63         | \$720.00<br>\$18.00  | \$737.60<br>\$18.44  | \$756.40<br>\$18.91  | \$774.00<br>\$19.35   | \$793.60<br>\$19.84   |
| 16                   | \$719.20<br>\$17.98         | \$734.80<br>\$18.37  | \$750.80<br>\$18.77  | \$770.80<br>\$19.27  | \$790.00<br>\$19.75   | \$808.40<br>\$20.21   |
| 17                   | \$736.40<br>\$18.41         | \$750.00<br>\$18.75  | \$768.80<br>\$19.22  | \$788.80<br>\$19.72  | \$807.20<br>\$20.18   | \$828.80<br>\$20.72   |
| 18                   | \$758.00<br>\$18.95         | \$771.60<br>\$19.29  | \$791.20<br>\$19.78  | \$811.60<br>\$20.29  | \$831.20<br>\$20.78   | \$852.40<br>\$21.31   |
| 19                   | \$794.40<br>\$19.86         | \$811.60<br>\$20.29  | \$831.60<br>\$20.79  | \$852.00<br>\$21.30  | \$874.40<br>\$21.86   | \$895.60<br>\$22.39   |
| 19M                  | \$895.20<br>\$22.38         | \$922.40<br>\$23.06  | \$950.80<br>\$23.77  | \$978.80<br>\$24.47  | \$1,007.60<br>\$25.19 | \$1,038.00<br>\$25.95 |

**AFSCME Labor & Trades**

Effective July 1, 2018

2.00%

| <b>PAY<br/>GRADE</b> | <b>2<br/>6 mos-<br/>1yr</b> | <b>3<br/>1-2 yrs</b> | <b>4<br/>2-4 yrs</b> | <b>5<br/>4-6 yrs</b> | <b>6<br/>6-8 yrs</b>  | <b>7<br/>8+ yrs</b>   |
|----------------------|-----------------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|
| 6                    | \$564.00<br>\$14.10         | \$574.80<br>\$14.37  | \$588.40<br>\$14.71  | \$604.00<br>\$15.10  | \$619.60<br>\$15.49   | \$634.80<br>\$15.87   |
| 7                    | \$622.80<br>\$15.57         | \$636.80<br>\$15.92  | \$650.40<br>\$16.26  | \$667.20<br>\$16.68  | \$684.80<br>\$17.12   | \$702.40<br>\$17.56   |
| 8                    | \$634.80<br>\$15.87         | \$647.60<br>\$16.19  | \$663.60<br>\$16.59  | \$680.00<br>\$17.00  | \$696.40<br>\$17.41   | \$714.00<br>\$17.85   |
| 10                   | \$658.00<br>\$16.45         | \$670.00<br>\$16.75  | \$688.00<br>\$17.20  | \$705.20<br>\$17.63  | \$721.20<br>\$18.03   | \$739.20<br>\$18.48   |
| 11                   | \$671.20<br>\$16.78         | \$684.80<br>\$17.12  | \$702.40<br>\$17.56  | \$719.20<br>\$17.98  | \$737.20<br>\$18.43   | \$756.40<br>\$18.91   |
| 13                   | \$686.80<br>\$17.17         | \$699.20<br>\$17.48  | \$718.00<br>\$17.95  | \$735.60<br>\$18.39  | \$754.00<br>\$18.85   | \$773.20<br>\$19.33   |
| 14                   | \$704.00<br>\$17.60         | \$716.80<br>\$17.92  | \$734.80<br>\$18.37  | \$752.80<br>\$18.82  | \$772.80<br>\$19.32   | \$790.40<br>\$19.76   |
| 15                   | \$719.20<br>\$17.98         | \$734.40<br>\$18.36  | \$752.40<br>\$18.81  | \$771.60<br>\$19.29  | \$789.60<br>\$19.74   | \$809.60<br>\$20.24   |
| 16                   | \$733.60<br>\$18.34         | \$749.60<br>\$18.74  | \$766.00<br>\$19.15  | \$786.40<br>\$19.66  | \$806.00<br>\$20.15   | \$824.40<br>\$20.61   |
| 17                   | \$751.20<br>\$18.78         | \$765.20<br>\$19.13  | \$784.00<br>\$19.60  | \$804.40<br>\$20.11  | \$823.20<br>\$20.58   | \$845.20<br>\$21.13   |
| 18                   | \$773.20<br>\$19.33         | \$787.20<br>\$19.68  | \$807.20<br>\$20.18  | \$828.00<br>\$20.70  | \$848.00<br>\$21.20   | \$869.60<br>\$21.74   |
| 19                   | \$810.40<br>\$20.26         | \$828.00<br>\$20.70  | \$848.40<br>\$21.21  | \$869.20<br>\$21.73  | \$892.00<br>\$22.30   | \$913.60<br>\$22.84   |
| 19M                  | \$913.20<br>\$22.83         | \$940.80<br>\$23.52  | \$970.00<br>\$24.25  | \$998.40<br>\$24.96  | \$1,027.60<br>\$25.69 | \$1,058.80<br>\$26.47 |

**AGREEMENT BETWEEN**

**CITY OF PORTLAND**

**AND**

**AFSCME LOCAL 481-00**

**LABOR AND TRADES**

**July 1, 2016- June 30, 2019**



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| Exhibit A .....                       | Dues Deduction Card                                                                                      |
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| Appendix C-1, C-2, C-3, C-4 .....     | Performance Appraisal Form, Intent Statement,<br>Process Outline, and Performance Improvement<br>Program |
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| Appendix H .....                      | Winter Departmental Procedures (Public Services,<br>Public Buildings)                                    |
| Appendix I .....                      | Construction Memorandum                                                                                  |
| Appendix J .....                      | Jetport Procedures                                                                                       |
| Appendix K.....                       | Career Ladder – Welder                                                                                   |
| Appendix L-1 and L-2 .....            | Career Ladder – Health and Human Services                                                                |
| Appendix M .....                      | Career Ladder – Public Buildings                                                                         |
| Appendix N .....                      | Career Ladders – Parks and Athletic Facilities                                                           |
| <del>Appendix O-1 and O-2 .....</del> | <del>Career Ladders – Aviation and Transportation</del>                                                  |
| Appendix P .....                      | Side Letter – Public Services Districting Transfer<br>Trial Agreement                                    |
| <b>Appendix Q .....</b>               | <b>Health Plan Reserve Account</b>                                                                       |

## **AGREEMENT**

This Agreement made and entered into this 21st day of January 2015, by and between the CITY OF PORTLAND, hereinafter referred to as "City" and Local 481, American Federation of State, County, and Municipal Employees, AFL-CIO, Council 93, hereinafter referred to as the "Union".

### **1. PREAMBLE**

- 1.1 Pursuant to the provisions of the Municipal Public Employees Labor Relations Law (Chapter 9-A), Title 26, Maine Revised Statutes Annotated), the parties have entered into this Agreement with the goal of establishing mutual rights, preserving proper employee morale, and promoting effective municipal operations.

### **2. RECOGNITION**

- 2.1 The City hereby recognizes that the Union is the sole and exclusive representative of a Unit consisting of all permanent employees (as defined in Appendix A) working in the job classifications in the attached classification and pay plans (except those excluded by Chapter 9-A, Title 26, M.R.S.A. and excluding all temporary, seasonal, on-call, or probationary employees as defined below and in Appendix A) in the following Departments and Divisions:

Parks, Recreation and Facilities Management (Public Assembly Facilities Division  
and Public Buildings Division)  
Health and Human Services (Barron Center and Social Services Division)  
Parking Division  
Public Services-Works  
Aviation and Transportation

- 2.2 The Union shall bargain for such permanent employees in the above unit with respect to wages, hours of work, working conditions, and all other terms and conditions of employment.
- 2.3 All new employees in permanently budgeted positions shall serve a probationary period of six (6) months, and shall have no seniority, grievance, or other rights during this period, except as otherwise specifically provided in this Agreement. During the six (6) month probationary period, the appointing authority may remove the probationer at any time if their work or conduct are found below satisfactory standards. Notwithstanding the foregoing, probationary employees do receive holidays and earn vacation and sick leave during the probationary period, and can use vacation or sick leave during the probationary period, unless specifically prohibited by a section of the Agreement. Probationary employees shall not be assigned to perform higher pay for higher classification work provided in Article 22.

- 2.4 Upon completion of the six (6) month probationary period, the probationary period shall be considered part of the employee's seniority time. In addition, any employee who becomes a permanent employee, and who has previously served in the same classification as a temporary, seasonal, or project employee, shall have such temporary, seasonal, or project time credited against their probationary period.
- 2.5 Permanent part-time employees shall be covered by all of the provisions of this contract, and shall be entitled to benefits as outlined in Appendix A, which is attached hereto and incorporated herein.
- 2.6 The City shall provide the Union with a monthly listing of the names and addresses of new employees and the names of separated employees. The City shall also notify the Union of new job classifications when created with an opinion from the Human Resources Department as to the appropriate bargaining unit for such new classifications.
- 2.7 The City and the Union agree to meet at reasonable times to discuss additions to and deletions from the recognition clause for possible changes in the recognition clause, and such changes will be by mutual agreement.

### **3. NO DISCRIMINATION BY PARTIES**

- 3.1 Employees covered by the Agreement shall have all the rights afforded under Section 963 of Chapter 9-A, Title 26, M.R.S.A.
- 3.2 No employee shall be favored or discriminated against by either the City or the Union because of his or her membership or non-membership in the Union.
- 3.3 The parties agree that they shall not unlawfully discriminate against any employee because of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry, or national origin.

### **4. DUES**

- 4.1 The City shall deduct regular weekly dues, or fair share fees as provided in Section 4.2 below, premiums for income protection insurance for employees participating in the AFSCME Income Protection plan, as outlined in Article 18, INSURANCE, upon receipt of a signed authorization form from members and a certified statement from AFSCME Council 93 as to the amount for dues and fees. The signed authorization for deduction of dues shall be in the form attached hereto and marked Exhibit A.

#### **4.2 Fair Share Fees**

- 4.2.1 For employees hired into a permanent position shall either (1) join the Union, or (2) agree to pay their fair share toward the Union's cost of collective bargaining,

contract administration, and the adjustment of grievances through payroll deductions as outlined in this Article. The Union shall establish said fair share service fee annually and shall notify the City promptly as to the dollar amount of said fair share. Employees shall have 10 days after completion of their probationary period within which to join the Union or to agree to pay the fair share amount.

4.2.2 The Union agrees to establish a bona fide internal Union procedure to allow bargaining unit non-member employees in the unit to challenge the level of the fair share deduction established hereunder. Any process established shall be in compliance with all State and Federal laws and regulations regarding dues and fair share amounts and deductions.

4.2.3 Upon receipt of a written authorization card from the employee, the City shall deduct either the full Union dues or the fair share fee as indicated. For those employees who do not select full membership or do not sign an authorization card, the City shall deduct from their paycheck fair share service fees pursuant to M.S.R.A. Title 26, Chapter 2, Subchapter 2 § 629.

#### 4.3 Amount of Dues

In the event of a change in the amount of dues or fees during the term of this Agreement, AFSCME Council 93 shall so inform the Director of Human Resources of the City in writing. After receipt of same, dues or fees as therein noted shall be deemed to have been authorized to be withheld on behalf of the employees who had previously signed authorization forms as noted.

#### 4.4 Dues Transmittal

The City shall forward all such dues and fees so collected to Council No. 93, Augusta Maine Office on or before the 15th of the month following the month in which they were collected from the employees. Any premiums collected shall be forwarded to the Maine Benefit Trust. The Benefit Trust will notify the City of the amounts of premiums to be deducted.

#### 4.5 Indemnification

The Union shall defend, indemnify, and hold the City harmless against any and all claims or suits which may arise out of or result from the dues or fee deductions taken, or not taken, pursuant to this Article, and the transmission thereof to the Union, said indemnification to include all costs and attorney's fees resulting from any such claims or suits.

### 5. **TIME OFF WHILE PERFORMING UNION DUTIES**

5.1 The Local Union President and/or Chief Steward, or other authorized Union representative, shall be allowed time off, with pay, for meeting with City officials concerning Union business provided, in the judgment of the City, said time off does not interfere with work flow requirements.

5.2 The Chief Steward, or other authorized Union representative, shall be allowed time off, with pay, during regular shift hours for investigating grievances, up to a maximum of one (1) hour per grievance, but not to exceed a total of three (3) hours per week, except with the permission of the Department Head or designee. The Chief Steward, or other authorized representative, shall not leave his/her regularly assigned work in order to investigate a grievance without first obtaining approval of his/her supervisor or other management representative holding a position of Section Head or Division Head. Such approval shall be granted with a twenty-four (24) hour notice to the supervisor or other management representative as defined above. A notice shorter than 24 hours shall not be arbitrarily denied.

5.2.1 If an employee is facing disciplinary action, the Chief Steward or other Union Steward will be permitted to attend the disciplinary hearing or the hearing will be postponed until the Chief Steward or other Union Steward is available.

5.3 The City agrees to meet once per month with a Union Committee to discuss matters pertaining to non-grievable items not covered in this Agreement provided the Union Committee submits a written agenda of the items for discussion at least three (3) working days prior to the meeting date. Such meetings shall be held at mutually convenient times. Whenever such meetings are held during normal working hours, the Union Committee shall be composed of not less than three (3) and not more than five (5) representatives.

5.4 During the term of this Agreement, up to two (2) weeks shall be allowed off the job, without pay, for no more than two (2) Union representatives at one time, to attend any regional, state, or national meetings of the American Federation of State, County, and Municipal Employees. No time off shall be granted under this paragraph unless the Department Head or designee gives permission and determines there is sufficient staffing available for departmental operations. This provision does not limit the Union to select the same two (2) representatives for the several meetings, but the aggregate time allowed for leave shall not exceed twenty (20) work days during each calendar year.

## **6. BULLETIN BOARDS**

6.1 The City shall permit the reasonable use of bulletin boards by the Union for the posting of notices relating to Union business provided that any such notice shall not be in violation of local, state, or federal law.

## **7. ACCESS TO PREMISES**

- 7.1 With the permission of the appropriate Division Head, such permission not to be arbitrarily withheld, representatives of the American Federation of State, County, and Municipal Employees, Council No. 93, and Local 481, may enter City premises for the investigation of pending disputes under the contract. A list of authorized Union representatives who may enter City premises shall be furnished by the Union within forty-five (45) days of the effective date of this Agreement to the appropriate Department Head, Division Head, and Director of Human Resources.

## **8. MANAGEMENT RIGHTS**

- 8.1 The City retains all right and authority to manage and direct its employees, except as otherwise specifically provided in this Agreement.

## **9. DEPARTMENT RULES**

- 9.1 The Union acknowledges the right of the City to make such rules and regulations governing the conduct of its employees as are not specifically inconsistent with the provisions of this Agreement.
- 9.2 The Unit President, the field representative for the Union, and the Chief Steward shall be supplied with a copy of the new or amended rule at least eight (8) working days prior to the posting of the new or amended work rule on the bulletin boards.
- 9.3 When work rules are changed or amended or new rules are established, they shall be posted on all bulletin boards for a period of ten (10) consecutive work days before becoming effective.
- 9.4 All Department rules and regulations shall be posted in conspicuous locations throughout the Department in order for employees to familiarize themselves with these rules. The City agrees to provide employees with an annual review of work rules when requested by the Union.
- 9.5 Employees will comply with all existing rules which are not in conflict with the terms of this Agreement. Any complaint involving discrimination in the application of new or existing rules may be processed through the grievance procedure.

## **10. STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED**

- 10.1 The Union agrees that during the term of this Agreement, neither it nor its officers or members will engage in, encourage, sanction, support, or suggest any (1) strikes, (2) slowdowns, (3) mass absenteeism, (4) mass resignations, or (5) picketing which would

involve suspension of or interference with normal work of the Department or other City Departments, or (6) any other similar action which would involve suspension of or interference with the normal work of the department or other City Departments.

- 10.2 In the event that Union members participate in such activities in violation of this provision, the Union shall notify those members so engaged to cease and desist from such activities and shall instruct the members to return to their normal duties. Any employee participating in these prohibited activities may be discharged by the City. The City agrees not to engage in any lockout of employees during the term of this Agreement.

## **11. GRIEVANCE PROCEDURE**

- 11.1 Should the Union, or an employee in the Unit, feel aggrieved concerning the interpretation or application by the City of any provision in this Agreement, the Union may seek adjustment of the grievance as follows:

11.1.1 The Union, through the Chief Steward, or other authorized Union representative, shall take up the grievance with the employee's Division Head or designee. The Division Head or designee shall issue a decision within ten (10) working days from the date the Union filed the grievance with the Division Head or designee.

11.1.2 If the grievance is not resolved at Step 11.1.1, within five (5) working days after receipt of the decision of the Division Head, the Union shall submit the details of such grievance in writing to the Department Head. Within five (5) working days thereafter, the Department Head or designee shall meet with a representative of the Union for the purpose of adjusting or resolving such grievance. Within ten (10) working days after said meeting, the Department Head or designee shall render a written decision.

11.1.3 If the grievance is not resolved at Step-11.1.2, within ten (10) working days after receipt of the written decision of the Department Head or designee, the Union representative may appeal to the Director of Human Resources by filing a written notice of appeal together with copies of the written grievance and the 11.1.2 decision. The Director of Human Resources or designee shall meet with the Union within fifteen (15) working days following receipt of the Union's written appeal to hear the grievance and shall provide a written decision within ten (10) working days of the date of the hearing.

11.1.4 If the grievance is not resolved at Step 11.1.3, within fifteen (15) working days after receipt of the written decision of the Director of Human Resources or designee, the Union representative may appeal to the City Manager by filing a written notice of appeal together with copies of the written grievance and responses at Steps 11.1.2 and 11.1.3. The City Manager or designee shall meet with the Union within twenty (20) working days following receipt of the Union's



written appeal to hear the grievance and shall provide a written decision within fifteen (15) working days of the date of the hearing.

- 11.1.5 In the event that the decision of the City Manager rendered pursuant to 11.1.4 above is not acceptable to the Union, within fifteen (15) working days after receipt of the decision at Step 11.1.4 it may request in writing that the matter be submitted to arbitration. The City and the Union shall mutually agree upon an arbitrator when possible. In the event they are unable to agree upon an arbitrator within seven (7) days of the request for arbitration, the arbitrator shall be selected through the American Arbitration Association in accordance with the rules of said Association then in full force and effect. The Union must submit a written arbitration request to the American Arbitration Association within sixty (60) days of the date of the City Manager's decision; if they fail to do so, they have forfeited their right to pursue the grievance to arbitration. Thereafter, arbitration shall be had in accordance with the rules of the American Arbitration Association. Said Arbitrator shall have no authority to add to, subtract from or modify the provisions of this Agreement. The arbitrator's decision shall be final and binding upon the parties hereto. The expenses of the arbitrator shall be borne equally by the parties.
- 11.1.6 The time limits for processing of grievances may be extended by written consent of the parties. Steps 11.1.1, 11.1.2, or 11.1.3 in the grievance procedure may be waived by written mutual consent of the parties. Absent such written extension, the Union may not appeal the grievance to the next step of the grievance procedure if they exceed the contractual time period for appealing the grievance; if the City exceeds the contractual time period for responding to a grievance without a written extension, the grievance will proceed to the next step of the grievance procedure providing the Union submits a timely written appeal to the next step.
- 11.1.7 At Steps 11.1.2, 11.1.3, 11.1.4 of the grievance procedure, the Department Head, Director of Human Resources, or City Manager may act through his/her Deputy, Assistant, or other duly authorized representative.
- 11.1.8 All grievances shall be commenced not later than thirty (30) days after the occurrence of the event giving rise to the grievance, or within thirty (30) days after the time such event became known to the employee or employees concerned, whichever shall be later.
- 11.1.9 Nothing in this Article shall diminish the right of any employee covered hereunder to present his/her own grievance as set forth in Title 26, Maine Revised Statutes Annotated up to and including the Manager's level. Any grievance processed by the Union shall go to a Grievance Committee of the Union before processing at Step 3 of the grievance procedure.

## **12. SAVINGS CLAUSE**

- 12.1 If any Article or section of this Agreement, or any riders thereto should be held invalid by operations of law or by any tribunal of competent jurisdiction, or if compliance with the enforcement of any article or section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement or any riders thereto shall not be affected thereby.
- 12.2 Within thirty (30) days after the expiration of the time for appeal from a final decree of a court of competent jurisdiction and no appeal having been filed, the City and the Union agree to meet to negotiate in regard to the specific Article, section, or rider held invalid by the court. This exception to Article 41, Embodiment, shall not be construed as limiting or otherwise modifying such Article 41, except as herein stated. The parties shall be required to negotiate only as to the specific Article, section, or rider declared invalid, and shall not be required to negotiate while any appeals of a decision are pending, but may do so upon mutual agreement.

## **13. WAGES AND SALARIES**

- 13.1 Effective July 3, 2016, employees will receive a **2.0% retroactive** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B(2).
- 13.2 Effective July 2, 2017, employees will receive a **2.0%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B(3).
- ~~13.3 Effective January 4, 2015, employees will receive a **1.5%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B(4).~~
- 13.3 Effective July 1, 2018, employees will receive a **2.0%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B(4).
- 13.4 Wages of permanent part-time employees shall be based upon the seniority step pay plans (Appendix B(2)(3) and (4) (5)) but such employees' base weekly wages shall be pro-rated on the basis of a forty (40) hour work week.
- 13.5 Retroactive pay increases will be paid to active employees and retirees as of the date of signing of this Agreement, for the period beginning on July 3, 2016 through July 1, 2017, employees will receive seventy five (75) % of the total amount of retroactive pay. For the period of July 2, 2017 through the date of implementation of the new pay plan, employees will receive full retroactive pay (the "period of retroactivity"). Retroactive pay will be determined by multiplying the difference between the employee's base wage during that same time period as determined by Appendix B(2) and if necessary B(3) and B(4) times the number of weeks at the new base wage and including all overtime. In the case of a promotion during the period of retroactivity, the employee's pay will be

based upon the employee's time in each position.

- 13.6 Employees who successfully complete the required certification tests and other criteria as outlined in departmental career ladders will be promoted in accordance with the appropriate career ladder following review and approval by the Department Head and Human Resources Director that all certification criteria have been satisfied. The promotion will be effective on the beginning of the full pay period following completion of all required criteria as certified by Human Resources. Employees are responsible for renewing all licenses used to justify the promotion and must satisfactorily complete all re-certifications (internal and external) in accordance with department policy. Failure to do so will result in a demotion to the appropriate pay grade, and the corresponding reduction in pay, providing the City has made available periodic opportunities for the employee to operate equipment on which they must re-certify.
- 13.7 Effective upon the signing of this agreement and upon implementation of kiosks with printers available to the employees, the City shall implement a paperless pay stub system. Also effective upon the signing and as soon as the re-loadable debit cards are available, all current and newly hired employees will have mandatory direct deposit for all monies owed by the City. The re-loadable debit card will be supplied by the City at no cost to the employees. The City agrees to give a two week notice to all employees prior to implementation.

#### **14. OVERTIME**

- 14.1 This section is intended to provide a basis for calculation of any payment of overtime. The total hourly rate shall include all stipends and differentials paid hereunder, unless excluded under the Fair Labor Standards Act.
- 14.2 Except as provided in 14.2.1 below, eight (8) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay. Ten (10) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay for employees on a four (4), ten (10) hour day work schedule.
- 14.2.1 Public Services Works employees who work the weekend shift during the winter period shall be scheduled to work three 12-13 hour shifts and shall receive forty (40) hours of pay. This Friday through Sunday schedule is their regular work week. Their hourly rate of pay will be adjusted for the winter period in accordance with the Fair Labor Standards Act (regular weekly salary divided by 36 39 hours worked).
- 14.3 Except as provided in 14.3.2 below and Appendix A for part-time employees, a monetary rate of one and one-half (1-1/2) times the base hourly rate shall be paid for all work performed by employees covered by this Agreement during the work week in excess of

forty (40) hours per week or eight (8) hours per day, but not for both; provided, however, that payment shall be modified under the circumstances described in Section 14.3.1 below.

14.3.1 Notwithstanding 14.3 above, if an employee uses sick time at the start of or during his regular shift, after working 16 consecutive hours or more previously the same pay period, then the overtime shall be paid at a straight time rate for the number of hours equivalent to the number of sick hours used.

14.3.2 Employees who work the weekend shift during the winter period will not be eligible for overtime after eight (8) hours per day on a regularly scheduled work day; instead, they will be eligible for overtime on a regular work day if they work in excess of their regularly scheduled ~~twelve (12)~~ thirteen (13) hour shift. These employees will be paid at time and one-half their adjusted hourly rate for all additional hours worked during Monday through Thursday, providing they do not call out sick during their regularly scheduled weekend hours.

14.4 With the concurrence of the Department Head and the employee, compensatory time off at a time and one-half rate may be provided in lieu of the mandatory overtime payment. ~~Except as provided in 14.4.2 below,~~ In no case shall an employee accrue more than ~~eighty (80)~~ one hundred (100) hours of such compensatory time.

14.4.1 Employees may earn up to a maximum of ~~ninety (90)~~ one hundred (100) hours of compensatory time during the fiscal year. This comp time will become a comp bank whereas an employee can either use the time off similar to vacation time or he/she can cash it out at any time during the year. If an employee still has a comp balance on the books at the end of the calendar year, the comp bank will be cashed out during the first pay date in January on a yearly basis to zero out any balances.

~~14.4.2 Employees may accrue up to forty (40) additional hours of compensatory time that will be earned at time and one half rate but will be taken at a later date as straight time pay. These hours may not be taken off in the form of paid time off. Employees who wish to accrue any hours of overtime worked in a given week into the Comp Time Cash Out program must fill out a Request Form designating the number of hours of total overtime worked as Comp Time Cash Out hours. When they wish to take payment from this bank of hours, they must complete another form requesting payment on the Friday prior to the pay date on which they wish to receive payment. Any hours left in the bank as of June 15<sup>th</sup> will be paid out at straight time prior to June 30<sup>th</sup> and additional hours may not be contributed to this bank between June 15<sup>th</sup> and the end of that fiscal year.~~

14.5 For the purposes of this section, "Hours Worked" shall mean only one of the following:

14.5.1 Hours actually worked.

- 14.5.2 Hours compensated for by holiday base pay.
- 14.5.3 Hours compensated for by bereavement leave.
- 14.5.4 Hours compensated for by vacation pay.
- 14.5.5 Hours compensated for by compensatory time off.
- 14.5.6 Hours compensated for by Jury/Witness pay only during periods of mandatory overtime.

14.6 For the purposes of this section, "Hours Worked" shall not include:

- 14.6.1 Hours compensated for by holiday premium pay.
- 14.6.2 Hours compensated for by call-back pay.
- 14.6.3 Hours compensated for by jury/witness pay, except as provided in 14.5.6 above.
- 14.6.4 Hours compensated for by reserve service leave.
- 14.6.5 Hours compensated for by sick leave pay.
- 14.6.6 Hours compensated for by personal leave pay.

14.7 Department Heads or his/her designee will discuss distribution of overtime with the Union upon request.

14.8 The following paragraphs apply to non-mandatory overtime.

14.8.1 When overtime work is necessary, the City will make every reasonable effort to distribute overtime that is scheduled at least 24 hours in advance equally among the regular, full-time employees. The City shall keep a list of employees who are on call for overtime that becomes available during the work week and weekends. Except as provided in 14.8.1.1 below, overtime will be offered first to employees in the Section, next to employees in the Division, and next to employees in the Department; provided that the employees are capable of performing the work. Except as provided in 14.8.1.1 below, the overtime list will be rotated so that an equal distribution of overtime will be afforded all employees; however the City will not make such reasonable effort in cases where employees refuse overtime work. Except as provided in 14.8.1.1 below, non-bargaining unit employees will not be offered scheduled overtime opportunities until after all available qualified bargaining unit employees in the Department are offered the overtime.

14.8.1.1 The Public ~~Services~~ Works Department will maintain an overtime log book in the Communications Center. Each Wednesday morning by 12:00 noon, full-time employees in the Department interested in volunteering for overtime starting the following Saturday may sign up. These volunteers must agree to work the total number of hours required for that assignment. Assignments may be scheduled throughout the week at any time so employees must make sure to sign the overtime log book by the Wednesday noon deadline. Should they decide to sign the book after the deadline to sign the book and the overtime was already filled, this will not be considered a missed opportunity.

Employees will be required to enter their own names into the overtime book. The removal of the names may only be done by a Section Head, Manager, or Director. In the absence of a Section Head, Manager, or Director, a Supervisor may be sought to approve the removal of the name(s). Failure to respond to a work assignment will be deemed as an unexcused absence and will be subject to disciplinary action.

14.8.2 When non-scheduled overtime occurs, such as when a particular project extends beyond the end of the normal shift, the bargaining unit employee working on that project during the day will be offered the overtime first and will not be required to sign the overtime book. When feasible, the supervisor will offer the overtime next to other Section employees; however, if the supervisor determines such a canvass is not feasible, the overtime will be offered to non-bargaining unit employees also assigned to that project during the day. Non-bargaining unit employees not assigned to work where the overtime occurs during the normal shift will not be offered the overtime prior to other available qualified bargaining unit employees in the Division.

14.8.3 When the City makes unintentional errors when calling employees to offer scheduled overtime opportunities, the following remedy for such missed opportunity shall apply to the employee who should have been called. Such employee will be granted an opportunity to work overtime equal to the number of hours s/he would have worked had s/he been properly scheduled. Such work shall be meaningful and beneficial to the City. Such overtime opportunity will be scheduled at a time that is mutually agreeable to the City and to the employee and shall not result in another otherwise deserving departmental employee to lose an overtime opportunity in order to satisfy the earlier error.

#### 14.8.4 **BARRON CENTER OVERTIME PROCEDURES**

##### 14.8.4.1 Non-Winter Period

Emergency/unforeseen events – first call will be to the person on standby for the week. If additional overtime is necessary, management will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

##### 14.8.4.2 Winter Period

Winter period is defined as November through April. Overtime is not considered voluntary during the winter period. Maintenance employees in the laundry division will also be utilized when necessary.

For known weather events – a schedule for additional hours/shifts will be posted prior to the event.

For unforeseen weather events and emergencies – the person on standby will be called first. If more than one person is needed, management will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

#### **14.8.5 JETPORT OVERTIME PROCEDURES**

14.8.5.1 The Jetport will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

14.9 ~~The Union agrees to provide individuals to work overtime during the non-winter months~~ When personnel are required to perform preparation for, participation in and clean-up related to Memorial Day and July 4<sup>th</sup> activities and cruise ship visits, overtime will be scheduled in accordance with normal departmental procedures. ~~The Union also agrees to provide individuals to work overtime during and in preparation for cruise ship visits to the Port of Portland.~~

14.10 The City will make available information on overtime distribution and accumulations as follows: Actual Hours Worked, Missed Overtime Opportunities, and Total Hours Combined. If the Union believes that the city is not making every reasonable effort to distribute overtime equally and make accurate postings, then, upon request, the City will meet with officers of the Union to discuss Union suggestions for the improvement of the City's procedure.

14.11 Overtime shall not be voluntary during the winter period or during periods of imminent danger to the health, safety, and property of Portland citizens (hereinafter referred to collectively as involuntary overtime). Definition of the winter period varies by Department. Unless specified otherwise in Appendix H or Appendix J the period is November 1 through April 1. Imminent danger determinations are made by the City Manager or designee. Overtime required to complete scheduled sanitation and recycling removal is considered to be involuntary overtime for the full calendar year. When, in cases of emergency, personnel and/or equipment are called in from other Departments, the personnel from other Departments shall be released from their duties when the workload lessens, unless they are acting as relief workers for regular, full-time workers.

##### **14.11.1 Winter Operations Staffing**

Employees' shifts and job responsibilities shall remain as current except as provided below. The City will limit each employee's winter operation obligation to sixteen (16) consecutive hours, with an eight (8) consecutive hours off-duty period, in the Public ~~Services~~ Works Department; exceptions to this schedule may be made if extenuating circumstances exist. Staffing and operational issues require that Aviation and Transportation employees continue to work throughout the snow event.

14.11.1.1 At Public Services Works, employees will be assigned to departmental winter operation teams. These teams will be called in for sand/salt, plowing or snow removal operations and maintenance of winter recreational facilities within designated times in order to achieve the sixteen (16) hour objective. When employees are needed to work in excess of sixteen (16) consecutive hours, such overtime shall be filled on a voluntary basis when possible.

14.11.1.2 Aviation and Transportation employees may take breaks as necessary and as approved by their supervisor. They will follow the break guidelines as outlined in Appendix J in order to balance the safety and operational needs at the Jetport.

~~14.11.1.3 The Construction agreement remains in effect during the winter period, allowing employees to remain on a four (4) day schedule and to perform construction duties during the winter period as weather permits. However, they will flex their schedule as described in Appendix H to work overnight to perform snow removal duties. They will receive straight-time pay for performing snow removal duties overnight; and, in the event the assignment lasts a full week or more, they shall be eligible for night shift differential for that period. In the event they are needed for snow plowing and/or sand/salt operations, not snow removal, they will work their full day shift and will be compensated in accordance with 14.3 for time worked outside their regular shift.~~

14.11.1.3 ~~Five (5)~~ Three (3) Public Buildings employees will be available to assist Public Services Works with snow plowing, sand/salt and snow removal operations throughout the storm.

14.11.1.4 Workers' Compensation claimants may be assigned transitional work, including shift work, which meets the needs of the City and the injured employee.

14.11.1.5 Employees shall be available at all of the following times:

- A. When directed to be available.
- B. Employees will be notified of predicted weather events through informational postings at the work site. Each employee is responsible for checking these postings daily.
- C. Some weather events occur suddenly. In the case of non-predicted weather events, the Union assures the City that



its members will respond as quickly as possible. The use of pagers, when furnished, is recommended.

14.11.1.6 Employees shall be available during the winter months as follows:

- A. The Departments of Public Services Works and Aviation and Transportation will make convenience pagers available to employees at the beginning of the winter season. Employees issued a convenience pager will be expected to notify the department upon receiving the page and to report to work promptly. These pagers offer the employee the ability to move about normally during the winter months while fulfilling their responsibility to the City to be available.
- B. Employees who choose not to accept a convenience beeper will be expected to "be available" during the winter period. They will be contacted via telephone and will be expected to be available when called. The employee must keep their telephone line reasonably open and available for calls. Employees are encouraged to contact the department if snow is predicted and if they will be unavailable to answer the phone for any period of time.

14.11.1.7 Employees who are not available as defined above will be subject to progressive discipline.

14.11.2 The City reserves the right to make all decisions regarding the City's response to the emergency. The parties agree that employees from other bargaining units and from other departments may be utilized as necessary to supplement unit members regularly assigned to snow removal or other emergency operations providing that unit members in other departments who volunteer to participate in winter operations outside of their regularly scheduled shift are called first.

~~14.11.3 Labor management committees have been established to make advisory recommendations regarding hardship requests and overtime refusals. These recommendations will be agreed to by the parties prior to implementation. These committees may also make recommendations regarding emergency response procedures and refer safety issues to the appropriate safety committee.~~

#### 14.11.3 Hardship

The City recognizes that certain individual situations may cause hardship in regards to involuntary overtime and/or shift assignments. Requests for hardship exemptions for overtime, shifts or other extraordinary circumstances will be considered through the following process. All employees with current or

predictable hardship situations must request a hardship exemption. The request must be submitted in writing to a departmental representative as designated by the Department Director by August 15. ~~Requests for shift change exemptions due to non-medical hardship reasons will be forwarded to a Union Committee for review and action. The Committee will consider the request and submit its decision in writing and with supporting documentation to the Department Director on or before September 1.~~ Hardships being requested for medical reasons for either a shift exemption or an overtime exemption will be handled by the Department Director in consultation with appropriate staff resources. The City shall not unreasonably deny such requests.

~~14.11.3.1.1 An employee granted an overtime or shift hardship exemption will waive his/her contract right for equalization of overtime.~~

~~14.11.3.1.2 The Department Director will meet with the Union Committee that acts on shift exemption hardship requests for non-medical reasons on an annual basis to discuss the past decisions that the Committee has rendered.~~

#### 14.12 Call-Back Pay

14.12.1 Employees called back to work shall receive a minimum of two ~~(2)~~ three (3) hours pay at the overtime rate for the work for which they are called back, or may receive one and one half (1-1/2) times their base hourly rate under the above provisions, whichever is greater, but not both.

14.12.2 Employees who report to work within thirty (30) minutes of the time they are first called shall be paid from the time of said call; otherwise, they shall be paid from the time they report to work.

14.12.3 If an employee is called into work within one hour of the normal starting time for their shift, such time shall be paid at the one and one-half (1 1/2) overtime rate for the actual time worked. If such call-in is an hour or longer prior to the start of the normal work shift, the "call-back" provisions in 14.12.1 and 14.12.2 shall apply.

14.12.4 An employee is not eligible for any additional "call-back" pay under this provision if they are called back to work within one (1) hour of the time they arrived for a previous "call-back." If an additional "call-back" occurs beyond one (1) hour from arrival time of a previous "call-back" the employee will receive additional "call-back" pay. If additional "call-backs" occur within one (1) hour and the employee is at work beyond two (2) hours the "call-back" pay provision shall apply.

#### 14.13 Stand-by Pay

14.13.1 If a Division elects to designate a person to carry a beeper, they will solicit volunteers and designations will be made from qualified volunteers providing sufficient volunteers are available. If a sufficient number of qualified volunteers are not available within the Division or the Department, the City will designate a qualified Division employee to be on stand-by. Such designation shall be made on the basis of inverse order of seniority on a rotating basis. The payment for the stand-by designation shall be ~~\$15.00~~ \$18.00 per day on weekdays and ~~\$22.50~~ \$27.00 on weekend days and holidays.

14.13.2 Employees designated to be on stand-by may respond to ~~questions~~ issues over the phone. If the employee must respond to the work site, the call-back provision in 14.12 shall apply.

14.13.3 This provision does not apply to employees who carry a convenience pager at any time during the year.

#### 14.13.4 Sewer Stand-By

14.13.4.1 The Union will provide the City with a primary and a secondary person to respond during off-duty hours to address sewer problems or emergencies. The City will contact the primary responder to assess the situation. The primary responder will determine if the secondary responder needs to be called.

14.13.4.2 The primary responder responsibility will rotate between the City's Sewer Inspectors. The secondary responder responsibility will rotate among the unit members of the Wastewater Section of Public Services.

14.13.4.3 The Sewer Inspectors will receive stand-by pay of one hour of straight time pay on week days and one hour of overtime pay on week end days and holidays.

#### 14.13.5 30-Week and Islands Beeper Program

14.13.5.1 The Public ~~Services~~ Works 30-week beeper program for mainland personnel will be continued for the non-winter period during each year of this contract.

14.13.5.2 The Public ~~Services~~ Works Islands beeper program will be continued year-round for the duration of this contract.

#### 14.13.6 Traffic Section Stand-By

- 14.13.6.1 The Union will provide the City with a primary person to respond during off-duty hours to address Traffic problems and/or emergencies.

~~\*\* See grievance response dated February 27, 2015 for rotation language.~~

- 14.13.6.2 The primary responder responsibility will rotate between the City's (2) Systems and Lighting Technicians and the Traffic Signal Repair Worker, creating a three (3) person (minimum) rotation. The Pager Swap Form shall be filled out at least 24 hours ahead of any personnel changes to the rotation. Other Traffic Division employees may be required to be on call when needed.

- 14.13.6.3 The primary responder who responds remotely to traffic calls shall receive for an initial call, one half hours (1/2) pay at the applicable overtime rate. For all additional calls within the twenty-four hour period, pay will be for actual hours worked at the applicable overtime rate. If the employee must respond to the work site, the call-back provision in 14.12 shall apply.

## **15. MEAL ALLOWANCE**

- 15.1 An employee shall receive an additional ten (\$10.00) dollars as a meal allowance whenever said employee shall have worked a period comprising twelve (12) consecutive hours (including meal and rest breaks and incentive time) except as provided in 15.1.1 below. Incentive time for the purpose of this article is defined in Article 14.11 and 20.4.

15.1.1 Public Services and Fleet Services employees who work the weekend shift during the designated winter period will receive a lump sum meal allowance payment in the amount of one hundred twenty (~~\$120.00~~) sixty (\$160.00) at the start of each winter period in December to cover the entire designated winter period.

15.1.1 Public Works employees during the designated winter period will receive a lump sum meal allowance payment in the amount of one hundred sixty (\$160.00) dollars at the start of each winter period in December to cover the entire winter designated winter period. Employees assigned on a regular basis to help Public Works from Parks, Rec & Facilities during the designated winter period will also receive one hundred sixty (\$160.00) dollars at the start of the winter period in December to cover the entire designated winter period.

## **16. HOLIDAYS**

16.1 The following holidays shall be paid holidays for all employees covered by this Agreement:

- |                               |                                                   |
|-------------------------------|---------------------------------------------------|
| 1. New Year's Day             | 8. Columbus Day                                   |
| 2. Martin Luther King Jr. Day | 9. Veterans Day                                   |
| 3. President's Day            | 10. Thanksgiving Day                              |
| 4. Patriot's Day              | 11. Day following Thanksgiving Day                |
| 5. Memorial Day               | 12. Christmas Eve (1/2 day except as noted below) |
| 6. Independence Day           | 13. Christmas Day                                 |
| 7. Labor Day                  |                                                   |

16.1.1 Compensation of permanent full-time employees, who work a 5-day Monday through Friday schedule, for the holidays listed above is described in paragraph 16.2. Compensation of permanent full-time employees who work a 7-day coverage schedule is described in paragraph 16.3. Holiday payment for permanent full-time employees who work a modified schedule is defined in the Memorandum of Agreements that outline the terms and conditions of that schedule. Compensation for permanent part-time employees for the holidays listed above is described in paragraphs 16.4 and Appendix A.

16.2 Permanent employees working a Monday through Friday Work Schedule

16.2.1 Payment for full-day holidays under this Article shall be made on the observed, not the actual, holiday. If any of the above full-day holidays falls on a Sunday, the following Monday shall be the observed holiday. If it falls on a Saturday, the preceding Friday shall be the observed holiday. Employees will receive base holiday pay equal to the hours they would normally work that day of the week. Employees who work on the holidays will receive additional compensation as outlined in 16.5.

16.2.2 Permanent full-time employees receive a half-day holiday on Christmas Eve in those years that December 24<sup>th</sup> falls on a Monday, Tuesday, Wednesday or Thursday. The second half of the employee's shift is the holiday period. The employee will receive base holiday pay for the second half of the shift; if the employee works the second half of their scheduled shift, s/he will also receive holiday premium pay as outlined in 16.5. If December 24<sup>th</sup> is not a regular work day for the employee, the employee will not receive any holiday base pay for Christmas Eve but will be paid in accordance with 16.5 if s/he is called into work after Noon on December 24<sup>th</sup> providing December 24<sup>th</sup> falls on a Monday, Tuesday, Wednesday or Thursday that year.

16.2.3 For permanent full-time employees, full-day holidays that fall on an employee's regularly scheduled day off, s/he may elect to receive one of the following: ~~a holiday credit of eight (8) hours, or eight (8) equivalent hours of straight time~~ base holiday pay equal to the number of hours the employee

normally works during the week in which the holiday occurs, or a day off with pay in the same work week which the holiday occurs, immediately prior to or following the holiday.

16.2.4 If an observed full-day holiday occurs during the work week in which an employee is actually on schedule vacation, the employee will not be charged a vacation day for the day of the observed holiday. This provision also applies in those years that Christmas Eve falls on a Monday, Tuesday, Wednesday or Thursday.

### 16.3 Permanent Employees Working a Seven-Day Coverage Schedule

16.3.1 Seven-day coverage employees means employees who work a five (5) day schedule that is other than a Monday through Friday schedule. This designation may apply on either a seasonal or year-round basis.

16.3.2 Payment for New Year's Day, July 4<sup>th</sup> and Christmas Day shall be on the actual, not the observed, holiday for seven-day coverage employees. Payment for all other holidays shall be on the observed holiday. Payment for full-day holidays (actual or observed) shall be base holiday pay equal to the number of hours the employee normally works that day of the week.

16.3.3 For full-time employees, the employee has the options described in 16.3.2 above if one or more of the actual full-day holidays listed above in 16.3.2 falls on an employee's scheduled day off. The provisions of 16.2.3 are also applicable if the employee is not regularly scheduled to work on the observed date of one or more of the holidays not specifically listed above.

16.3.4 Seven-day coverage employees receive a half-day holiday on Christmas Eve in those years that December 24<sup>th</sup> falls on a day that the employee is regularly scheduled to work. The employee will receive holiday base pay for the second half of their shift and will receive holiday premium pay as described in 16.5 if required to work during the second half of their shift.

### 16.4 Permanent-Part-Time Employees

16.4.1 Part-time benefit eligible employees receive base holiday pay only if the holiday falls on a day the employee is regularly scheduled to work. The amount of holiday pay will be based on the number of hours the employee would normally be scheduled to work on that day of the week.

16.4.2 Part-time employees who work on a holiday receive holiday premium pay as outlined in 16.5 below, for the actual hours worked on the holiday.

16.4.3 Part-time employees do not receive any additional pay, comp time, or additional time off when a holiday falls on the employee's scheduled day off.

## 16.5 Holiday Premium Pay

16.5.1 Except as provided in 16.5.3 and ~~16.6~~, employees who work on an observed holiday during the twenty-four (24) hour span of the observed holiday, or in the case of Christmas Eve during the second ~~four (4)~~ half of the hours normally worked during their ~~of the work~~ shift, shall be entitled to their base pay, plus one and one-half (1-1/2) times their base hourly rate for all hours worked during the normal ~~eight (8) hour~~ scheduled work shift of the employee. The twenty-four (24) hour span for any overlapping shift, starts at the beginning of the shift.

16.5.2 ~~Except as provided in 16.6~~, Any hours worked in excess of ~~eight (8)~~ the number of hours the employee is normally expected to work during the above-described holiday period shall be compensated at a rate of two (2) times the employee's base hourly rate.

16.5.3 Employees who work on Thanksgiving Day or Christmas Day, during the twenty-four (24) hour span of the observed holiday, shall be entitled to their base pay plus one of the following for all hours worked that day:

16.5.3.1 double time their base hourly rate; or

16.5.3.2 compensatory leave earned at the double time rate.

16.5.4 Solid Waste Division employees regularly assigned to perform sanitation and recycling duties will work on the actual or observed holidays that fall during their regular schedule except for the actual Christmas Day holidays and the actual New Year's Day holidays. Employees will be expected to pick up sanitation and recycling on the Saturday prior to or following for both of these holidays if the holiday falls on a weekday. If Christmas and New Year's fall on the weekend then employees will be expected to pick up sanitation and recycling on the observed holiday. Employees will receive overtime compensation for actual hours work on the Saturday prior to or following for both Christmas and New Year's holidays. Thanksgiving and the day after will not be worked. Solid Waste Division employees will be paid regular holiday pay for both days.

16.5.4.1 Sanitation and Recycling collection will be picked up on the actual or observed holiday and will be staffed using unit volunteers from throughout the Department during both non-winter and winter months. Employees will receive overtime pay for only the actual hours worked on the Saturday, as well as holiday base pay if the observed holiday is worked. Solid Waste unit employees shall be given priority over other Department unit employees for such overtime. The practice of starting Holiday pick-up at 0700 instead of the normal start time will cease.

16.5.4.2 Notwithstanding the above, a minimum of seven (7) Solid Waste unit employees shall be required during holiday collection and Saturday collection before or after a holiday. The remaining six (6) employees necessary to fully staff this operation may come from employees who volunteer for this purpose by signing the overtime volunteer book in the Department's Communications Center.

16.5.4.3 If the Solid Waste Section fails to acquire the seven (7) volunteers from within its ranks or the six (6) Departmental volunteers necessary to satisfy the staffing requirements outlined in 16.5.4.2 above, the remaining positions shall be filled on a mandatory basis via reverse seniority from the remaining Solid Waste employees who did not volunteer.

16.6 Public Services employees working the weekend shift during the winter period shall be paid as follows:

16.6.1 If the holiday falls on an employee's regularly scheduled work day but the employee is not scheduled to work that day, the employee will receive ~~twelve~~ ~~(12)~~ thirteen (13) hours of base holiday pay at their straight time hourly rate.

16.6.2 If the holiday falls on an employee's regularly scheduled work day and the employee is scheduled to work that day, the employee will receive base holiday pay plus actual hours worked at time and one-half times their straight time hourly rate during the 24-hour span of the holiday. In the event the employee works more than their regular scheduled hours, they will receive double time instead of time and one-half for any hours worked in excess of ~~twelve~~ thirteen.

16.6.3 If the holiday falls on an employee's regularly scheduled day off and they do not work the holiday, the employee will receive eight (8) hours of straight time pay.

## **17. VACATIONS**

17.1 Subject to the limitation on accumulation and earning of vacation leave set forth in Subsection 17.4 vacation leave shall be earned from the date upon which the employee is first covered by this Agreement. Other non-bargaining unit employment with the City will be credited provided it is consecutive City service.

17.2 Except as provided in Appendix G, vacation leave shall be earned by permanent full-time employees at the rate of 1.54 hours per week in the first through the second year of service; 2.31 hours per week in the third through sixth year of service; 3.08 hours per week in the seventh through nineteenth year of service; and 3.85 hours per full payroll week in the twentieth and each succeeding year of service. The weekly earnings rate



shall be adjusted in the final week of the calendar year in accordance with annual accrual amounts of 80 hours, 120 hours, 160 hours, and 200 hours. This year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of these annual amounts.

17.3 Vacation leave earnings shall be credited and posted on a weekly basis. For purposes of this Article, years of service is defined as permanent consecutive City service.

17.4 Employees may accumulate earned vacation time on the following basis:

17.4.1 All employees hired prior to January 1, 1979 may accumulate up to a maximum of 240 hours of vacation leave.

17.4.2 All employees hired on or after January 1, 1979 may accumulate up to a maximum of 160 hours of vacation leave.

17.4.2.1 Any employee with 20 years of service or more may accumulate up to 200 hours; however the maximum payout for vacation leave will remain at 160 hours.

17.4.3 In the event that an employee has accumulated the maximum amount of leave, including time converted from sick to vacation leave pursuant to Article 24.3, Conversion of Sick Leave, such employee shall not earn any additional vacation leave. The employee will begin earning vacation leave again in the month in which the earned leave drops below the maximum, but such earnings shall not be retroactive.

17.5 Vacations shall be scheduled by the Department Head or designee, throughout the calendar year as long as such scheduling does not interfere with normal work-flow requirements as determined by said Department Head. Subject to the foregoing, seniority of employees within division will be the basis for scheduling vacations.

17.6 Employees may use accumulated vacation days on a single day or hourly basis, provided that the request has been made prior to noon of the preceding workday and has been approved by the Department Head or designee.

17.7 Employees shall be compensated for all accumulated vacation leave at the time of separation subject to the limitation on the maximum accumulation.

17.8 Vacation Call-In Pay

17.8.1 An employee who is actually on scheduled vacation and is called in to work once the vacation has started shall be paid a rate of two and one-half (2 1/2) times his base hourly rate for all hours worked during his normal work shift of eight (8), ten (10) or twelve (12) hours. Any hours worked in excess of the employee's normal work shift during vacation call-back time shall be compensated at the

rate of three (3) times the employee's base hourly rate. In addition, the employee called in from vacation time shall have his lost time from vacation rescheduled according to the manner set forth in this section, provided that the rescheduling does not interfere with another employee's scheduled vacation, who is in the same job classification.

## **18. INSURANCE**

### **18.1 Life Insurance**

18.1.1 The present practice with respect to City and employee participation in the cost of the Maine Public Employees Retirement System group life insurance premiums shall be continued. Dependent and supplemental life insurance is also available at the employee's expense for those who participate in the group life insurance plan. The City reserves the right to obtain benefits equal to or better than the basic Maine Public Employees Retirement System Group Life Insurance Plan from an alternative source and to offer said alternative plan on the same terms as above during the life of this Agreement.

18.1.2 The City agrees to continue life insurance deductions on a pre-tax basis as provided by the Internal Revenue Service.

### **18.2 Medical Insurance**

18.2.1 The City provides a self-insured health insurance benefits program with claims administration by a third-party administrator.

18.2.1.1 First year of implementation of the changes to the City's health plan shall include a two hundred dollar (\$200) deductible for the single plan and four hundred dollar (\$400) deductible for the family plan per year.

18.2.1.2 The second year of implementation of the changes to the City's health plan shall include a four hundred dollar (\$400) deductible for the single plan and eight hundred dollar (\$800) deductible for the family plan per year.

18.2.1.3 The City agreed to establish a reserve account of one hundred fifty thousand dollars (\$150,000) to be used as outlined by the Health Insurance Advisory Committee.

18.2.2 For employees who are hired into a permanent position prior to March 1, 1985, the City will pay the full cost of the medical insurance premium for an individual or family subscription as appropriate per employee as outlined in section 18.2.5 below.

18.2.3 For employees who are hired into a permanent position on or after March 1, 1985, the City will pay the full cost of the medical insurance premium for an individual subscription per employee and for one-half (1/2) of the cost of the family subscription for an employee who is eligible for and who elects to have said family medical insurance coverage. Employees are responsible for the full payment of the +19 premium. Effective January 1, 2005 there will be no separate +19 premium and the City will pay fifty-three percent (53%) of the difference between the cost of the individual subscription for an employee who is eligible for and who elects to have said family medical insurance. Effective no sooner than January 2016, the City will pay 85% of the medical insurance premium for an individual subscription per employee. Annually, the employee will have the opportunity to earn up to a 15% premium credit by meeting the five (5) requirements of the City's wellness program that consist of completing a health risk assessment (3%), completing biometric testing (3%), meeting with a health coach (3%), documenting fitness related activity (3%), and being tobacco free or enrolled in a smoking cessation program (3%).

18.2.4 The City's contribution for the individual or family premium as determined under subsections 2 or 3 above will be prorated for permanent part-time employees as provided in Appendix A.

18.2.5 The City will pay, or share in the payment of in the case of permanent part-time employees, or employees eligible for insurance under subsection 3 above, only the subscription level to which an employee is entitled by virtue of the number of people he/she may insure. However, employees who are members of the same family and eligible for more than one family subscription will be entitled to full or part payment, as appropriate, from the City for no more than one family subscription, with other family members entitled only to individual subscriptions. Said subscription shall be on the same terms and conditions as specified in subsections 18.2.1 - 18.2.4 above.

18.2.6 The City will provide the Union with thirty (30) days prior notice of any change in insurance provider, and the Union shall have ten (10) days thereafter within which to comment on such change.

18.2.7 The City shall begin payment on health insurance premiums on the first full month of employment. Upon separation, any balance due for that month's employee's premium will be deducted from the employee's final paycheck or balance billed if the final paycheck is insufficient to cover the amount due.

18.2.8 The City agrees to continue dependent care health benefit deductions on a pre-tax basis as provided by the Internal Revenue Service. The City further agrees to continue pre-tax health care flexible spending accounts effective January 1, 2002.

18.2.9 Re-opener: Notwithstanding any provision of this Agreement, either party may reopen this health insurance article and the salary article on or after July 1, 2001. The salary article shall only be reopened if the health insurance article is renegotiated and upon request of either party. Any subsequent negotiations shall be conducted in accordance with the most recent executed ground rules.

18.2.10 A member of the bargaining unit may be appointed by the bargaining unit to serve on a Health Insurance Advisory Committee, comprised of one (1) member from each participating bargaining unit in the City and an equal number of City representatives. The parties agree to participate in quarterly Labor/Management Advisory meetings to review claims experience data, track the effectiveness of the plan design changes and any other health benefit issues of concern to either party.

18.2.11 Except as provided in 18.2.12.1 below, the City agrees to continue health care benefit deductions on a pre-tax basis as provided by the Internal Revenue Service.

18.2.12 For the purposes of this article "family" is defined as spouse or domestic partner, and dependents. To enroll a domestic partner on the City's health insurance plan, the employee must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

18.2.12.1 The portion of the employee's health insurance contribution for domestic partner coverage as outlined in 18.2.3 above will be taken on a post-tax basis.

18.2.12.2 The City's contribution to the premium cost for domestic partner coverage and coverage of dependents of the domestic partner will be reported as imputed income at year end, in accordance with Internal Revenue Service regulations, and will be calculated into the employee's gross earnings as taxable wages.

### 18.3 Income Protection and Dental Insurance Deductions

18.3.1 The City agrees to deduct premiums for the Union's income protection plan for employees participating in said plan and so long as the Union makes said plan available. The deduction for the Union plan will be made pursuant to Article 4, Dues. Following contract execution employees will have the option to participate in the MMEHT Income Protection Plan.

18.3.2 Employees may participate in any dental insurance plan which may be made available to employees at their own cost and through payroll deductions. Employees may enroll a spouse and dependent children on the plan. Employees may enroll a domestic partner on the plan providing the employee satisfied the

City's eligibility requirements for claiming an individual as a domestic partner. In no case shall the City be required to make a dental insurance plan available to employees.

## **19. PENSIONS**

- 19.1 The City is a participating local district under the Maine Public Employees Retirement System (MainePERS). Permanent/project employees who work a normal week of 21 hours or more per week are required to join the retirement system program in accordance with the MainePERS Rules, or join the City's alternative ICMA-RC 401(a) plan as provided below. The employee's decision to join either plan is irrevocable for all periods of employment with the same employer as per MainePERS laws and rules.

19.1.1 The City shall continue to participate in the Maine Public Employees Retirement System (MainePERS) Regular Plan, Rule 94-411 Chapter 803, Sec, 7, Paragraph A (Regular Benefit Plan AC). The City further agrees to continue to participate in the cost of pension payments under the options currently in effect. The MainePERS Board of Trustees may establish by rule the rate at which members (employees) who participate in the Consolidated Plan contribute to that Plan.

- 19.1.2 The City currently offers an ICMA 401(a) defined contribution qualified pension plan to new hires and current employees as an alternative to participation in the Maine Public Employees Retirement System defined benefit plan. Maine Revised Statutes Title 5, Section 18252-B sets forth the employee and employer contribution rates.

- 19.2 The City agrees to continue to participate in a qualified deferred compensation plan for permanent part-time employees who work 20 hours or less per week. The deferred compensation plan provides for immediate vesting and optional withdrawal of the account balance upon the employee's termination.

- 19.3 The Union agrees not to grieve, arbitrate nor litigate on behalf of any employee(s) any claim or claims, directly or indirectly, arising out of the City's practice in regard to employee voluntary buy-back, solely at employee expense, of retirement service for the first six months of employment for employees hired prior to July 1, 1984.

- 19.4 The City agrees to continue pension deductions on a pre-tax basis as provided by the Internal Revenue Service. State Income Tax deductions will be calculated in accordance with State Tax Law.

## **20. REGULAR HOURS OF WORK**

- 20.1 The regular work week shall consist of five (5) consecutive days. The regular hours of

work, or shift, shall be eight (8) consecutive hours, excluding interruptions for lunch or meal periods. Upon mutual agreement between the City and the Union the regular work week may be modified in whole or in part to meet the service needs of the citizens of Portland and to provide flexibility to the employees. Ten (10) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay for employees on a four (4), ten (10) hour day work schedule. ~~Twelve (12)~~ Thirteen (13) hours worked shall constitute a day's work and ~~thirty six (36)~~ thirty-nine (39) hours worked shall constitute a week's work at base hourly rates of pay for employees on a three (3), ~~twelve (12)~~ thirteen (13) hour day work schedule. A proposed modification which affects one or more but not all divisions will be voted on by the affected sections within the affected division, provided the modification relates to hours of work and related articles only.

20.1.1 There will be two weekend schedules, in addition to the three (3) five-day weekday shift schedules, at Public Services Works during the winter period. The weekend schedules will consist of three ~~12-~~ 13 hour shifts on Friday, Saturday, and Sunday.

20.2 Each employee shall be scheduled to work a shift with regular starting and ending times. Upon the determination by the City of its staffing needs, assignments to work weeks and shifts shall be made from the classification or classifications needed. Except as provided in 20.2.1, 20.2.2 and 20.2.3 below, such shift assignments shall be made first on the basis of volunteers by seniority and then on the basis of inverse seniority, defined as time in the classification. Work schedules showing employee shifts, work days, and hours shall be posted on all department bulletin boards at all times. Work schedules shall not be changed, except for emergencies or for good cause, including, but not limited to achieving operating economies, adjusting to technological changes, affecting a change in work program, or reflecting a change in work site. Except in the event of an emergency, the City agrees to provide employees a minimum of two (2) weeks' notice of work schedule changes by posting such changes on departmental bulletin boards.

20.2.1 A designated representative from the Department of Public Services Works will distribute a Labor and Trades Winter Shift Assignment Selection Sheet at the beginning of September to all employees subject to winter shift assignments. Employee's preferences for winter shift assignments will be selected with this Selection Sheet and submitted to the designated representative prior to September 15. The designated representative from the Department of Public Services Works will put the shift list together based on seniority. Public Services Works positions that are exempt from winter shift assignments will be listed in Appendix H. The City will finalize the winter shift schedule on or before October 1.

~~20.2.2 Assignment of Public Services employees to the winter shifts among those eligible to bid on the winter weekend shifts shall be on the basis of overall bargaining unit seniority among the volunteers who agree to operate a one-person plow unit as required.~~

20.2.2 Assignment of Public Services Works employees eligible to bid on the first, second, and third week day shifts and the weekend day and weekend night shifts shall be on the basis of overall bargaining unit seniority. ~~Before the canvass begins for these shifts, third shift employees will decide if they wish to remain on that shift; if they do wish to remain on the third shift, they will not be included in the canvass.~~

20.3 Except as provided in 20.3.1 or 20.3.2 below, unpaid lunch or meal periods of thirty (30)-minutes shall be in the middle of the work shift. Morning and afternoon coffee or rest breaks of fifteen (15) minutes maximum duration shall be granted by the supervisor, but no such break need be granted during periods of emergency operation affecting the health, safety, and property of Portland's citizens. The supervisor of crews working in areas where coffee is not readily available shall have complete discretion as to the number of employees who can leave the job site, and how coffee or refreshments are obtained. Employees in the unit shall have a ten (10) minute cleanup period immediately prior to their lunch period and immediately prior to the end of their shift, except during periods of emergency operation affecting the health, safety and property of Portland's citizens. Modifications shall be allowed upon mutual agreement between the City and the Union.

~~20.3.1 Employees working the winter weekend shift at Public Services will receive two (2) one half hour breaks during the shift instead of one half hour meal break and two fifteen (15) minute coffee or rest breaks. Employees working in Public Works will receive a paid lunch during the winter period.~~

20.3.2 For all other departments, with the approval of the Department Director, or Designee, employees working in certain divisions and sections may have the option of a thirty (30)-minute paid meal break in the field. The meal break shall occur as close to mid-shift as possible, at the discretion of the Supervisor. A twenty (20)-minute mid-morning break may also be taken in the field. One person may be designated to obtain food and beverages for the crew. The break will not start until the "runner" returns with food and work will resume at the end of the specified mid-morning break (20 minutes) or meal break (30 minutes.) If a store or restaurant is located adjacent to a work site employees may purchase food during the 30-minute meal break, but the total meal period will not exceed 30-minutes. The two, 10-minute wash up periods are eliminated before lunch and at the end of the work shift. The end of the work shift shall be thirty (30) minutes earlier. Punch out time is five (5) minutes prior to the end of the shift. Crews may break down work sites ten to twenty minutes prior to punch out time in order to allow adequate travel time back to a central location. The location of the job site and distance from the central home base will determine the time in which work sites are broken down. Managers and Supervisors shall have discretion to determine when it is feasible for breaks and meals to be taken on-site due to severe or inclement weather conditions. Modifications shall be allowed upon mutual agreement of the City and the Union.

#### 20.4 Incentive Work Schedule

20.4.1 The City agrees to continue to permit employees assigned to the Sanitation and Recycling ~~subsection~~ of Solid Waste to work an "incentive" work schedule, which will provide that employees may leave work prior to the end of their shift if the Solid Waste Supervisor determines that all required work within the ~~subsection~~ is completed. Employees may be required to stay after the required work within Sanitation and Recycling is completed to assist with snow plowing and winter operations, holiday trees collection (two weeks), fall leaf collection (four weeks), and emergency situations. When required to stay and work on the above-mentioned operations, Sanitation and Recycling ~~subsection~~ employees are eligible for overtime pay after the completion of their normal work shift of eight (8) hours. The "incentive" will apply when the employees of this division are not required to move into one of the above-mentioned operations. Such determinations will be made by Department management.

20.4.1.1 Employees within the ~~Sanitation and Recycling subsection~~ Solid Waste section may be assigned to either the Sanitation crew or the Recycling crew. Within this ~~subsection~~ employees will have a primary assignment to either the Sanitation or Recycling crew but management may use people in either program as needed. For example, management may utilize staff normally assigned from one crew to supplement the other crew to cover full or partial day absences or to temporarily readjust staffing in the event of equipment failures or other unanticipated events as well as the management of daily workload issues. Temporary changes in assignments shall not be made in an arbitrary or capricious manner.

20.4.1.2 The Department's prior practice of regularly supplementing the Sanitation crew with Districting personnel has been discontinued.

20.4.1.3 Maintenance Worker II's assigned to Sanitation and Recycling will be covered by this provision (Incentive Work Schedule) only on the days they are assigned to a packer or recycling truck for their full shift. On days they are not assigned to a packer or recycling truck, they will be required to work a full eight (8) hour shift performing other duties within the Division as assigned by the Solid Waste Supervisor, Solid Waste Coordinator, or designee.

20.4.2 Any hours not actually worked up to eight hours under the incentive plan shall be compensated at the individual's regular rate of pay and shall count as hours worked under Article 14, Overtime, and Article 15, Meal Allowance, in accordance



with the collective bargaining agreement.

20.4.3 Employees regularly assigned to perform Sanitation and Recycling duties will not be subjected to winter shift schedule changes; they will, however, be subject to mandatory overtime. When required to assist with the plowing of snow during their regularly scheduled shift, which shall occur in those emergency situations when the Director determines that plowing takes priority over Sanitation and/or Recycling duties, the incentive schedule will not apply for the designated shifts.

20.4.4 The City reserves the right to discontinue the incentive work schedule for employees in the Sanitation and Recycling subsection of Solid Waste with a ninety (90) day written notice to the Union. Thereafter, the Union reserves the right to bargain over the impact of such decision.

## **21. NIGHT SHIFT AND IN-CHARGE DIFFERENTIAL**

### **21.1 Night Shift Differential**

21.1.1 Except as provided in 21.1.2 below, employees who work a night shift on a regular basis with fifty percent (50%) of the regular hours being worked after 6:00 p.m. shall receive a shift differential allowance of forty-five cents (\$.45) per hour for the entire night shift. Employees who work a night shift on a regular basis with fifty percent (50%) of regular hours being worked after 11:00 p.m. shall receive a shift differential allowance of sixty-five cents (\$.65) per hour.

21.1.2 Employees in the Public Services Works Department or Parks, Recreation and Facilities department who work the week end shift schedule during the winter will receive \$.25 50 cents per hour associated with the weekend day schedule and a \$.75 cents per hour for the forty (40) hours associated with the weekend night schedule.

### **21.2 In-Charge Differential**

21.2.1 The Director of Health and Human Services or designee may designate a member of the maintenance staff of the Barron Center to provide supervision to the maintenance crew. Such employee will receive additional pay of \$1.00 per hour for performing these duties.

21.2.2 The Director of Health and Human Services or designee may designate a member of the maintenance staff of the Social Services Division to provide supervision to the Social Services facilities staff and to assist the Social Services Facilities Manager with determining future building and plant needs. Such employee will receive additional pay of \$1.00 per hour for performing these duties.

21.2.3 Employees who maintain a current State of Maine Municipal Right-of-Way

Pesticide License, Category 6 A/D, shall be paid a \$1.00 per hour stipend for the actual hours worked performing an authorized pesticide spraying operation.

21.2.4 The Airport Manager or designee may designate a third-shift Airport Maintenance Worker to be in-charge of third-shift maintenance personnel as described in Appendix J. Such employee will receive additional pay of \$1.25 per hour for performing these duties.

21.2.5 Mechanic and Autobody Repair personnel in Fleet Services who possess up-to-date ASE and/or EVT certifications will be compensated with a \$.25 per hour stipend for each certification up to a maximum of eight (8) total certifications.

21.2.6 Welding personnel in Fleet Services are eligible for a \$1.00 per hour stipend after obtaining an American Welding Society Unlimited Thickness Plate certification or \$1.00 per hour after obtaining a Pipe Certification from the State of Maine Board of Boilers and Pressure Vessels. Maximum welding stipend allowed is \$2.00 per hour.

21.2.6.1 A designated Island employee may qualify, with provided proof of certification, for the welding stipend for hours worked only while performing welding duties

21.2.7 Employees will receive stipends listed above in 21.2.5, and 21.2.6 and 21.2.6.1 after they provide written proof to the Fleet Services Manager or Principal Administrative Officer that they have obtained the required certification(s). Stipends shall be effective at the start of the next payroll period following submission of the proof of the certification(s) to the City.

21.2.8 The Public Works Director or designee may designate a Mechanic III at Fleet Services to be the Lead Heavy Equipment Technician. Such employee will receive additional pay of \$1.00 per hour to perform the duties as required by the Fleet Manager.

## **22. HIGHER PAY FOR HIGHER CLASSIFICATION OF WORK**

22.1 The City shall maintain and make available to the Union detailed descriptions of the duties of each employee classification. Such descriptions may be amended from time to time by the City. An employee may be temporarily assigned to work in any position in a higher classification, if the need arises during a workday. On the following workday, such assignment shall be given to any available qualified employee having such higher classification.

22.2 Any employee who is temporarily assigned to work of a higher classification for which a higher rate of pay is applicable shall, if he performs such work for a minimum of one full

hour, be paid at the "6 month to 1 year" pay step in the higher classification or the first step in the higher classification which guarantees a minimum of a three-percent increase in pay, whichever is greater. This provision applies to higher class assignments in Local 481-00 and Local 481-07.

- 22.3 Employees who are assigned work in a higher classification for ~~ten (10)~~ eight (8) consecutive workdays or more shall be entitled on the ~~eleventh~~ ninth workday of such assignment to compensation at the appropriate seniority step of the higher classification pay grade. ~~Upon contract execution the employee will receive compensation at the appropriate seniority step on the eighth (8<sup>th</sup>) consecutive work day in the assignment.~~ Vacation leave or holidays shall be paid at this higher rate beginning on the eleventh ninth day of the employee's assignment to the higher classification of work.
- 22.4 Should an employee be temporarily assigned to work of any lower classification, they shall not suffer any reduction in his negotiated rate of pay while so working.
- 22.5 Maintenance Workers (pay grade 14) who are assigned to dig graves using a backhoe in the Cemeteries will be paid as Maintenance Worker I (pay grade 16) in accordance with 22.2 or 22.3.

### **23. TOOL ALLOWANCE**

- 23.1 The City and the Union agree that employees who are required to furnish tools in the classifications listed below shall be entitled to a three hundred-fifty dollar (\$350.00) tool allowance per fiscal year for tools purchased during that fiscal year. The tool allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. The employee will receive reimbursement within a thirty (30) day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance pro-rated for that year and any overpayment will be deducted from their separation pay.

~~23.1.1 The City agrees to furnish to employees the necessary metric tools in the event the City purchases equipment that requires the use of metric tools. Employees will not be required to purchase metric tools during the life of this Agreement.~~

#### Classification List

Airport Facilities Technician  
Airport Maintenance Worker (hired prior to July 1, 1996)  
~~3<sup>rd</sup> Class Welder~~  
Trades Worker I, II and III

- 23.2 The City and Union agree that employees who are required to furnish tools in the classifications listed below shall be entitled to a ~~five~~ six hundred dollar ~~(\$500)~~ (\$600) tool allowance for tools purchased during that fiscal year. ~~Upon signing of this~~

~~agreement, the tool allowance will increase to six hundred dollars (\$600.00) per fiscal year.~~ The tool allowance will increase by \$50 for fiscal year 2018 and by another \$50 for fiscal year 2019. The tool allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. The employee will receive reimbursement within a thirty (30) day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance for the year pro-rated and any overpayment will be deducted from their separation pay.

#### Classification List

Autobody Repair Worker  
Mechanic I  
Mechanic II  
Mechanic III  
1<sup>st</sup> Class Welder  
2<sup>nd</sup> Class Welder  
3<sup>rd</sup> Class Welder

23.3 ~~Airport Maintenance Workers and Assistant Airport Facilities Technicians hired into their current position on or after July 1, 1996~~ will be issued an initial tool pouch upon hire by the Department that will contain the tools necessary to their job. The list of tools that are currently being provided are listed in Appendix J (Jetport) ~~and Appendix P-4 (Facilities)~~. They will be expected to use these tools for work purposes only and to take proper care of them. In the event a tool is damaged during performance of City work, the Department will replace the tool. The employee will be personally responsible for replacement of City issued tools that are used for non-City purposes. All tools will be returned to the City at termination of employment.

23.4 The tools purchased in accordance with this article are tools that are used on a regular basis by the employee for their City job. Such purchases are to be pre-approved by the employee's Division Head or designee.

~~23.5 Labor management committees will meet during the term of the contract to discuss and make recommendations to the City regarding what tools the City provides for all affected Maintenance employees and what tools the employees should provide.~~

#### **24. SICK LEAVE**

24.1 For full-time employees who work the standard 5-day schedule sick leave shall accrue at the rate of 1.85 hours per week beginning with the first payroll week of service with unlimited accumulation. Full-time permanent employees who work a 3-day or 4-day schedule shall accrue sick leave at the rate of 2.31 hours per week beginning with the first payroll week of service with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual

amount of 96 hours for employees working a 5-day schedule and 120 hours for employees working a 3-day or 4-day schedule. The year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the annual amount.

24.2 Sick leave may be used only in the following cases:

24.2.1 Personal illness or physical incapacity, including pregnancy or related disabilities (including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery there from) which is defined as a condition of such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which he or she is assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.2 Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.3 Employees who wish to use sick leave to care for a domestic partner in accordance with 24.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

24.3 Conversion of Sick Leave to Vacation

24.3.1 Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of vacation leave.

24.3.2 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of pay at their regular rate.

24.3.3 Employees may make one of the above elections only once for any consecutive twelve month period, and only once during any twelve month period.

24.4 Conversion of Sick Leave to Personal Leave

24.4.1 Any permanent employee working the standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days of previously earned sick leave to an equivalent amount of personal leave. Employees with at least twelve

months of service on July 1<sup>st</sup> of each fiscal year who wish to make such a conversion will notify the City of their decision during the month of July. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only. Neither conversion of sick leave to personal leave or subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of determining an employee's eligibility for converting sick leave to vacation.

24.4.2 Sick leave will be converted to personal leave at the time the conversion is elected and the personal leave balance will change as personal leave time is used. In no event shall the employee's personal leave balance exceed two (2) days in any fiscal year. At the end of the fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, providing the total balance of personal leave for the upcoming fiscal year does not exceed two (2) days.

24.4.3 Personal leave is intended to be used for personal needs and is not to be used to circumvent departmental procedures for processing vacation requests. When using personal leave time, the employee is not required to give the reason for the use of such time. However, the employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit and will comply with the minimum notice requirements listed below. Personal leave requests will not be approved on a retroactive basis.

24.4.3.1 During periods of mandatory overtime, a twenty-four hour notice is required for the use of personal leave. The employee is responsible for contacting the Department Director or designee to request the time off; Dispatch does not have the authority to approve such requests. Failure to provide this notice or failure to contact one of the individuals listed above may result in a denial of the use of personal leave. In the event of a denial, the employee must report to work as scheduled and will be disciplined for failure to do so. The City reserves the right to deny personal leave requests made in compliance with the 24-hour notice request in the event that the employee will be required for emergency operations.

24.4.3.2 In the case of emergencies, personal leave must be requested and approved prior to the start of the employee's shift and will not be approved on a retroactive basis. The City will make every effort to accommodate these requests, even during periods of mandatory overtime; however, requests may be denied during periods of mandatory overtime if the employee is needed for emergency operations.

24.4.4 Personal leave does not count as "hours worked" for the purpose of calculating overtime and personal leave balances are not payable at separation from employment. However, any employee shall have the option at separation to convert unused personal leave to sick leave.

## **25. ON-THE-JOB-INJURIES**

25.1 Employees who have been injured while performing an official duty shall be paid for the time lost on the date of injury. Such pay will not extend beyond the normally scheduled work shift, exclusive of overtime. Such time lost will not be charged to sick leave. After a period of twelve (12) consecutive months on Workers' Compensation, an employee shall not earn holidays, vacation days, or sick leave. An employee may elect to use any accumulated days to make up the difference between their Workers' Compensation and their regular weekly salary.

### **25.2 Transitional Work**

25.2.1 It is the goal of the City of Portland to assist an employee who sustains a work-related injury to return to the position they held at the time of their injury. To that end, the City has defined specific work assignments or "Transitional Work" that will be made available to those injured workers who, in the judgment of the City, will probably be able to return to "Regular Work" within three years of the date of injury. This decision will be based in part on information provided by health care professionals.

25.2.1.1 "Transitional Work is defined as a temporary job assignment created for the purpose of this provision or a regular job assignment that has been modified to eliminate or significantly limit one or more of its essential functions temporarily for the purpose of this provision.

25.2.1.2 "Regular Work" is defined as the position the employee held at the time of injury or, in the event that position is not available, another suitable position.

See Appendix E-2 for a sample Transitional Work agreement.

### **25.2.2 Eligibility**

Participation in the Transitional Work Program will be limited to a period of three (3) years after the date of initial injury. In order to be eligible for assignment to Transitional Work, an employee (1) must have sustained an injury arising out of and in the course of employment with the City of Portland; (2) must have the approval of a treating physician; and (3) must sign a Transitional Work Agreement. The City will provide Transitional Work within the injured

employee's department providing such work is available.

#### 25.2.3 Duration of Assignment

An employee who meets the eligibility requirements in this policy will be assigned to the next available Transitional Work assignment and will be permitted to work up to ninety (90) days in that assignment. If at the end of the ninety (90) day period, the employee has not been released to Regular Work, the employee will no longer be eligible for Transitional Work unless further medical evidence is presented that permits the City to believe that, with reasonable further periods of Transitional Work, the employee will probably be able to return to Regular Work. If such evidence is provided, the City may offer additional periods of Transitional Work for up to three years from the initial date of injury.

If, during the course of the Transitional Work, it becomes evident to the City that the injured worker probably will not be able to return to Regular Work within three (3) years of the date of injury, the Transitional Work may be terminated. Such employees retain any rights they may have under M.R.S.A. Sec. 217 with regard to employment rehabilitation.

#### 25.2.4 Re-Employment within Three Years of Date of Injury

25.2.4.1 If an employee becomes capable of performing the essential functions of the position held on the date of injury, with or without reasonable accommodation, within three years of the date of injury, the employee may return to work in that capacity. Upon return to work, the employee shall receive pay and benefits at the level he/she would have received if the injury had not occurred.

25.2.4.2 If the employee cannot return to the position held on the date of injury within three years of the date of injury, the City will evaluate the employee's ability to perform other permanent assignments at an equal or lower pay grade within the bargaining unit.

25.2.4.3 Upon a determination of capability to work, the employee will provide the City with his/her current medical restrictions and the positions he/she wishes to be considered for if unable to return to "Regular Work". If the employee is able to return to work for the City, but not in the position held at the time of injury, pay and benefits shall be determined by the City under the appropriate bargaining agreement and with the concurrence of



the bargaining unit representative. If the employee should return to a non-union position, the City's Non-Union Personnel Policy will determine pay and benefits.

25.2.4.4 The acceptance or refusal of appointment to a position other than the position held on the date of injury shall not terminate the employee's right to seek re-employment in the position held on the date of injury.

25.2.4.5 This section assumes that the employee remains in active status and has not been terminated in accordance with 25.4.2. In the event that an employee terminated in accordance with 25.4.2 becomes capable, within the 3-year period from date of injury, of performing his/her previously held position, s/he will be returned to that position if it is vacant and will receive the contractual rate of pay for that position. If the previously held position is not available or another position in that classification is not available, s/he will be placed in a vacant bargaining unit position as soon as a position the employee is qualified to perform becomes available. The employee will receive the rate of pay they were receiving when they were terminated for the remainder of the three (3) year period or the contractual rate of pay for that position, whichever is greater, until a position in the previously held classification becomes available.

25.3 Except as provided in 25.3.2 below, effective January 1, 2004, employees out on Workers' Compensation must pay their pension contribution based on the wage portion of the Workers' Compensation benefits that the employee receives. All pension payments will be made pursuant to the rules of the Maine Public Employees Retirement System. If payment is not made within thirty (30) days of when the employee receives the Workers' Compensation benefit, the employee will be responsible for accrued interest until all contributions are paid.

25.3.1 Employees out on Workers' Compensation prior to January 1, 2004 may pay their pension contribution on an optional basis under the rules of the Maine Public Employees Retirement System. If such employee contribution is paid while the employee is out on Workers' Compensation or by the end of the calendar year during which the employee lost time, the employee is required to pay their contribution amount. If the employee pays their share after this date, they will be responsible for their contribution plus interest in accordance with

Maine Public Employees Retirement System laws. The City will pay its share, including interest, in accordance with Maine Public Employees Retirement System laws.

25.3.2 The City has provided notice to the Maine Public Employees Retirement System of employees out on Workers' Compensation between January 1, 2004 and October 28, 2005, and has paid the interest accrued from January 1, 2004 through the date of the letter(s) sent to each employee by the Maine Public Employees Retirement System regarding payment of pension contributions on their Workers' Compensation benefits. If payment is not made within thirty (30) days of when the employee receives the MainePERS letter, the employee will be responsible for accrued interest until such contributions are paid.

25.3.3 Retirement service credit will be provided only for time for which pension contributions have been made.

#### 25.4 Termination of Employment

25.4.1 In those cases where an employee is unable to perform regular Work and health care professionals determine, at any point during the three (3) year period following date of injury, that the employee will be unable to return to regular Work during the three (3) year period, the employee may be terminated from employment on or after eighteen (18) months following date of injury. This termination is non-disciplinary and the employee will receive a 90-day notification.

25.4.1.1 In the event the City exercises its right to terminate as described above prior to three (3) years from date of injury, and providing the employee becomes capable of returning to Regular Work prior to the three (3) year date, s/he will be returned to work at the contractual rate of pay for the position or the same rate of pay as s/he was receiving at the time of termination, whichever is greater.

25.4.2 If unable to return to Regular Work by the date specified in the ninety (90) day notification listed in 25.4.1 above and, providing the updated medical report indicates a work capacity, the employee will provide the City with his/her current medical restrictions and the positions he/she wishes to be considered for as an alternative to termination. The provisions of 25.2.4 will apply if the employee is capable of performing another permanent budgeted position within the City that is available within the ninety (90) day period.

### **26. UNUSED SICK LEAVE UPON SEPARATION**

26.1 During the term of this Agreement, when an employee is laid-off, the employee shall

receive an amount equal to his/her salary at the time of lay-off for one-half (1/2) the number of days of his/her accumulated unused sick leave up to a maximum of ninety (90) days of pay.

- 26.2 During the term of this Agreement, when an employee retires from continuous permanent active service with the City and is immediately eligible for retirement benefits, he/she shall be entitled to receive an amount equal to his/her salary at the time of retirement for one-half (1/2) of accumulated sick leave up to a maximum of ninety (90) days of pay, provided the employee has a minimum of sixty (60) days of sick leave accumulated. Retiring employees with less than sixty (60) days shall not receive any payment.
- 26.3 In the event of death before retirement of an employee covered by this Agreement, unused sick leave shall be paid to the employee's designated beneficiary or estate, in the salary equivalent to one-half (1/2) of his/her then accumulated unused sick leave, said payment not to exceed payment for ninety (90) days.
- 26.4 In the event of death in the line of duty of an employee, the City shall pay one hundred percent (100%) of his/her total accumulated unused sick leave balance to the employee's designated beneficiary or estate.
- 26.5 For resigning employees of good standing with less than ten (10) years of continuous permanent service with the City, payment shall be one-fifth (1/5) of accumulation with a maximum payment of twenty four (24) days; for resigning employees of good standing with ten (10) years or more of continuous permanent service with the City, payment shall be one-half (1/2) of accumulation with a maximum payment of forty-five (45) days. A good standing resignation is considered to be two (2) weeks notice of resignation.

## **27. LEAVES OF ABSENCE**

### **27.1 Short-Term Leave of Absence**

A regular employee may be granted a leave of absence without pay by a Department Head when approved by the Director of Human Resources, for a period deemed necessary by the employee for the purpose of the leave, but not in excess of sixty (60) days. The employee requesting such leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

### **27.2 Special Leaves (Long-Term)**

The City Manager, upon the recommendation of the Department Head and the Director of Human Resources, may authorize special leaves of absence with or without pay for any period or periods not to exceed one calendar year for the following purposes: attendance at college, university or business school for the purpose of training in subjects relating to the work of the employee and which will benefit the employee and

the City service; urgent personal business requiring the employee's attention for an extended period, such as settling an estate, liquidating a business; or for purposes other than the above that are deemed beneficial to the City service. The employee requesting such special leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

### 27.3 Family Medical Leave

27.3.1 Consistent with the applicable state or federal Family Medical Leave law, employees may be eligible for unpaid, job protected leave of up to twelve (12) weeks. Requests for leave pursuant to this provision shall be made to the appropriate department Human Resources representative and will be administered in accordance with applicable law, as may be amended from time to time. An employee who has been employed for twelve (12) consecutive months and who has worked 1250 hours in the last twelve months is may be entitled to up to twelve (12) consecutive weeks of Family Medical Leave in any twelve month period. The twelve month period during which this entitlement may occur is measured backward from the date the employee's first FMLA leave begins. ~~The leave shall be an unpaid leave unless the employee elects to use accumulated vacation leave or accumulated sick leave.~~

27.3.2 Whenever possible, the employee must give at least thirty (30) days notice to their department Human Resources representative of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving such notice. The leave may be consecutive, intermittent, or on a reduced hourly schedule if the City and employee agree, or if medically necessary. Upon request, the employee shall provide medical certification, in the form of a completed City of Portland Health Care Provider Certificate Form, of the need for the leave. FMLA leave is governed by the requirements of the state and/or federal FMLA laws, as they apply. If the requirements, benefits, definitions and/or scope of FMLA changes during the term of this Agreement, such changes are automatically incorporated by this Agreement.

27.3.3 Employees who request to use Family Medical Leave for the purpose of caring for a domestic partner, or child or parent of domestic partner, must satisfy the City's eligibility requirements for claiming an individual as a registered domestic partner.

#### 27.3.4 Substitution Provision – Paid

The City may require the use of accrued paid benefit leave, including sick leave, vacation leave, personal leave and compensatory time to the extent that it is allowed under State and/or Federal Family Medical Leave laws while the employee is on an unpaid Family Medical Leave or extended medical/disability leave of absence.

#### 27.4 Disability Leave

27.4.1 When disabled, an eligible employee may be placed on an unpaid leave of absence not to exceed three months if (1) either the employee or his/her attending physician requests same, or (2) the employee's attendance or performance becomes unsatisfactory because of the disability. Should the Department Head determine that an employee's attendance or performance is unsatisfactory because of a disability, the employee may be required to take a leave of absence. In making such a determination, the Department Head shall place major emphasis upon the recommendation of the employee's physician, as the recommendation concerns the employee's health and physical capabilities. In the event the employee does not have a physician, the Department Head may direct the employee to go to a physician selected by the City. In order that such physician shall have the necessary facts upon which to base his/her recommendation, the Department Head and the Director of Human Resources shall furnish the physician with a statement concerning the requirements of the job and the conditions under which it is performed. In any instance in which the Department Head requires the employee to go on leave of absence, if the affected employee files a grievance, the burden of proof shall then be upon the City as to the correctness of such determination. In the event such determination is found to be unjustified, the employee involved shall be reimbursed for all lost time and/or restored all lost sick leave credits. The initial twelve (12) week period of disability leave will be processed as Family Medical Leave if the disability is covered by the Family Medical Leave Act.

27.4.2 Except for emergencies, the employee shall submit written notification to the Department Head at least two weeks prior to his/her anticipated departure stating the probable duration of the leave. The Department Head may require the employee to provide a statement from his/her physician setting forth (1) the anticipated duration of the disability, and (2) whether the employee may continue to perform his/her work assignments.

27.4.3 Upon written request of the employee submitted to the Department Head at least two weeks prior to the expiration of the granted leave, and at the discretion of the City Manager, after recommendation of the Department Head and the Director of Human Resources, a disability leave of absence without pay may be extended or renewed for an additional period of time but not to exceed a total of twelve months duration.

27.4.4 Disabilities caused or contributed to by pregnancy are, for all job-related purposes, temporary disabilities.

27.4.5 Accumulated sick leave benefits shall be applied to any portion of the requested or required leave so eligible at the option of the employee, but cannot be used to extend a disability leave beyond the twelve-month period.

- 27.5 The employee is expected to return to work upon the expiration of the granted leave or to have arranged an extension of the leave prior to its expiration. Failure on the part of the employee to return to work on the expiration of the granted leave may be deemed a resignation from service.
- 27.6 Employee's requests for leaves of absence under this Article shall not be denied in an arbitrary or capricious manner, but remain discretionary with the City except in the case of Family Medical Leave under 27.3.2.
- 27.7 Any leave of absence taken in accordance with this Article (Article 24) shall not be deemed a break in service for seniority purposes. The City shall continue to provide the employee with health insurance coverage for the duration of any authorized leave. Employees shall not accrue sick or vacation leave or receive payment for holidays for the duration of any authorized leave that exceeds twelve (12) weeks in duration.

## **28. OTHER LEAVE**

### **28.1 Bereavement Leave**

An employee shall be excused from work for up to five (5) work days because of death of a spouse or domestic partner, a child or a parent and three (3) work days because of death in his/her immediate family, as defined below, and shall be paid his/her regular rate of pay for the scheduled working hours missed. Not more than eight (8) hours per day (10 hours for employees working a four/ten schedule or 12 hours for employees working a 3-day winter weekend schedule) shall be paid under this Article. It is intended that this time off be used for the purpose of handling necessary arrangements and attendance at the funeral. Immediate family is defined to mean brothers, sisters, half-brothers, half-sisters, daughter-in-law, son-in-law, mother-in-law, father-in-law, grandparents, grandchildren, step-children, children of a domestic partner, step-parents, sister-in-law and brother-in-law. Immediate family also includes members of domestic partner's family similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner. An employee may use three (3) more calendar days of bereavement leave chargeable to sick leave immediately annexed to the initial leave if in the sole opinion of the Department Head the additional time is needed for travel or because of other extenuating circumstances. Said extension shall not be arbitrarily withheld. Bereavement leave charged to sick leave shall not count as sick leave usage for the purposes of Article 24.3, Sick Leave Conversion to Vacation.

### **28.2 Funeral Leave**

In addition to the foregoing, one (1) day (8 hours for employees working a 5-day schedule, 10 hours for employees working a four/ten schedule or 12 hours for employees working a 3-day winter weekend schedule) may be used for attendance at

the funeral of the following relatives: aunt, uncle, niece, nephew, or other relative living in the same household or a domestic partner's relative that is similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner.

28.3 Personal Leave

Personal leave, without pay, may be granted to employees covered by this Agreement by the appropriate Department Head or his authorized representative, if such Department Head or authorized representative deems there is good and sufficient reason for granting said personal leave. A minimum twenty-four (24) hour notice is required to be given by the employee, excluding Mondays and days following a holiday in emergency situations. However, on such Mondays and days following a holiday, the employee shall give notice in the most practical manner within fifteen (15) minutes after the start of the normal work day so that the appropriate Department Head can make adjustments in the day's work schedule.

28.4 Military Leave

Military leave and any rights to re-employment after such leave shall be available to employees under the terms and conditions of applicable federal and/or state law as may be amended from time to time. Any person restored to service under such law shall be restored with accrued seniority. ~~However, no vacation, sick leave, or other benefits shall accrue during the period of the employee's absence while in the military service to the point of restoration to City service.~~

28.5 Reserve Service Leave

Reserve service leave and rights to re-employment after such leave shall be available to employees who are members of the organized military reserves or National Guard, under the terms and conditions of applicable federal and/or state law as may be amended from time to time. For any period of Reserve Service Leave of up to three (3) weeks in any calendar year, the City will pay the difference between the employee's total service pay for said field duty and the employee's regular compensation, the sum of both payments to equal the regular weeks pay of the employee had he/she been in the City service during this period. The employee using Reserve Service Leave shall furnish his/her Department Head with an official statement of reserve service pay received.

28.6 Any disputes as to rights under applicable federal and/or state law in regard to military leave and reserve service leave are not arbitrable but may be determined by a court of competent jurisdiction.

28.7 Jury/Witness Pay

28.7.1 The City shall pay to an employee called for jury duty the difference between his/her regular pay and his/her juror's pay. The employee shall notify the City as

soon as possible of his/her intention to serve as juror. The employee will continue to be paid regular weekly wages during the term on the jury and upon receipt of juror's pay will present an official statement of juror's pay. If such juror's pay is less than the employee's regular wages for the period served as a juror, the employee shall submit to the City the entire portion of that juror's pay. However, if such juror's pay is greater than the employee's regular wages for the period served as a juror, the employee shall submit to the City that portion of the juror's pay which equal the wages paid to him/her for the period served as a juror.

28.7.2 The City shall pay to an employee subpoenaed to appear as a witness in a case, other than a case in which the employee is a plaintiff, the difference between his/her regular pay and his/her witness pay. Such witness pay shall be handled in the same manner as jury pay above.

#### 28.8 Jury/Witness Duty

In the event an employee is called to jury duty or is subpoenaed as a witness in a case (wherein the employee is not a plaintiff or a defendant in the case), he/she shall be granted leave to fulfill that obligation. The employee will be excused from the shift that encompasses the majority of hours on the same calendar day as the jury/witness duty.

All jury/witness duty requests must be pre-discussed with the Department Head or designee. The Department Head or designee and the employee will predetermine based on the specific situation whether the employee will be available to work for a full or partial shift.

An employee who is excused by the Court earlier than originally anticipated is required to contact their immediate supervisor promptly. The supervisor will determine if there is work to be done and whether or not the employee will be required to report for City duty on that day.

Employees who work part time will be granted leave with pay for the hours or days that the employee is excused for jury duty and for which the employee was scheduled to work.

Employees on jury/witness duty leave when a City holiday occurs will receive their normal holiday pay. Actual jury duty service on a holiday will not result in any additional compensation or time off since jury duty service is not considered to be City employment.

### **29. PERSONNEL EVALUATIONS**

29.1 The City and the Union agree that all evaluating during the life of this Agreement will be made according to the system outlined in Appendix C.



- 29.2 The AFSCME Performance Appraisal Committee shall continue to meet on an as needed basis during the term of this agreement to monitor the effectiveness of the appraisal process and to recommend changes as appropriate.

### **30. CLOTHING**

- 30.1 All employees in the Unit shall wear the clothing provided by the City during work hours, and maintain a clean and neat appearance. Employees shall report to work with the City-provided personal protective equipment (PPE) necessary for their job. The Department Director, or designee, may require employees to turn in clothing and PPE provided by the City upon separation.
- 30.2 The City will make available outerwear appropriate for the work being performed on an "as needed" basis, as determined by the Department Director, or designee.
- 30.3 The City agrees to provide Mechanics with 5 6 sets of shirts and pants, including six (6) summer shirts per week through a lease agreement and 1 pair of insulated winter coveralls and 1 pair of regular coveralls per fiscal year. Mechanics who choose not to participate in a lease agreement will receive the clothing described in 30.7, below.
- 30.4 Individual Division Heads shall determine appropriate footwear for employees in their divisions. The City agrees to reimburse all employees covered by this Agreement up to a maximum of ~~\$175~~ \$200.00 towards the purchase of safety-toe footwear (as specified by the American National Standards Institute – Z41.1 – 1967), protective toe caps, laces and boot liners per fiscal year. Remaining footwear balances at the end of the fiscal year will not be forwarded or "rolled over" to the next fiscal year. Employees who receive reimbursement for boots within 30 days of separation with the City, will have the reimbursement deducted from their separation pay.

The Department will contribute an additional \$75 per fiscal year towards the purchase of safety footwear for Forestry and Horticulture employees.

- 30.5 The City will reimburse employees up to a maximum of \$150 during the remaining term of this Agreement toward the purchase price of safety prescription eyeglasses (as specified by the American National Standards Institute – Z87.1.)
- 30.6 The City shall furnish employees with the personal protective equipment (PPE) necessary to perform their job. Replacements shall be on an "as needed" basis as determined by the Department Director or designee. Employees are expected to properly care for personal protective equipment issued to them.
- 30.7 The City agrees to provide employees who work predominantly a 5-day schedule with 5 summer shirts, and a combination of 5 winter shirts or sweatshirts. Employees working a 5-day schedule will be reimbursed up to a maximum of \$150 per fiscal year toward the

purchase of pants. Employees who work predominantly a 4-day or 3-day schedule will receive 4 summer shirts, and a combination of 4 winter shirts or sweatshirts. Employees who work a 4-day or 3-day schedule will also be reimbursed up to a maximum of ~~\$120~~ \$150 toward the purchase of pants per fiscal year. Employees can purchase any number of pair of pants for the amount of money listed above but there will be no replacements and employees will be expected to be in proper clothing provided by the City. The City will provide employees with 1 winter jacket and replacement will be made on an "as needed" basis. The City is not required to provide clothing if an employee is out of work during the season of issuing. The employee will be issued clothing for the season they return to work as defined in Appendix H or J.

### **31. JOB TRAINING**

31.1 The City shall continue its policy of providing employee training through participation in the financing of credit and non-credit training courses related to the duties and responsibilities of the employees as City resources allow.

31.2 General job training will be provided periodically on an individual and group basis, both on the job and off when, in the opinion of the City, such training is necessary.

31.3 Maintenance Worker job titles ~~shall be changed with the execution of this Agreement,~~ are as follows:

- |                |                        |
|----------------|------------------------|
| ▪ Pay Grade 14 | Maintenance Worker     |
| ▪ Pay Grade 16 | Maintenance Worker I   |
| ▪ Pay Grade 17 | Maintenance Worker II  |
| ▪ Pay Grade 18 | Maintenance Worker III |

31.4 The Public Services Maintenance Worker III career ladder and re-certification program is terminated with this Agreement. Employees having attained the Maintenance Worker III classification at Public Services via the old career ladder, or through the terms of this Agreement, shall not be required to re-certify on various pieces of equipment, or other Departmental functions, in order to maintain their Maintenance Worker III classification and pay grade. Maintenance Worker III employees will be required to plow one-person during winter operations. Any Maintenance Worker II employee promoted to a Maintenance Worker III, under the terms of this Agreement, who chooses not to plow one-person during winter operations shall remain a Maintenance Worker II.

31.4.1 Maintenance Worker I employees, so classified at pay grade 14 prior to this Agreement, may be promoted to a Maintenance Worker I classification at pay grade 16 by completing the old Maintenance Worker II career ladder. The old Maintenance Worker II career ladder shall remain in force until December 31, 2009, at which time it will terminate.

31.4.2 A Public Services labor-management committee made up of equal

numbers of labor and management representatives will meet regularly to discuss training needs. The Committee will meet monthly unless it is mutually agreed that less frequent meetings are needed. The labor-management committee will provide Department management with a list of employees who need training and also the type(s) of training needed. The committee will monitor the timeliness of training and will provide department management with input regarding the provision of regular on-the-job and new hire training that will result in a well-trained, productive work force.

- 31.5 If the City requires specific training for existing employees in a given classification, the City will pay for the course work and will provide straight time pay for all hours spent in training beyond the normal work day, straight time until total hours worked that week equal forty (40) and time and one-half for hours over forty (40) in accordance with the Fair Labor Standards Act.
- 31.6 Probationary employees, including those employees fulfilling a promotional probationary period, shall be expected to fulfill the licensing requirements of their classification during the probationary period without any financial contribution from the City. The employee is expected to meet the licensing requirements during the applicable probationary period unless unable to do so as a result of circumstances beyond the employee's control, such as the timing of examinations by a third party.
- 31.7 When the employee is required by the City to travel overnight, the City agrees to reserve the overnight accommodations and pre-pay the lodging expenses. Employees will be reimbursed for meal expenses in accordance with Administrative Regulation 1 after submitting receipts. Employees using a personal vehicle while traveling on City business will be reimbursed in accordance with the current IRS mileage rate. Whenever feasible, the City will provide pre-paid credit cards for the purchase of fuel.
- 31.8 Any employee who is designated by the Department Director or designee to teach equipment operation to other employees shall receive a \$1.50 per hour training differential for the time spent in an authorized training session, providing the training is conducted during the employee's regular work hours. Employees who provide training outside of their regular work hours will receive time and one-half their regular base hourly rate in lieu of the training differential.

## **32. WITHDRAWAL OF RESIGNATION**

- 32.1 An employee may resign in good standing by giving written notice to his/her Department Head at least fourteen (14) calendar days in advance of the effective date of his resignation. An employee may, with the approval of the Department Head, withdraw his resignation during the fourteen (14) day notice period. Such approval shall not be arbitrarily denied.

### **33. FILLING OF JOB VACANCIES**

33.1 Except as provided in 33.1.1 and 33.1.2 below job openings shall be posted on departmental bulletin boards for a minimum of seven (7) working days. At the time of posting, the Unit Presidents will be sent selection criteria for posted openings in their Unit. The posted notice shall describe the job and any pertinent job specifications. Suitable transfers will be allowed. A transfer shall be considered suitable if it is in the same classification or is a position of equal pay grade in the unit and, in both instances, the employee must be qualified as determined by the City. If there are qualified applicants and unless there are unusual or emergency circumstances, the vacancy shall be filled within thirty (30) working days from the date of application closing, which date shall appear on the posted notice. This time limit may be extended by the City, when in its sole discretion it is necessary to do so, but to a date not to exceed forty (40) calendar days from the application closing date.

33.1.1 The City is not required to post job openings prior to offering that opening to a bargaining unit employee in order to fulfill its requirement to make reasonable accommodation in accordance with federal or state law.

33.1.2 In accordance with past practice, the City is not required to post job openings if an additional vacancy in the same classification and same Division becomes available prior to the close of the selection process on the initial vacancy. The City will post the additional vacancy for a seven (7) working day period to determine if any additional applicants are interested in the position when the additional vacancy is in a different division or department.

33.2 Employees in any City Department may apply for unit vacancies which are posted. Among applicants the City considers to be qualified, the vacancy shall be filled in the following preferential order: first by the unit applicant employed by the Department in which the vacancy occurs, secondly, by the bargaining unit applicant and, thirdly, all other applicants including non-employee applicants.

33.3 Upon execution of this Agreement, the City retains the right to fill Maintenance Worker I vacancies, at pay grade 16 (formerly MW II position), with individuals as a Maintenance Worker, at pay grade 14 (formerly MW I position), if the selected applicant, in the sole discretion of the City, does not meet an acceptable portion of the Maintenance Worker I job requirements. If the selected employee is able to meet all the requirements of the Maintenance Worker I classification over time, the City shall have the right to promote the employee to Maintenance Worker I at pay grade 16 without posting.

33.4 Upon execution of this Agreement, the City also retains the right to fill Maintenance Worker III vacancies, at pay grade 18, with individuals as either a Maintenance Worker I, at pay grade 16, or a Maintenance Worker II, at pay grade 17, if the selected applicant, in the sole discretion of the City, does not meet an acceptable portion of the requirements of the Maintenance Worker III job requirements. If the selected employee is able to meet all the requirements over time, the City shall have the right to promote

the employee to Maintenance Worker II, at pay grade 17, or Maintenance Worker III, at pay grade 18, without posting.

33.5 Employees who, pursuant to Article 31, JOB TRAINING, have completed training courses satisfactorily as determined by the City shall be given a preference for promotion over other applicants, provided that the training relates directly to the duties and/or skills required for the promotional position, and the employee is otherwise qualified for the position.

33.6 Should a successful applicant become convinced within the first twenty-five (25) working days that s/he cannot cope with the new job, or should the City become convinced, within thirty (30) working days of the employee's appointment that the employee cannot fulfill the requirements of the job, then the reason therefore shall be put in writing, the employee's Unit President notified, and the employee shall be returned to the former job. If an employee moves to a lower level position, the employee must meet all licensing requirements for the new position within thirty (30) working days of the appointment.

33.7 An employee appointed to a unit position shall be paid from the date of appointment at the permanent rate for the position at that employee's seniority step. Seniority shall be continuous permanent City service.

33.8 If an individual unit applicant for a position has cause for disputing the choice of the City, he may appeal the City's action using the established grievance procedure. However, the City shall under no condition be liable for back pay or other compensation to any employee or person as a result of the disposition of any such grievance.

33.9 Notwithstanding the above, and regardless of whether or not the applicants are City employees, the City may hire any qualified Island resident applicant to fill an Island position over applicants who are not Island residents.

33.10 Temporary Assignments

33.10.1 Whenever the City determines that temporary assignments are required, the most junior person in classification, based on continuous service time in classification, from the available daily work pool of employees in the Division shall be assigned the substitute work.

33.10.2 The City shall have the sole authority to determine whether workers who are normally assigned to a permanent crew shall be placed in the daily worker pool.

33.10.3 Workers assigned outside of their normal classification shall be exempt for this selection procedure based on seniority within classification, unless otherwise determined by the City.

33.10.4 Unless otherwise agreed by the City and the Union, this procedure shall

be consistently applied. The most junior worker shall be the substitute assigned.

33.10.5 This provision is not intended to impact the winter work schedule.

33.11 Temporary Filling of Foreman and Supervisor Vacancies

33.11.1 The City will maintain a list of employees who are interested in filling in as Foreman or Supervisor when a temporary vacancy exists. This list will include date of request and area(s) of preference.

33.11.2 When the City determines a Foreman or Supervisor position needs to be filled on a temporary basis, the City will select someone from this list taking into consideration the following factors: job requirements, the employee's qualifications, and how often the employee has been offered a temporary Foreman vacancy during the preceding twelve month period.

33.11.3 Qualified employees will be offered such positions within their Section (if no Section exists, then within Division) on a rotating basis.

**34. DISCIPLINARY PROCEDURE**

34.1 No employee shall be discharged, demoted, or suspended except for just cause (including but not limited to violations of any rules as provided above) and notice of the reasons for such disciplinary action shall be stated in writing and given to the employee affected and/or the Chief Steward, but in every case to the President, within five (5) days after the effective date of the action. Under the normal circumstances, disciplinary action shall be taken by the City within thirty (30) days of when the Department Head or his appropriate designee learns of the event giving rise to the disciplinary action. Said 30-day time frame shall not apply to disciplinary actions for abuse of sick leave. The 30-day time frame is delayed in the case of vehicle accidents providing the employee's Department has an Accident Review Committee (which may be a subcommittee of the departmental Safety Committee). The 30-day time frame begins when Department managers meet to discuss the accident following receipt of the Accident Review Committee report.

34.2 Any disciplinary action imposed upon an employee may be processed as a grievance through the regular grievance procedure and the Union shall have the right to take up matters of suspension, demotion or discharge at Step 1.1.3 of the procedure.

34.3 Pursuant to N.L.R.B. v. Weingarten, the City recognizes the right of an employee to have a Union representative present at a disciplinary hearing or meeting.

34.4 Written reprimands shall be removed from the personnel file after a period of two years

provided that there has not been a recurrence of that offense during that two year period.

**34.5 Disciplinary Suspensions**

34.5.1 Employees with suspensions of two (2) days or less in their files may have those suspensions removed after a period of five (5) years or more.

34.5.2 Employees may request to have suspensions of three (3) days or more removed after a period of five (5) years. The Director of Human Resources will review such requests on a case by case basis. Factors that will be considered are the employee's prior disciplinary record, their overall personnel record, and their conduct since the discipline was taken.

**35. PERSONNEL REDUCTIONS AND SENIORITY**

35.1 Reductions in personnel by the City result solely from the elimination of positions by department and by classification.

35.2 For purposes of personnel reductions and bumping within the unit, seniority is defined as continuous permanent City service, and seniority rosters will be compiled on that basis.

35.2.1 In the event of a tie in seniority dates, the employee who has worked in the classification the longest will be deemed the more senior. In the event that the appointment date to present classification is the same, the employee who first applied for the position will be deemed the more senior. If the application dates are the same, the tie-breaking decision will be made by a toss of the coin.

35.2.2 Union officers shall have preferred seniority over all other employees for purposes of the exercise of bumping rights. Between such officers, seniority shall be in the following order:

Unit Chair  
Chief Steward  
Unit Vice-Chair  
Unit Recording Secretary  
Unit Treasurer  
Shop Steward

In the event that more than one person holds a particular office listed above, bumping shall be determined by seniority based on time in that Union Offices, as determined by the Union.

35.3 In the event of a personnel reduction, positions eliminated will be identified by department, then by classification, by division, and by shift assignment, and the

employee with the least seniority in the position eliminated, as defined above, will be the employee placed on lay-off.

35.3.1 In the event of a personnel reduction, pursuant with the execution of this Agreement, Maintenance Worker II employees in the Solid Waste Division, at pay grade 17, will be considered equal to Maintenance Worker III employees, at pay grade 18. Their seniority will be blended with Maintenance Worker III employees in determining seniority for the purposes of exercise of bumping rights. This provision applies to active Maintenance Worker II employees in the Solid Waste Division, at pay grade 17, at time of execution of this Agreement. This provision shall not apply to employees hired after April 23, 2009.

35.4 In the event of a personnel reduction resulting in lay-off, employees placed on lay-off may elect to bump into other unit positions in the following order:

35.4.1 The employee will first be offered any suitable vacant position in the department which is reducing its personnel. If there are no such vacancies, the employee will be offered any suitable vacant position in the bargaining unit. A vacant position shall be deemed to be "suitable" if it is in the same classification or is a position of an equal pay grade in the unit which the employee is qualified to perform, as determined by the City. The employee shall take a suitable vacant position rather than bumping other employees, unless the employee can show:

35.4.1.1 that taking said vacancy would result in economic hardship for the employee such as a significant increase in travel time to work or inability to use the employee's normal mode of transportation; or

35.4.1.2 that taking said vacancy would result in personal hardship, such as a change in shift or conflict in the employee's working relationships.

35.4.2 If there are no vacant positions to which the employee can transfer, the employee ~~can~~ shall bump ~~less~~ the least senior employee in the same classification in the Department. If there are no ~~less~~ least senior employees in the same classification in the Department, the employee can bump ~~a-less~~ the least senior employee so classified in the bargaining unit.

35.4.3 If there are no ~~less~~ least senior employees in the same classification in the bargaining unit, the employee may bump ~~less~~ the least senior employee in the next lower level of the job family, as determined by Appendix D, or the employee can bump ~~a-less~~ the least senior employee in a position once held.

35.4.4 If there are no available positions under subsections 35.4.1-35.4.3 above, the employee may bump ~~a-less~~ the least senior employee in positions which the City determines the employee is qualified to perform. Whenever an employee bumps into a new classification, the employee must have any licenses required in that



classification.

35.4.5 The City's determination as to qualifications of an employee to perform a job shall be final so long as it is not arbitrary and capricious.

35.5 Employees may opt to accept lay-off at any point in the bumping process rather than exercising their bumping rights.

35.6 No employee may bump into a promotional position. An employee who bumps into a position under subsections 35.4.1-35.4.4 above shall be paid at the rate provided in this Agreement for that classification except as provided in 35.3.1. The appointment date of employees who bump will not change as a result of the bumping.

35.7 Employees who are laid off will receive separation pay as provided in Article 26.

35.8 Seniority rosters will be posted in work locations and sent to the Unit Chair in January of each year. Separate seniority rosters shall be maintained for permanent full-time and part-time employees.

35.9 Recall

35.9.1 Employees who are laid off or who bumped into positions under Section 35.4.1-35.4.4 above shall have an 18-month recall right to the classification from which the employee was laid off, and in the reverse order of lay off.

35.9.2 Employees laid-off and on the recall list may be offered temporary, seasonal, on call, or project work but performance of said work will not affect or extend the recall period. Refusal of said work shall not affect the person's recall period.

35.9.3 The City may rely on its records for the last address of the laid off employees, and may remove from the list a person who does not respond or accept recall to work within ten (10) working days after certified mailing of notification. A copy of such recall notification shall be mailed to the Chair of the Unit for his information. If an employee retires, resigns, or is terminated from permanent City service for cause, the employee shall be removed from the recall list and lose all rights to recall.

**36. SAFETY**

36.1 Safety Committees shall function to review safety procedures and make advisory recommendations to Department Heads regarding new safety procedures or modifications to current safety procedures that may be needed. The Department Head or designee shall respond to all written recommendations from the Safety Committee within thirty (30) days. The departmental Safety Committees shall be composed of at least as many labor representatives as management representatives. The Union will

appoint labor representatives and alternates to serve on departmental Safety Committees unless there is agreement between the City and the Union which modifies Committee representation. The Risk Manager or designee shall provide technical assistance to the Committee. The Risk Manager or designee shall hold the tie-breaking vote regarding advisory recommendations to the Department Heads.

#### 36.2 Safety Standards

All employees shall follow safety standards while on duty for the City. This shall include, but not be limited to: the wearing and use of safety equipment, i.e. personal protective equipment, head protection, eye and face protection, foot protection, hearing protection, or any other equipment provided or furnished in any way by the City. The employees shall observe all safety rules and regulations established and posted by the City. Failure on the part of the employee to abide by such safety standards will result in disciplinary action.

#### 36.3 Driver's Daily Checklist and Use of City Equipment

The employees agree to perform daily Vehicle Condition Reports and other maintenance checks on their vehicles as established within their particular Department. Employees agree to help maintain the condition and life of City equipment through proper and safe operation.

- 36.4 Departmental Accident Review Committees shall function to recommend accident prevention methods, determine preventability of employee vehicle accidents, and make recommendations for improvements to fleet safety policy. These departmental committees shall be composed of at least as many labor representatives as management representatives and will include a safety professional to chair the committee.

### **37. LICENSE REQUIREMENTS**

- 37.1 It shall continue to be the City's policy to require employees who operate City vehicles to have and maintain a valid Maine Motor Vehicle Operator's license as required by the employee's classification. The City will periodically verify such a license. Consequences for loss of license(s) are defined as follows:

37.1.1 Loss of a Maine Motor Vehicle Operator's license for a period of up to six (6) months will result in an automatic demotion for the duration of the license suspension. "Demotion" for the purposes of this policy shall be equivalent to a 10% reduction in pay.

37.1.2 Loss of a Maine Motor Vehicle Operator's license, or a required CDL license, if not covered under the City's Drug and Alcohol Policy, for a period of more than six (6) months will result in immediate termination of employment. Any medical condition shall be reviewed on a case by case basis.

- 37.2 The City will do license verifications. Upon request, a copy of this report will be sent to the employee.
- 37.3 Employees who are required to possess a CDL license by the City will be subject to the City's Drug and Alcohol Policy.

### **38. JOB SPECIFICATIONS**

- 38.1 Within thirty (30) days after execution of the Agreement, the City agrees to supply the Unit Chair and bargaining agent with copies of unit job specifications, including those modified during the negotiations which preceded this Agreement. Thereafter, the City agrees to submit all modified specifications to the Unit President and the bargaining agent for Union review and recommendations. Said recommendations must be submitted to the City within ten (10) working days after receipt of the job specifications.

### **39. LEGAL AID AND PROTECTION**

- 39.1 The City will, with the consent of the employee, assume the defense of and indemnify any employee against a claim which arises out of an act or omission occurring within the course or scope of his/her employment and for which the City is liable under the Maine Tort Claims Act, 14 M.R.S.A. 8101 et seq. up to the statutory limit of \$400,000. The City, at its discretion, may provide such defense and/or indemnification through a self-insurance program or through insurance coverage limited to Four Hundred Thousand Dollars (\$400,000), including costs other than defense costs, for any and all claims arising out of a single occurrence, to be purchased by the City.
- 39.2 The City will, with the consent of the employee, assume the defense of and indemnify any employee up to the statutory limit of \$400,000 of the Maine Tort Claims Act against any claim which arises out of an act or omission occurring within the course or scope of his employment and for which the City is not liable, provided that such defense or indemnification is not contrary to public policy, and the City determines that the employee acted in good faith and did not willfully or knowingly violate any ordinance, rule, or regulation of the City.
- 39.3 In all cases in which the City has assumed the defense of an employee, the City, acting through its Corporation Counsel, has the right to arrange, at the City's expense, for an attorney selected by the Corporation Counsel, to defend the employee. In the event the City determines outside counsel is needed for a particular case, Corporation Counsel will consider counsel requests submitted by an employee but reserve the right to either approve or decline that request. Further, in all cases in which the City has assumed the defense of an employee, the Corporation Counsel may, in its discretion, authorize and accept settlement of the case. Corporation Counsel reserves the right, in his/her discretion, to consult with the City Council prior to settlement in a particular case.

- 39.4 The above legal aid and protection is also extended, on the same terms and conditions, to former employees for claims against them for acts or omissions during their employment with the City in positions covered by this Agreement.
- 39.5 It is a condition of the City's obligation to defend and/or indemnify an employee hereunder that the employee shall fully cooperate with the City in any claim by or against the City regardless of whether the employee works for the City at the time that the claim is filed. "Full cooperation" hereunder shall include, without limitation, providing information to the City and its attorneys, including attorneys designated or hired by the City, appearing and/or participating as a witness in the case when requested to do so by the City, including, without limitation, participating in all pre-trial and trial proceedings. "City" as used under this section shall include officers, employees and agents of the City, including without limitation, attorneys designated or hired by the City. Except in those circumstances where such full cooperation is in conflict with the advice of the employee's legal counsel or is in violation of the employee's constitutional rights, failure to fully cooperate with the City on any case may result in disciplinary action against the employee and denial of the indemnification obligation hereunder unless otherwise required by the Maine Tort Claims Act.
- 39.6 Paragraph 39.5 above may not be construed to imply that an employee who is not a defendant has no duty to fully cooperate with the City and its representatives, when the City and its representatives, in their sole discretion, determine that the employee has information relevant to the claim or the defense of the claim against the City or another employee of the City. In such a situation, except in those circumstances where such full cooperation is in conflict with the advice of the employee's legal counsel or is in violation of the employee's constitutional rights, the non-defendant has a duty to fully cooperate with the City as a condition of employment.
- 39.7 The City agrees to release the employee from his/her shift for appearances at any necessary proceedings on the date of such proceedings and at the request of the City's designated defense attorney. Should the proceedings conclude prior to the end of the employee's shift, the employee may be required to report for duty for the remainder of his/her shift.

39.7.1 Employees who are required by the City to appear on behalf of the City at a court hearing outside of their regularly scheduled hours will be compensated with three (3) hours of straight time pay or time and one-half pay for actual time spent in pre-trial and trial proceedings, whichever is greater. Employees who work second or third shift and who spent the majority of the day in court may take straight time pay for the hours spent in court and credit these hours against their shift requirement for that day, with pre-approval from the Department Head or designee.

39.7.2 Employees will receive straight time pay for the hours spent in pre-trial and trial proceedings that occur during their regularly scheduled work hours. In the event that the time spent in pre-trial or trial proceedings begins during

regularly scheduled hours and extends beyond the end of their regular work day, the employee may be eligible for overtime pay in accordance with Article 14.3 for the additional hours but will not be eligible for the three (3) hour minimum for off-duty hours.

#### **40. PRINTING OF AGREEMENT**

- 40.1 The City agrees to supply the Union with copies of the Agreement in legible print, within forty-five (45) days after the signing of the Agreement.

#### **41. EMBODIMENT OF AGREEMENT**

- 41.1 The Parties acknowledge that during the negotiations which preceded this Agreement each had unlimited rights and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter specifically referred to or covered in this Agreement.

#### **42. UNIT WORK**

- 42.1 The City reserves the right to make all decisions in regard to contracting for the delivery of City services, including the contracting of work normally done by employees in the unit and even if such contracting results in the layoff of permanent City employees. Except for emergencies, the City agrees to give the Union sixty (60) days' notice of a decision to subcontract unit work when subcontracting would result in the layoff of permanent City employees. Upon written request of the Union, the City shall negotiate the impact of the subcontracting which results in the laying off of permanent City employees. The impact bargaining shall not serve as a bar to the implementation of the said subcontracting.
- 42.2 The City will meet with the Union to discuss the availability of positions within City government for which the laid-off employee is determined to be qualified and the availability of any training programs which may be applicable to the employee. In reviewing these placement possibilities, every effort will be made to seek matches of worker's skills and qualifications with available, comparable positions.

#### **43. TERM OF AGREEMENT**

- 43.1 This Agreement shall be effective July 3, 2016 and shall remain in full force and effect

until June 30, 2019. The Union shall notify the City in writing one hundred twenty (120) days prior to June 30, 2019 that it desires to modify this Agreement. If said notice is given, this Agreement shall remain in full force and be effective during the period of negotiations.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their representatives duly authorized on the date and year stated below.

**DATED:** \_\_\_\_\_

**FOR THE CITY:**

\_\_\_\_\_  
Jon Jennings, City Manager

\_\_\_\_\_  
Thomas Caiazzo, Chief Negotiator

**FOR THE UNION:**

\_\_\_\_\_  
James Mackie, AFSCME Council 93

\_\_\_\_\_  
Scott Ouillette, Labor & Trades Unit  
President – AFSCME Local 481-00

\_\_\_\_\_  
Michael Lamb  
Chief Steward - AFSCME Local 481-00

## APPENDIX A

### DEFINITIONS OF EMPLOYMENT

I. **Permanent Employees** are employees who are appointed to a permanently budgeted position on either a full-time or part-time basis and have completed any required probationary period for such position.

A. **Full-time employees** are regularly scheduled to work the regular work week on a continuing basis. Such employees receive full benefits as outlined in the AFSCME Local 481-00 Agreement between the City and the Union.

B. **Part-time employees** are regularly scheduled to work less than the regular work week on a continuing basis. Those part-time employees regularly scheduled to work 20 hours a week or more shall be entitled to the following benefits on a pro-rated basis only:

- 1) Sick leave accrual: weekly pro-rata based on either standard hours or actual hours worked (excluding hours compensated with premium pay or in excess of 40 hours), whichever is greater;
- 2) Vacation accrual: weekly pro-rata based on either standard hours or actual hours worked (excluding hours compensated with premium pay or in excess of 40 hours), whichever is greater;
- 3) City participation in the cost of medical insurance based on the employee's standard hours; and
- 4) Holidays, except that such employees shall be compensated for a holiday only if it falls on an employee's regularly scheduled work day. Base holiday pay shall equal the number of hours the employee is regularly scheduled to work on that day of the week. Holiday premium pay is outlined in Article 16.5.

**Part-time employees** who are regularly scheduled to work less than 20 hours a week shall not be entitled to any sick leave, vacation leave, or holidays, and the City shall not participate in any of the cost of medical coverage.

**Part-time employees** are entitled to overtime pay under Article 12, Overtime, only after they have worked in excess of forty (40) hours per week or in excess of both their regularly scheduled work day and eight (8) hours that day.

II. **Non permanent employees** are on-call, temporary, or seasonal employees as follows, and are excluded from the provisions of this Agreement:

A. **On-call employees** are persons who are not regularly scheduled to work, but who are available to work on an intermittent, as-needed basis. Such persons shall be paid only for those hours actually worked. A permanent City employee may work in an on-call position, such as cashier at the parking garage, on a regularly scheduled basis as a second City job, but such an employee shall be entitled only to regular pay for such hours worked and shall not be entitled to any other benefits for such on- call employment.

B. **Seasonal employees** are persons in positions in an industry designated by the State or by the parties as a seasonal industry, e.g. summer recreation, golf, parks and cemetery programs, Portland's Downtown District, Ferry Terminal, Construction Company and Hadlock Field. The employee will expect to be terminated at the end of the season. Such employees will be paid only for those hours actually worked. Seasonal employees are intended to supplement regular employees.

C. **Temporary employees** are persons who are regularly scheduled to work a standard work week or less, for a definite, limited period of time, usually not to exceed six (6) months, or who are appointed to replace an employee on leave of absence or at long-term training. Temporary employees shall not work more than six (6) consecutive months, unless they are replacing a permanent employee on leave. In such cases, employees shall have an estimated termination date from the date of initial employment, but in no case shall such term exceed more than one (1) year except with the concurrence of the Union.

D. **Project employees** are persons appointed to work on a special project of limited duration or to a position of longer duration not to exceed two (2) years that is funded by non-City funds; or to fill in for a permanent employee on an approved leave of absence. Project employees may work a standard work week or less and are eligible for full or pro-rated benefits as appropriate under this Agreement on the same basis as permanent full and part-time employees after completion of a probationary period. Notwithstanding the foregoing, Article 24, PERSONNEL REDUCTIONS AND SENIORITY, will not apply to project employees and they will be terminated upon completion of the special project or elimination of the non-City funding source with no bumping or recall rights. All other provisions of this Agreement shall cover project employees on the same basis as permanent employees, except that project employees are excluded by the Maine State Retirement System's regulations from participating in its term life insurance program.



**APPENDIX B-1**  
**AFSCME/LABOR AND TRADES CLASSIFICATION PLAN**

**Grade 8**

**Grade 10**

Custodial Worker  
Laborer

**Grade 11**

Floating Custodial Worker

**Grade 13**

**Grade 14**

Building Maintenance/Custodial Worker  
Maintenance Worker

**Grade 15**

3rd Class Welder Assistant (F)  
Trades Worker I

**Grade 16**

~~Airport Facilities Technician Assistant~~  
Airport Maintenance Worker II  
**Arborist I**  
Journeyman Electrician  
Maintenance Worker I  
Mechanic I (F)

**Grade 17**

Maintenance Worker II  
Trades Worker II

**Grade 18**

~~Airport Facilities Technician Assistant II (G)~~  
**Arborist II**  
Facilities Electrician  
Facilities Plumber  
Maintenance Worker III  
Mechanic II (F)  
Parking Meter Technician III  
Parks Facilities Assistant

**APPENDIX B-1**  
**AFSCME/LABOR AND TRADES CLASSIFICATION PLAN**

PDD Steward  
Sewer Facilities Technician  
2nd Class Welder Machinist (F)  
Traffic Computer Sign Operator

**Grade 19**

~~*Airport Maintenance Worker III\* Effective July 6, 2014*~~

**Arborist III**

Athletic Facilities Steward  
Assistant Dispatcher  
Autobody Repair Worker (F)  
Master Electrician (B)  
Mechanic III (F)  
Trades Worker III  
Traffic Signal Repair Worker  
1st Class Welder Machinist (F)

~~**\* This classification upgrade is retroactive to July 6, 2014. The job description for Airport Maintenance Worker III dated June 2014 shall be implemented within forty eight (48) months of the ratification of this agreement.**~~

**Grade 19M**

~~Airport Airfield Electrician (B)~~  
~~Airport Facilities Technician (B, G)~~  
Facilities Master Electrician (B)  
Facilities Master Plumber (D)  
HVAC Technician (E)  
Parks Facilities Technician  
Sewer Inspector  
Systems and Lighting Technician (A, C)

**\*Airport Designations**

**Grade 15A**

Airport Maintenance Worker I (6 month max)

**Grade 16A**

Airport Maintenance Worker II  
Airport Facilities Technician Assistant I

**Grade 18A**

Airport Facilities Technician Assistant II

**Grade 19A**

Airport Maintenance Worker III

**Grade 19MA**

Airport Airfield Electrician  
Airport Facilities Technician

- (A) Employees in this classification who possess a valid State of Maine Masters Electrician License will receive a 3% stipend in addition to their base weekly pay.
- (B) Employees in this classification who possess IMSA Level II for Fire Alarms or Street Lighting will receive a 3% stipend in addition to their base weekly pay.
- (C) Employees in this classification who possess IMSA Level III traffic signal will receive a 3% stipend in addition to their base weekly pay.
- (D) Employees in this classification who possess a Natural Gas & Propane license will receive a 3% stipend in addition to their base weekly pay.
- (E) Employees in this classification who possess all three of the required will receive a 3% stipend in addition to their base weekly pay.
- (F) Employees in this classification will receive a \$1.00 per hour market rate stipend.
- (G) Employees in this classification will receive a \$.50 per hour market rate stipend.

\*Employees currently in these positions will be grandfathered at current rate and stipends.

**AFSCME Labor & Trades**

Effective July 3, 2016

2.00%

| <b>PAY<br/>GRADE</b> | <b>2<br/>6 mos-1yr</b> | <b>3<br/>1-2 yrs</b> | <b>4<br/>2-4 yrs</b> | <b>5<br/>4-6 yrs</b> | <b>6<br/>6-8 yrs</b> | <b>7<br/>8+ yrs</b>   |
|----------------------|------------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| 6                    | \$542.00<br>\$13.55    | \$552.40<br>\$13.81  | \$565.60<br>\$14.14  | \$580.40<br>\$14.51  | \$595.60<br>\$14.89  | \$610.00<br>\$15.25   |
| 7                    | \$598.40<br>\$14.96    | \$612.00<br>\$15.30  | \$625.20<br>\$15.63  | \$641.20<br>\$16.03  | \$658.00<br>\$16.45  | \$675.20<br>\$16.88   |
| 8                    | \$610.00<br>\$15.25    | \$622.40<br>\$15.56  | \$637.60<br>\$15.94  | \$653.60<br>\$16.34  | \$669.60<br>\$16.74  | \$686.40<br>\$17.16   |
| 10                   | \$632.40<br>\$15.81    | \$644.00<br>\$16.10  | \$661.20<br>\$16.53  | \$677.60<br>\$16.94  | \$693.20<br>\$17.33  | \$710.40<br>\$17.76   |
| 11                   | \$645.20<br>\$16.13    | \$658.00<br>\$16.45  | \$675.20<br>\$16.88  | \$691.20<br>\$17.28  | \$708.80<br>\$17.72  | \$727.20<br>\$18.18   |
| 13                   | \$660.00<br>\$16.50    | \$672.00<br>\$16.80  | \$690.00<br>\$17.25  | \$707.20<br>\$17.68  | \$724.80<br>\$18.12  | \$743.20<br>\$18.58   |
| 14                   | \$676.40<br>\$16.91    | \$689.20<br>\$17.23  | \$706.40<br>\$17.66  | \$723.60<br>\$18.09  | \$742.80<br>\$18.57  | \$759.60<br>\$18.99   |
| 15                   | \$691.20<br>\$17.28    | \$706.00<br>\$17.65  | \$723.20<br>\$18.08  | \$741.60<br>\$18.54  | \$758.80<br>\$18.97  | \$778.00<br>\$19.45   |
| 16                   | \$705.20<br>\$17.63    | \$720.40<br>\$18.01  | \$736.00<br>\$18.40  | \$755.60<br>\$18.89  | \$774.40<br>\$19.36  | \$792.40<br>\$19.81   |
| 17                   | \$722.00<br>\$18.05    | \$735.20<br>\$18.38  | \$753.60<br>\$18.84  | \$773.20<br>\$19.33  | \$791.20<br>\$19.78  | \$812.40<br>\$20.31   |
| 18                   | \$743.20<br>\$18.58    | \$756.40<br>\$18.91  | \$775.60<br>\$19.39  | \$795.60<br>\$19.89  | \$814.80<br>\$20.37  | \$835.60<br>\$20.89   |
| 19                   | \$778.80<br>\$19.47    | \$795.60<br>\$19.89  | \$815.20<br>\$20.38  | \$835.20<br>\$20.88  | \$857.20<br>\$21.43  | \$878.00<br>\$21.95   |
| 19M                  | \$877.60<br>\$21.94    | \$904.40<br>\$22.61  | \$932.00<br>\$23.30  | \$959.60<br>\$23.99  | \$988.00<br>\$24.70  | \$1,017.60<br>\$25.44 |

**AFSCME Labor & Trades**

Effective July 2, 2017

2.00%

| <b>PAY<br/>GRADE</b> | <b>2<br/>6 mos-1yr</b> | <b>3<br/>1-2 yrs</b> | <b>4<br/>2-4 yrs</b> | <b>5<br/>4-6 yrs</b> | <b>6<br/>6-8 yrs</b>  | <b>7<br/>8+ yrs</b>   |
|----------------------|------------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|
| 6                    | \$552.80<br>\$13.82    | \$563.60<br>\$14.09  | \$576.80<br>\$14.42  | \$592.00<br>\$14.80  | \$607.60<br>\$15.19   | \$622.40<br>\$15.56   |
| 7                    | \$610.40<br>\$15.26    | \$624.40<br>\$15.61  | \$637.60<br>\$15.94  | \$654.00<br>\$16.35  | \$671.20<br>\$16.78   | \$688.80<br>\$17.22   |
| 8                    | \$622.40<br>\$15.56    | \$634.80<br>\$15.87  | \$650.40<br>\$16.26  | \$666.80<br>\$16.67  | \$682.80<br>\$17.07   | \$700.00<br>\$17.50   |
| 10                   | \$645.20<br>\$16.13    | \$656.80<br>\$16.42  | \$674.40<br>\$16.86  | \$691.20<br>\$17.28  | \$707.20<br>\$17.68   | \$724.80<br>\$18.12   |
| 11                   | \$658.00<br>\$16.45    | \$671.20<br>\$16.78  | \$688.80<br>\$17.22  | \$705.20<br>\$17.63  | \$722.80<br>\$18.07   | \$741.60<br>\$18.54   |
| 13                   | \$673.20<br>\$16.83    | \$685.60<br>\$17.14  | \$704.00<br>\$17.60  | \$721.20<br>\$18.03  | \$739.20<br>\$18.48   | \$758.00<br>\$18.95   |
| 14                   | \$690.00<br>\$17.25    | \$702.80<br>\$17.57  | \$720.40<br>\$18.01  | \$738.00<br>\$18.45  | \$757.60<br>\$18.94   | \$774.80<br>\$19.37   |
| 15                   | \$705.20<br>\$17.63    | \$720.00<br>\$18.00  | \$737.60<br>\$18.44  | \$756.40<br>\$18.91  | \$774.00<br>\$19.35   | \$793.60<br>\$19.84   |
| 16                   | \$719.20<br>\$17.98    | \$734.80<br>\$18.37  | \$750.80<br>\$18.77  | \$770.80<br>\$19.27  | \$790.00<br>\$19.75   | \$808.40<br>\$20.21   |
| 17                   | \$736.40<br>\$18.41    | \$750.00<br>\$18.75  | \$768.80<br>\$19.22  | \$788.80<br>\$19.72  | \$807.20<br>\$20.18   | \$828.80<br>\$20.72   |
| 18                   | \$758.00<br>\$18.95    | \$771.60<br>\$19.29  | \$791.20<br>\$19.78  | \$811.60<br>\$20.29  | \$831.20<br>\$20.78   | \$852.40<br>\$21.31   |
| 19                   | \$794.40<br>\$19.86    | \$811.60<br>\$20.29  | \$831.60<br>\$20.79  | \$852.00<br>\$21.30  | \$874.40<br>\$21.86   | \$895.60<br>\$22.39   |
| 19M                  | \$895.20<br>\$22.38    | \$922.40<br>\$23.06  | \$950.80<br>\$23.77  | \$978.80<br>\$24.47  | \$1,007.60<br>\$25.19 | \$1,038.00<br>\$25.95 |

**AFSCME Labor & Trades**

Effective July 1, 2018

2.00%

| <b>PAY<br/>GRADE</b> | <b>2<br/>6 mos-1yr</b> | <b>3<br/>1-2 yrs</b> | <b>4<br/>2-4 yrs</b> | <b>5<br/>4-6 yrs</b> | <b>6<br/>6-8 yrs</b>  | <b>7<br/>8+ yrs</b>   |
|----------------------|------------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|
| 6                    | \$564.00<br>\$14.10    | \$574.80<br>\$14.37  | \$588.40<br>\$14.71  | \$604.00<br>\$15.10  | \$619.60<br>\$15.49   | \$634.80<br>\$15.87   |
| 7                    | \$622.80<br>\$15.57    | \$636.80<br>\$15.92  | \$650.40<br>\$16.26  | \$667.20<br>\$16.68  | \$684.80<br>\$17.12   | \$702.40<br>\$17.56   |
| 8                    | \$634.80<br>\$15.87    | \$647.60<br>\$16.19  | \$663.60<br>\$16.59  | \$680.00<br>\$17.00  | \$696.40<br>\$17.41   | \$714.00<br>\$17.85   |
| 10                   | \$658.00<br>\$16.45    | \$670.00<br>\$16.75  | \$688.00<br>\$17.20  | \$705.20<br>\$17.63  | \$721.20<br>\$18.03   | \$739.20<br>\$18.48   |
| 11                   | \$671.20<br>\$16.78    | \$684.80<br>\$17.12  | \$702.40<br>\$17.56  | \$719.20<br>\$17.98  | \$737.20<br>\$18.43   | \$756.40<br>\$18.91   |
| 13                   | \$686.80<br>\$17.17    | \$699.20<br>\$17.48  | \$718.00<br>\$17.95  | \$735.60<br>\$18.39  | \$754.00<br>\$18.85   | \$773.20<br>\$19.33   |
| 14                   | \$704.00<br>\$17.60    | \$716.80<br>\$17.92  | \$734.80<br>\$18.37  | \$752.80<br>\$18.82  | \$772.80<br>\$19.32   | \$790.40<br>\$19.76   |
| 15                   | \$719.20<br>\$17.98    | \$734.40<br>\$18.36  | \$752.40<br>\$18.81  | \$771.60<br>\$19.29  | \$789.60<br>\$19.74   | \$809.60<br>\$20.24   |
| 16                   | \$733.60<br>\$18.34    | \$749.60<br>\$18.74  | \$766.00<br>\$19.15  | \$786.40<br>\$19.66  | \$806.00<br>\$20.15   | \$824.40<br>\$20.61   |
| 17                   | \$751.20<br>\$18.78    | \$765.20<br>\$19.13  | \$784.00<br>\$19.60  | \$804.40<br>\$20.11  | \$823.20<br>\$20.58   | \$845.20<br>\$21.13   |
| 18                   | \$773.20<br>\$19.33    | \$787.20<br>\$19.68  | \$807.20<br>\$20.18  | \$828.00<br>\$20.70  | \$848.00<br>\$21.20   | \$869.60<br>\$21.74   |
| 19                   | \$810.40<br>\$20.26    | \$828.00<br>\$20.70  | \$848.40<br>\$21.21  | \$869.20<br>\$21.73  | \$892.00<br>\$22.30   | \$913.60<br>\$22.84   |
| 19M                  | \$913.20<br>\$22.83    | \$940.80<br>\$23.52  | \$970.00<br>\$24.25  | \$998.40<br>\$24.96  | \$1,027.60<br>\$25.69 | \$1,058.80<br>\$26.47 |



APPENDIX C-1

UNION INTENT STATEMENT

It is the intent of the collective bargaining units of AFSCME Locals 481 and 1373 to incorporate into the collective bargaining agreements a fair and objective performance appraisal process which will be used to evaluate our members on a yearly basis.

Our goal is to create a performance review tool which is effective in reviewing an employee's job performance in many fair and objective categories while minimizing subjective or critical assessments of their abilities.

The annual performance evaluation should be a positive and constructive experience which recognizes performance that fulfills or exceeds job requirements and also develops a plan to correct or modify performance that needs improvement.

Locals 481 and 1373 urge you to participate in the performance appraisal process in a jointly cooperative manner that enhances job satisfaction and promotes customer service.

  
Charles B. O'Connell  
AFSCME Local 1373

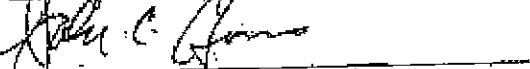
1-17-96  
Date

  
Charles L. Smith  
AFSCME Local 481 - Labor and Trades Unit

1-17-96  
Date

  
Joseph E. Smith  
AFSCME Local 481 - Supervisors Unit

1-17-1996  
Date

  
John C. Jones  
AFSCME Council 93

1-17-96  
Date



## APPENDIX C-2

### PERFORMANCE APPRAISAL PROCESS

1. At the time of hire, each employee receives the following information and documents:
  - City mission statement
  - Division and department mission statement
  - Job description
  - Department/division work rules, policies and procedures
  - List of department/division performance expectations not covered by the above documents
  - Performance appraisal form and intent statement

These materials are discussed with the employee and the employee signs off that s/he has received the documents and understands the information. The employee receives a copy of the sign off sheet and a copy is forwarded to Human Resources for the employee's personnel file.

2. Each employee receives a three (3) and six (6) month appraisal during their first six months of employment. Within the first six (6) months the manager must decide if they are recommending that this employee be retained on a permanent basis. At the six (6) month appraisal, goals and objectives are jointly developed for the next six (6) month period in preparation for the annual appraisal.

3. Each employee receives an annual appraisal twelve (12) months from date of hire and subsequent annual appraisals on the anniversary date. When employees change classifications, their performance appraisal anniversary date changes to reflect time in their current position. All appraisals should be completed within thirty (30) days of the anniversary date. They should be done as close to the anniversary date as possible.

- A. The employee is given the option of submitting a self-appraisal to their supervisor prior to the supervisor rating the employee's performance. The supervisor and employee may decide to exchange forms at the appraisal discussion instead of the employee submitting their form first.

The supervisor will then complete the appraisal form and provide the employee with a copy. In the categories that the supervisor rates the employee's performance at either the high or low end of the scale, s/he must support the rating with examples in the comment section for that category. Supervisors are encouraged to provide examples in all categories; employees are encouraged to do the same on the self-appraisal.

In order to make the appraisal as complete and objective as possible, the supervisor may solicit input from others prior to completing the appraisal, including input from the manager who will review the complete appraisal and other persons who have supervised the employee during the rating period. If input is solicited from persons other than the rater and reviewer, they should be noted on the appraisal form and also the period of time they provided supervision to the employee.

- B. The performance appraisal discussion will be held in a location where there will be no interruptions and at a time that is convenient for both parties. It is recommended that an hour be allotted for each performance appraisal discussion. The full hour may not be needed for every performance appraisal, depending on the amount of discussion needed to fully cover all performance categories. It is preferable to allot more time than is necessary and end early than to run out of time and need to either rush or reschedule the discussion.

- C. The appraisal is a summary of the previous year's performance and should reflect the full twelve months. It should include both what the employee has done well and the areas that are in need of improvement. The comment lines below each category are to be used to further explain the rating or to provide examples that support the rating. The information provided in the appraisal should not be new to the employee; feedback should be given throughout the year and documented by the supervisor in a personnel file for future reference.
  - D. Personal goals and objectives are then jointly developed for the next rating period. The employee's personal goals and objectives should reflect the employee's role or contribution towards achievement of the group goals. Their goals should build on areas of strength and address issues of personal growth that will enhance their ability to make significant contributions to the work team, the division and the department. There should be a thorough discussion about what support the employee needs in order to accomplish these goals and objectives.
  - E. The employee may add comments to the appraisal form if they disagree with the appraisal or portions thereof.
4. The completed appraisal form is submitted to the Reviewer for his/her signature and comments and then to the appropriate Division or Department Head or designee for signature and review. The appraisal is returned to the employee for their final sign-off and then it is forwarded to Human Resources. The employee will be offered a copy of the appraisal.

At the employee's request, the self-appraisal completed by the employee will be attached to the appraisal completed by the rater (which is the official appraisal) when it is submitted to Human Resources for placement in the employee's personnel file.

5. It is recommended that the employee and supervisor meet mid-year for a progress check on their jointly developed goals and objectives. A mid-year check is required if, in the supervisor's opinion, the employee's performance is deficient in any of the categories. This discussion will be documented. The supervisor and employee may also need to meet if the employee's goals need to be revised. Changes in work team goals, unanticipated needs that arise, or noticeable changes in the employee's performance may make this appropriate. At any time, the employee may request to meet with their supervisor to discuss their goals and objectives. Employees are encouraged to monitor their own performance and to initiate discussions with their supervisor during the rating period if they have questions or concerns about their progress.
6. When a supervisor leaves City employment, they will provide the employee with a written assessment of the employee's performance using the performance appraisal form. This appraisal will be placed in the employee's personnel file along with any comments the employee wishes to make. Each Department is responsible for ensuring that this occurs prior to the supervisor's departure.

APPENDIX C-3  
AFSCME Units Annual Performance Appraisal  
Six Month – Annual

The City and Union jointly encourage all employees to self-evaluate. A copy of this form will be provided to the employee for their self evaluation.

Name:

Distribution:

Job Title:

Appointment Date:

Rating Period:

Union Affiliation:

Rater:

Please check the statement(s) in each category that best describe(s) employee performance during the rating period.

1. **Job Knowledge:** Knowledge of procedures and processes required to do the job.

|                                                                                                            | Supervisor | Employee |
|------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Has mastered all duties and/or skills and is creative in his/her approach to doing the job. ....        | ↑          | ↑        |
| b. Is competent in dealing with difficult or complex issues, and understands all phases of their job. .... | ↑          | ↑        |
| c. Demonstrates adequate knowledge of routine aspects of job. ....                                         | ↑          | ↑        |
| d. Barely satisfactory knowledge of routine aspects of job. ....                                           | ↑          | ↑        |
| e. Lack of knowledge affects productivity. ....                                                            | ↑          | ↑        |

Comments: \_\_\_\_\_

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

2. **Quantity of Work:** Attention to work process, workload, timeliness and deadlines.

|                                                                                                  | Supervisor | Employee |
|--------------------------------------------------------------------------------------------------|------------|----------|
| a. Industrious, does more than is required without compromising time management or quality. .... | ↑          | ↑        |
| b. Always completes acceptable amount of work. ....                                              | ↑          | ↑        |
| c. Usually completes an acceptable amount of work. ....                                          | ↑          | ↑        |
| d. Not completing acceptable amount of work. ....                                                | ↑          | ↑        |

Comments: \_\_\_\_\_

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

3. **Quality of Work:** Applies job knowledge to achieving division mission.

|                                                                                                                | Supervisor | Employee |
|----------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Applies creative assessment and problem solving to their work process. ....                                 | ↑          | ↑        |
| b. Has a grasp of work process which produces effective results that meet quality and accuracy standards. .... | ↑          | ↑        |
| c. Has a basic understanding of the work process, applies it sporadically. ....                                | ↑          | ↑        |
| d. Lacks a basic understanding of work process. ....                                                           | ↑          | ↑        |

Comments: \_\_\_\_\_

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

# APPENDIX C-3 (cont'd)

## Performance Review – Page 2

### 4. Judgement and Decision Making: Ability to make sound decisions and appropriate recommendations.

|                                                                                                                 | Supervisor | Employee |
|-----------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Applies logic to data collection/decisions, recommendations reflect above average insight and foresight..... | ↑          | ↑        |
| b. Usually makes sound decisions (decisions which are relevant, based on guidelines and other resources).....   | ↑          | ↑        |
| c. Sometimes does not evaluate all relevant data before arriving at a decision. ....                            | ↑          | ↑        |
| d. Makes poor decisions, avoids making decisions. ....                                                          | ↑          | ↑        |
| Comments: .....                                                                                                 |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

### 5. Effort/Initiative: Extent that the employee sees what needs to be done and does it without being told or reminded. Commitment to get the work done and furthering the Division mission.

|                                                                                                                                                  | Supervisor | Employee |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Is consistently self-directed while honoring policy limits; behavior exemplifies Division mission. ....                                       | ↑          | ↑        |
| b. Takes initiative to work on tasks, puts forth adequate effort to achieve job requirements, behavior is consistent with Division mission. .... | ↑          | ↑        |
| c. Needs occasional prompting, puts forth minimal effort, behavior occasionally supports Division mission.....                                   | ↑          | ↑        |
| d. Needs frequent prompting; puts forth no effort, behavior may contradict Division mission. ....                                                | ↑          | ↑        |
| Comments: .....                                                                                                                                  |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

### 6. Planning and Organizing: Orderliness, efficiency and planning ahead.

|                                                                                                     | Supervisor | Employee |
|-----------------------------------------------------------------------------------------------------|------------|----------|
| a. Able to anticipate events and organize work effectively in unusual or emergency situations. .... | ↑          | ↑        |
| b. Highly efficient and organized; plans ahead; strong overall sense of work priorities. ....       | ↑          | ↑        |
| c. Efficient, plans work and utilizes time properly, realizes work priorities. ....                 | ↑          | ↑        |
| d. Occasional tendency to put work off, work backs up. ....                                         | ↑          | ↑        |
| e. Little inclination for devising better means of managing time, poor organizer. ....              | ↑          | ↑        |
| Comments: .....                                                                                     |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

### 7. Internal Communication: The degree to which the employee engages in and takes responsibility for two-way communication with co-workers, supervisors, and subordinates.

|                                                                                                                                                                       | Supervisor | Employee |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Consistently demonstrates the ability to listen effectively, clarifying statements of others as necessary and articulates thoughts clearly and appropriately. .... | ↑          | ↑        |
| b. Demonstrates ability to listen and process information effectively and accurately. ....                                                                            | ↑          | ↑        |
| c. Has difficulty listening, does not always transfer accurate information effectively, and does not always articulate thoughts clearly and appropriately. ....       | ↑          | ↑        |
| d. Does not listen or articulate thoughts clearly and appropriately; may perpetuate misinformation. ....                                                              | ↑          | ↑        |
| Comments: .....                                                                                                                                                       |            |          |

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

# APPENDIX C-3 (cont'd)

Performance Review – Page 3

## 8. Personal and Job Growth: The degree to which the employee seeks to expand professionally.

|                                                                                                                                                                     | Supervisor | Employee |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Actively pursues opportunities for growth and development. ....                                                                                                  | ↑          | ↑        |
| b. Seeks out feedback and makes extra effort to improve, regularly accepts and takes advantage of opportunities for growth and development. ....                    | ↑          | ↑        |
| c. Accepts performance feedback; makes effort to change and sustains that effort; attends mandatory training as required.....                                       | ↑          | ↑        |
| d. Has difficulty accepting performance feedback and expresses little interest in training opportunities; requires prompting to sign up for required training. .... | ↑          | ↑        |
| e. Ignores performance feedback; consistently refuses offers for skills training or professional development; does not sign up for required training. ....          | ↑          | ↑        |
| Comments: .....                                                                                                                                                     |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

## 9. Customer Service: The degree to which the employee views customers as partners and facilitates access to services, without regard to individual differences.

|                                                                                                                                                                              | Supervisor | Employee |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. May identify customer service trends and applies creative thinking to improve all aspects of customer service while providing high quality service to all customers. .... | ↑          | ↑        |
| b. Solicits feedback from all customers and communicates this information to appropriate staff. ....                                                                         | ↑          | ↑        |
| c. Exhibits commitment to fulfilling our obligation to serve all customers. ....                                                                                             | ↑          | ↑        |
| d. Exhibits limited commitment to the need to incorporate customer service concepts into routine. ....                                                                       | ↑          | ↑        |
| e. Exhibits no commitment to the need to incorporate customer service concepts into practice. ....                                                                           | ↑          | ↑        |
| Comments: .....                                                                                                                                                              |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

## 10. Contribution to Team Effort: The degree to which an employee contributes to a positive work environment through respectfulness, creativity, cooperation and teamwork.

|                                                                                                                                                          | Supervisor | Employee |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Demonstrates positive team leadership ability; seeks opportunities to work with all persons. ....                                                     | ↑          | ↑        |
| b. Consistently makes positive contributions to team effort; reaches out to all team members and includes them in work efforts and team activities. .... | ↑          | ↑        |
| c. Makes an overall positive contribution to team effort; makes effort to include all team members in work efforts and team activities. ....             | ↑          | ↑        |
| d. Makes minimal contributions to team effort; may exclude some team members from work efforts or team activities.....                                   | ↑          | ↑        |
| e. Undermines team effort; excludes some team members from work efforts or team activities. ....                                                         | ↑          | ↑        |
| Comments: .....                                                                                                                                          |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

## 11. Safety: The degree to which the employee contributes to work place safety.

|                                                                                  | Supervisor | Employee |
|----------------------------------------------------------------------------------|------------|----------|
| a. Actively contributes to departmental safety efforts. ....                     | ↑          | ↑        |
| b. Identifies unsafe working conditions and notifies appropriate personnel. .... | ↑          | ↑        |
| c. Uses good judgment and follows safety guidelines. ....                        | ↑          | ↑        |
| d. Occasionally neglects safety guidelines. ....                                 | ↑          | ↑        |
| e. Engages in unsafe behaviors; disregards safety guidelines. ....               | ↑          | ↑        |
| Comments: .....                                                                  |            |          |

Category Rating: \_\_\_\_ Exceeds Requirements \_\_\_\_ Fulfills Requirements \_\_\_\_ Needs Improvement

**APPENDIX C-3 (cont'd)**

Performance Review – Page 4

**12. Use of City Resources: The degree to which the employee maintains City equipment and materials.**

|                                                                                                  | Supervisor | Employee |
|--------------------------------------------------------------------------------------------------|------------|----------|
| a. Exhibits a superior use and care of City resources. ....                                      | ↑          | ↑        |
| b. Exhibits strong commitment to maintenance and conservation of City resources. ....            | ↑          | ↑        |
| c. Pays adequate attention to maintenance and conservation of City equipment and resources. .... | ↑          | ↑        |
| d. Makes minimal effort towards maintenance of City equipment and resources. ....                | ↑          | ↑        |
| e. Does not pay attention to maintenance of City equipment and resources. ....                   | ↑          | ↑        |

Comments: \_\_\_\_\_

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

**13. Attendance: The degree to which the employee is at work and on time.**

|                                                                                                                                                                                                                                          | Supervisor | Employee |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Absences or tardiness are rare. ....                                                                                                                                                                                                  | ↑          | ↑        |
| b. Absences and tardiness are within acceptable range as defined by Department policy; or the City average if there is no Department policy. Absences may exceed City average if there was an isolated extended period of sickness. .... | ↑          | ↑        |
| c. Absences or tardiness exceed acceptable standard; a chronic pattern of absenteeism may exist. ....                                                                                                                                    | ↑          | ↑        |
| d. Is often absent or late; chronic pattern of absenteeism exists. ....                                                                                                                                                                  | ↑          | ↑        |

Comments: \_\_\_\_\_

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

Fill out the next section (14) only on employees with supervisory responsibilities.

**14. Supervisory Responsibilities: The degree to which the employee has developed effective leadership abilities and provides effective leadership to their team without regard to individual differences.**

|                                                                                                                                                                                        | Supervisor | Employee |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|
| a. Supervisor has developed a high performing team and most decisions are made by the team; supervisor encourages creativity and initiative among all team members. ....               | ↑          | ↑        |
| b. Supervisor has delegated some decision-making to team and regularly provides team development opportunities; demonstrates effective leadership and conflict resolution skills. .... | ↑          | ↑        |
| c. Supervisor is an effective team leader to all team members; seeks to motivate all employees to apply themselves to their work; demonstrates basic conflict resolution skills. ....  | ↑          | ↑        |
| d. Supervisor does not provide work team with leadership necessary to be an effective team; employee motivation and conflict resolution skills are below average. ....                 | ↑          | ↑        |

Comments: \_\_\_\_\_

Category Rating: \_\_\_\_\_ Exceeds Requirements \_\_\_\_\_ Fulfills Requirements \_\_\_\_\_ Needs Improvement

Overall Summary of Performance and Accomplishments in the last rating period:



APPENDIX C-3 (cont'd)

Performance Review – Page 5

Goals and Areas of Job Growth for the next rating period.

List goals as discussed between supervisor and employee. Describe how they will be achieved.

Employee Comments

Did you choose to self-evaluate? ☐ Yes ☐ No

How can your supervisor/employer support you in your growth?

What type of training or work opportunity is needed for successful completion of your goals?

After reviewing this evaluation I choose to take the following action:

- ☐ I am in agreement with this performance appraisal; no action is needed.
- ☐ I am not in full agreement of my evaluation, discussions with my rater have failed to satisfy me but I elect to take no action.
- ☐ I choose to meet with my Department personnel to attempt to resolve my concerns. I am not waiving my rights to file a grievance in accordance with my Union contract if this meeting does not meet my needs. My Union Steward is allowed to attend if I so choose.
- ☐ I disagree with my evaluation and wish to have a meeting with the Director of Human Resources, but am not waiving my rights to file a grievance.
- ☐ I disagree with my evaluation and intend to follow the grievance procedures as outlined in the Union contract.

Rater and Reviewer Authorization

\_\_\_\_\_  
Rater Signature

\_\_\_\_\_  
Date

Reviewer Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Reviewer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Department Head/Division Head  
(if other than reviewer)\_\_\_\_\_

\_\_\_\_\_  
Date

Employee Confirmation

Comments:

Final signature: I have reviewed this evaluation, Rater and Reviewer comments, and my signature signifies that I am aware of its contents.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## APPENDIX C-4

### PERFORMANCE IMPROVEMENT PROGRAM

Improvement is necessary in the following areas, and will be reviewed in six weeks with the employee:

| <u>Performance Factors</u>      | <u>Improvement Needed</u> |
|---------------------------------|---------------------------|
| 1. Job Knowledge                | <hr/> <hr/>               |
| 2. Quantity of Work             | <hr/> <hr/>               |
| 3. Quality of Work              | <hr/> <hr/>               |
| 4. Judgment and Decision Making | <hr/> <hr/>               |
| 5. Effort/Initiative            | <hr/> <hr/>               |
| 6. Planning and Organization    | <hr/> <hr/>               |
| 7. Internal Communication       | <hr/> <hr/>               |
| 8. Personal and Job Growth      | <hr/> <hr/>               |

APPENDIX C-4 (cont'd)

9. Customer Service

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10. Contribution to Team Effort

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11. Safety

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12. Use of City Resources

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13. Attendance

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14. Supervisory Skills  
(if applicable)

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Employee Comments:

Rater Comments:

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rater Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Reviewer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dept/Division Head Signature

\_\_\_\_\_  
Date

**APPENDIX D**  
**LABOR AND TRADES**  
**JOB FAMILIES**

1. Mechanical Services

Mechanic III  
Autobody Repair Worker  
Mechanic II  
Mechanic I

2. Maintenance Operations

Parks Facilities Technician  
Athletic Facilities Steward  
Maintenance Worker III/Parks Facilities Assistant/PDD Steward  
Maintenance Worker II  
Maintenance Worker I  
Maintenance Worker  
Laborer

3. Support Staff

Building Maintenance/Custodial Worker  
Floating Custodial Worker  
Custodial Worker

4. Welding Services

1st Class Welder Machinist  
2nd Class Welder Machinist  
3rd Class Welder Assistant

5. Electrical Services

Airport Airfield Electrician/Facilities Master Electrician/  
Systems and Lighting Technician/Airport Facilities Technician (Electrical)  
Master Electrician  
Airport Facilities Technician Assistant II (Electrical)/Facilities Electrician  
Journeyman Electrician/Airport Facilities Technician Assistant (Electrical)

6. Airport Facilities

Airport Facilities Technician (HVAC)  
Airport Facilities Technician Assistant II (HVAC)  
Airport Facilities Technician Assistant I (HVAC)

## Appendix D (cont'd)

7. Airport Operations

Airport Maintenance Worker III  
Airport Maintenance Worker II  
Airport maintenance Worker I  
Airport Airfield Electrician

8. Forestry Operations

Arborist III  
Arborist II  
Arborist I

9. Facilities Management

Facilities Master Plumber  
HVAC Technician  
Trades Worker III  
Trades Worker II  
Facilities Plumber  
Trades Worker I

10. Positions Not Grouped

Sewer Inspector  
Assistant Dispatcher  
Traffic Signal Repair Worker  
Sewer Facilities Technician  
Traffic Sign Computer Operator

## **APPENDIX E-1**

### **City of Portland Transitional Work Policy**

It is the policy of the City of Portland to provide suitable return-to-work/transitional work opportunities for employees who have a work capacity, following a work-related injury or illness. These transitional work assignments are designed to enable the employee to return to work in a productive capacity, focusing on his or her abilities to work within the restrictions or limitations prescribed by the medical practitioner.

Transitional Work assignments and job restrictions are coordinated by the employee's supervisor, departmental Workers' Compensation Liaison and the Workers' Compensation and Safety Manager. Assignments are temporary in accordance with labor contracts and Workers' Compensation Law.

Each assignment requires active participation of all parties to ensure that the employee's abilities are properly matched with job requirements, thereby avoiding any further injury. Every effort is made to find work similar to the employee's pre-injury assignment but may on occasion require working in another department. The return-to-work program's ultimate priority is to have the employee return to their regular assignment in a safe and timely manner.

Any employee working a transitional work assignment or with restrictions must communicate frequently with their supervisor, Workers' Compensation liaison, and the Workers' Compensation and Safety Manager regarding worsening or improvement of their condition or changes in the prescribed restrictions.

*Excerpted from July 12, 2004 revision of City's Risk Manual, Section III – Work Related Injuries and Reporting*

## APPENDIX E-2

### TRANSITIONAL WORK AGREEMENT

The Employee and Employer hereby enter into this agreement for a period of Transitional Work as follows:

- 1) The date upon which the Employee sustained an injury is \_\_\_\_\_, 20\_\_\_\_.
- 2) Pursuant to the City of Portland's Transitional Work Program, the Employee will return to work in a Transitional Work assignment on \_\_\_\_\_, 20\_\_\_\_.
- 3) Attached is a copy of the Transitional Work Program of the City of Portland which the Employee has read and understood.
- 4) The parties agree that the term of this Transitional Work Assignment shall be 90 days from the return to work date above to \_\_\_\_\_, 20\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
City of Portland

## **APPENDIX F**

### **MEMORANDUM OF AGREEMENT**

The purpose of this agreement is to confirm the understanding of the parties concerning the use of workfare clients.

1. Workfare clients will be used for projects or seasonal work. However, to preserve as many unit positions as possible and to allow the City maximum flexibility, workfare clients may be given assignments listed on Attachment A. Individual exceptions may be made by the Union signatories. Social Services will coordinate assignment of workfare clients with departmental needs in accordance with this intent. Should a question arise concerning the assignment of workfare clients, the City will meet with the Union promptly to discuss and resolve the question.
2. Whenever Workfare clients are assigned to work with regular City employees, such assignments will be of a laboring or entry-level clerical nature and will not include the use of equipment that is not normally used by such entry-level employees.
3. Workfare clients will be allowed to operate hand mowers, string trimmers and similar equipment, but will not be allowed to operate other motorized equipment.
4. Workfare clients will be allowed to work in the place of temporary and seasonal employees provided that the above-outlined qualifications apply.
5. Direct supervision of workfare clients will be provided by regular City employees. Any Labor and Trades employee supervising workfare clients will be compensated at his/her regular rate, or, if supervising four or more at grade 18.
6. Workfare clients will be provided with a workfare orientation by Social Services with reinforcement provided by City staff. Appropriate job site training will be provided by City staff.
7. Social Services will provide workfare clients with necessary work clothing such as work boots, gloves.
8. City employees and workfare clients will treat each other with respect.
9. Social Services will monitor workfare assignments, client performance, training needs, and supervision through job site visits as needed.
10. The parties agree to meet when requested to do so.



**APPENDIX F (cont'd)**

This agreement shall continue until terminated by either party. The terminating party shall give at least 30 days notice of its intent to terminate. Changes may be made by mutual agreement of both parties at any time.

\_\_\_\_\_  
For the City of Portland

\_\_\_\_\_  
Date

\_\_\_\_\_  
For AFSCME Council 93

\_\_\_\_\_  
Date

\_\_\_\_\_  
For Labor and Trades Unit

\_\_\_\_\_  
Date

## **APPENDIX F (cont'd)**

### **ATTACHMENT A**

#### **City Workfare Locations and Example Assignments**

##### Parks and Open Spaces Division:

Parks, Cemeteries and Open Spaces - Litter patrol, raking, weeding, trimming, mowing, seeding, planting flowers

Golf Course – Litter patrol, raking, mowing

##### Health and Human Services Department:

Barron Center – Grounds work and custodial related projects, including building maintenance.

Social Services - Oxford Street Shelter and Family Shelter - custodial and building maintenance, light clerical tasks such as filing, photocopying, etc.

##### Recreation and Facilities Management Department

Public Buildings Division - custodial and building maintenance

##### Public Services Department

Streets and Utilities Division - patching, hand sweeping, reclamation site inventory and sorting, litter patrol

Central Services Division - cleaning equipment, custodial services

##### Engineering Division:

Traffic Section - painting, sign pole straightening

Engineering Section - filing, data entry

Police Department - litter patrol, cruiser cleaning, custodial services, building maintenance

##### Aviation and Transportation Department

Maine State Pier, Fish Pier, International Ferry Terminal, Jetport - litter patrol, sweeping, hand painting, weeding, separating fish net

## APPENDIX G

### BARRON CENTER SIDE AGREEMENT

The City of Portland and AFSCME Local 481-00 in an attempt to institute a sick leave usage incentive program have mutually agreed to the following program at the Barron Center:

1. Notwithstanding Article 24 - SICK LEAVE and Article 17 VACATION, effective January 1, 1987 and continuing, the AFSCME Labor and Trades bargaining unit members located at the Barron Center shall be participating in the City's sick leave incentive plan.
2. Sick leave shall accrue at the rate of .92 hours per week with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 48 hours. The year-end adjustment for employees who have not been employed for a full calendar year will be based on a pro-ration of the annual amount.
3. Vacations shall accrue according to the following schedule:

0 - 3 years - 2 weeks - 1.54 hours per week  
3+ - 5 years - 3 weeks - 2.31 hours per week  
5+- 9 years - 4 weeks - 3.08 hours per week  
9 + years - 5 weeks - 3.85 hours per week

The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with annual accrual amounts of 80 hours, 120 hours, 160 hours and 200 hours. The year-end adjustment for employees who have not been employed for the full calendar year will be based on a pro-ration of these annual amounts.

4. The provisions of the collective bargaining agreement pertaining to unused sick leave upon retirement shall be prorated consistent with the terms of this side letter.
5. The provision for conversion of sick leave to vacation in Article 24.3 is modified as follows: a Barron Center employee is eligible for conversion if (s)he uses the equivalent of one or fewer sick days within a twelve (12) consecutive month period.

\_\_\_\_\_  
For the City of Portland

\_\_\_\_\_  
Date

\_\_\_\_\_  
For AFSCME Council 93

\_\_\_\_\_  
Date

\_\_\_\_\_  
For Labor & Trades Unit

\_\_\_\_\_  
Date

## **APPENDIX H**

### **WINTER PERIOD DEPARTMENTAL PROCEDURES**

General procedures that apply to all departments are outlined in Article 14.11. Additional procedures that are specific to individual departments are outlined below.

#### **Public Services**

1. The winter period shall begin on a Sunday in November and end on a Saturday in April. The Department Director, or designee, shall determine these dates. Unless weather conditions dictate otherwise, these dates shall be the last Sunday in November and the first Saturday in April.
2. The Union agrees to provide the City with 24-hour coverage throughout this period. Employees will work either a Monday through Friday eight (8) hour schedule, a four (4) ten (10) hour day schedule, or a weekend schedule of three twelve (12) hour days. The Department will determine the number of employees on each shift no later than September 1 each year.
3. Employees will be offered convenience pagers in November. Employees who accept a beeper are expected to respond to each page by contacting Dispatch (874-8493) within 20 minutes of the page.
  - A. If an employee chooses not to carry a convenience pager, s/he shall remain available and able to be reached by telephone during periods of imminent weather. These employees shall submit only one telephone number to the Communications Center which shall be the number used for this purpose.
4. The Department maintains an overtime log book in the Communications Center. Each Friday, employees interested in volunteering for overtime that may occur during the upcoming week may sign up. Two lists are maintained - one for Team A and one for Team B. If additional employees are needed for a shift or operation, the volunteers will be called in the order they appear on the winter overtime list. If there are not enough volunteers to meet the department's need, employees who did not volunteer will be called in from the overtime list.
  - A. Any volunteer who does not accept the overtime, or is not available, will be marked with a refusal and their name will be referred to the Peer Review Committee in accordance with Article 14.11.3.2.
  - B. For the purpose of equalizing the distribution of overtime, employees who did not volunteer, but were eligible to be called prior to the volunteers who were called, will receive a non-disciplinary refusal mark on the overtime list. Their name will not be referred to the Peer Review Committee.
  - C. If there are not enough volunteers to meet the department's need and the employees who did not volunteer are called in, these employees will be

## **APPENDIX H (cont'd)**

considered to have been "forced in" because all overtime during the winter period continues to be mandatory.

- D. Because the voluntary component of these procedures impacts the City's ability to equalize overtime, the Union agrees that equalization of overtime grievances will not be filed providing that the procedures outlined above are followed.
- 5. Sanitation and Recycling personnel will not be expected to assist with the plowing effort on a scheduled work day until after their route is done.
- 6. Construction personnel will be assigned to A team for the winter period. Their hours of work will be 9:00 p.m. – 7:00 a.m. when they are needed for snow removal duties. The City will continue its practice of sending them home at 1:00 p.m., if they are being required to return at 9:00 p.m. that same day for snow removal, and they will be paid until 5:00 p.m. If conditions change and they are not needed at 9:00 p.m., they will be so notified by the Winter Coordinator and will receive the straight time payment for their regular work shift (6:30 a.m. – 5:00 p.m.) The only time they will be required to report to work for a plow or sand/salt operation between 1:00 p.m. and 10:30 p.m. the same day they were sent home at 1:00 p.m. is if there is an all call, and hours after 5:00 p.m. would be compensated at their time and one-half rate. During a plowing storm they will be expected to continue to work after 7:00 a.m.
- 7. The following stipends are in effect for the winter period:
  - A. Public Services OPP Plowing Ops

All OPP current/future qualified employees will receive sixty cents (\$.60) for all hours worked during the winter operations period as defined in Article 14.11.1 and Appendix H. 1.
  - B. These employees will not be required to operate a one-person unit for more than sixteen (16) consecutive hours.
  - C. All other employees from other departments who are OPP qualified and who assist Public Services during winter ops will receive \$2.00 per hour during a plowing storm or a sand/salt operation. These employees will not be required to operate a one-person plow unit for more than sixteen (16) consecutive hours.
- 8. When employees request a winter vacation, they will designate whether or not they will be available during the Sunday through Saturday period of the vacation. Employees who indicate they will be available will not receive vacation call-in pay if they respond to calls during their normal working hours, including weekend periods, and they are not eligible for vacation call-in pay outside of these hours. They will be given option of taking vacation pay, in addition to overtime, or they may reschedule vacation time and not receive vacation

## APPENDIX H (cont'd)

pay. Employees who indicate they are not available are eligible for vacation call-in pay if they are called during the 24-hour period (midnight to midnight) of the vacation day. Normally, employees will not be called while on scheduled vacation; however, if an employee is called while on scheduled vacation, they will notify the Dispatcher that they are on scheduled vacation.

9. One (1) employee per shift will be allowed to be on vacation during the winter period. Vacation requests must be submitted in writing to the Winter Manager, or designee, during the month of September and will be processed after the winter shift schedule is finalized. Employees will be informed by October 15 if their vacation request has been approved or denied. Effective with the 2008-2011 winter period vacations will be scheduled in accordance with a "pick" procedure. On the first "pick" employees who submitted a vacation request in September for the upcoming winter period will be granted time by seniority for one period of consecutive days off (up to a two week maximum). After all employees have had their first "pick" a second pick will be done in order of seniority for open slots on the schedule. This procedure will continue until the winter vacation schedule has been filled or all employee requests have been processed, whichever occurs first. Employees who do not submit a vacation request prior to October 1<sup>st</sup> may schedule vacation time on a first come-first served basis after the schedule as described above is finalized.
10. Public Services hardship committee evaluates hardships based on an annual basis, not a seasonal basis. The hardship period begins on the last Sunday in November and continues through the last Saturday in November of the following year. Hardship requests that develop during the year (following the submission date of August 1) may be submitted at the time they become known to the employee.
11. The following employees shall be exempted from winter shifts:
  - Cemeteries
  - Forestry
  - Horticulture (shall work with Forestry crew)
  - Traffic Computer Sign Operator
  - Solid Waste
  - Portland Downtown District
  - Construction
  - Systems and Lighting Technicians
  - Sewer Inspector (1)
  - Islands
  - Fleet services (shifts applicable to Fleet functions only)
  - Assistant Dispatcher
12. During a winter plowing event, unless otherwise specified herein, a minimum of ten (10) employees will be assigned to sidewalk plowing and related functions. All other employees will be assigned to street plowing and all other Departmental snow removal

## **APPENDIX H (cont'd)**

operations. The on-call primary responder for the Water Resources Division and the Traffic Division shall be exempt from winter operations for the period they are on-call unless they voluntarily sign the overtime book or a state of emergency is declared by the City Manager or his/her designee.

13. The Department of Recreation and Facilities Management will provide, if needed, up to five (5) employees per storm from its Public Buildings Division and four (4) employees from its Athletic Facilities Division to assist the Department of Public Services with plowing and other winter operational functions.
  - A. Public Buildings personnel who assist Public Services with plowing may participate in Public Services voluntary sign-up procedure described in #4 of the Public Services section of Appendix H. Volunteers from Public Buildings will only be offered overtime after all Public Services volunteers on the list have been contacted. There will be no effort to equalize distribution of overtime to Public Buildings volunteers.

## **APPENDIX I**

### **MEMORANDUM OF AGREEMENT**

The parties agree that the AFSCME Labor and Trades and Supervisors collective bargaining agreements will be the general working agreement for the Public Services Construction Section, and will be amended as follows:

#### **1. Hours of Work**

The regular hours of work shall be four consecutive ten-hour days, Monday through Thursday. Starting and ending times shall be established by the work team. Employees may be required to begin and end the day at the respective job site. The timing of meal and rest breaks will be determined by the work team.

In the event of inclement weather mid-week, the work team may opt with a unanimous vote to take that day off and work on Friday at straight time. Employees will be paid at straight time for the hours actually worked on Friday (up to a total of ten).

During the winter period the team has the flexibility to change shifts to deal with snow removal operation with approval of the Construction Coordinator.

#### **2. Holidays**

Holidays defined in the respective collective bargaining agreement as paid holidays will be paid as follows:

A. These holidays shall be paid at the rate of one fourth of the employee's weekly salary, based on the compensation rate in effect when the holiday occurred.

B. If the holiday falls on a scheduled work day, the employees shall have the holiday off. If the holiday falls on Friday, employees working Monday through Thursday will have Thursday off. If the holiday falls on a Monday, employees working Tuesday through Friday will have Tuesday off.

#### **3. Vacation**

Vacation leave shall continue to be earned as outlined in the current bargaining agreements. When the employee uses a vacation day, 10 hours will be deducted from the accumulated balance.

#### **4. Sick Leave**

Effective with the implementation of the 4/10 schedule, sick leave shall accrue at the rate of ten (10) hours per month for employees working under the agreement. When



~~an employee uses a sick day, he/she shall have ten) hours deducted from his/her accumulated balance.~~

**APPENDIX I (cont'd)**

**MEMORANDUM OF AGREEMENT (cont'd)**

~~Balances of accrued sick leave under the 5/8 schedule will not be converted; and 5/8 schedule, accrued balances will not be reduced.~~

5. Overtime

~~Overtime or compensatory time shall be paid or earned at the rate of one and one-half times the employee's base rate when he/she actually works beyond ten hours per day or forty hours per week. Construction employees will be required to remain on the job site until all scheduled work is satisfactorily completed, as determined by the Construction Coordinator or Leader.~~

6. Terms

~~This agreement shall remain in effect for the duration of this agreement.~~

Agreed to by:

\_\_\_\_\_  
City of Portland \_\_\_\_\_ Date

\_\_\_\_\_  
AFSCME Labor & Trades Unit \_\_\_\_\_ Date

\_\_\_\_\_  
AFSCME Council 93 \_\_\_\_\_ Date

## **APPENDIX J**

### **JETPORT PROCEDURES**

#### **I. Winter Work Rules**

The ability of the Aviation and Transportation Department to carry out vital City operations during the winter depends on the faithful observance of these RULES by employees involved in winter operations.

- A. Overtime is not voluntary between November 15 and April 15. No employee shall fail or refuse to report for overtime work when directed to report for overtime work at any time during the period of November 15 through April 15. (Or during periods of imminent danger to the health, safety, and property of Portland citizens.)
- B. Employees shall be available to be called for overtime work during the period of November 15 through April 15 at all of the following times:
  - 1. When directed to be available.
  - 2. When weather forecasts predict snow, icing, high winds and/or tides, heavy rains, possible refreezing, etc. Each employee is responsible for checking forecasts posted near their time clock.
  - 3. During Winter Precipitation at the Jetport all employees will be kept as informed as possible as to the likelihood of call-in to minimize disruptions of their off-time. However some situations occur unforeseen.
- C. The employee must keep telephone lines reasonably open and available for calls. Employees shall provide the department with their home telephone number. They may provide another telephone number for winter calls. If they provide a second telephone number they will inform the Department management which is the primary number and which is the secondary number.
- D. The employee must be able to be reached in a manner acceptable to the Department. The employee will be responsible for notifying the Department of how it can contact the employee.
- E. City-furnished telephone pagers offer the employee the ability to move about normally during the winter months with the condition of reasonable availability. Use of these pagers is recommended when furnished. Maintenance employees who elect not to accept a City-furnished pager and who choose to use a cell phone as their primary number for the winter period may request and receive a dollar amount equivalent to what the City would have spent for the pager.

## APPENDIX J (cont'd)

- F. An employee may request to be excused from the requirements of being available for overtime work as stated in Rule 2. A request to be excused will be permitted only if received no later than noon the day before, except in special cases. These requests will not be granted automatically but will depend upon the needs of the Department.
- G. Snow removal vehicle assignments will be made storm by storm by the Director of Operations or Designee. Maintenance Workers may be asked to operate a variety of pieces of equipment, depending on the needs of the Department at any particular time.
- H. The department will address absences on a case-by-case basis and may take whatever action it deems necessary.
- I. Any employee who is unable to report for snow plowing because of illness should contact the Department immediately and make this known to the individual in charge. The Department reserves the right to require medical certificates.
- J. Guidelines for Taking Breaks
  - 1. Drivers should take a ten-minute stretch break at least every two hours.
  - 2. Drivers should take regular meal breaks at convenient times.
  - 3. After approximately 12 hours of work, drivers should take a thirty (30) minute break for a meal or rest stop.
  - 4. A work limit of 16 continuous hours should be followed unless the driver and Supervisor agree that unusual conditions require the hours to be extended. The final decision as to driving longer than 16 hours will be made by the Airport Operations Manager or his/her designee.
  - 5. Drivers should take a break from plowing duties whenever they feel they are too tired to drive safely on the airfield.
  - 6. A fine balance must be maintained between keeping our properties safe and employee off-time/breaks. At times, a somewhat extended "PUSH" followed by a longer rest break may need to be employed - safety being the controlling factor.
- K. ~~During the winter period employees who have worked twenty-four (24) consecutive hours immediately prior to the start of their regular shift will receive additional half time pay for hours actually worked within their normally scheduled shift, for the duration of all hours worked.~~

## **APPENDIX J (cont'd)**

L. The following procedure will be used at the Jetport for scheduling winter operations:

1. Employees will submit vacation requests for the upcoming winter period on the first three (3) business days following September 15. All requests submitted during this time period will be reviewed on the following business day and will be treated as if they were received on the same date. Only one person may be on vacation at a time and seniority will determine who receives the vacation if more than one person has requested the same time off except that employees requesting a full week off will receive priority over more senior employees requesting a single day off.
2. The winter vacation schedule will be posted on a board and will be kept up-to-date by Department management. It is the responsibility of the employee going on vacation to check the board to find out if s/he will be on call on their regular days off following the vacation period.
3. Vacation requests received after the time frame outlined in paragraph 1 will be posted by the Airport Operations Manager. They will be approved for open slots on the schedule (for days that no one is on scheduled vacation).
4. Once a vacation request has been approved in accordance with these guidelines, it will not be canceled due to shortage of staff (vacant positions), sick leave usage within the department or because a more senior person wants the same time off. If necessary, the Department reserves the right to utilize contract personnel during these periods.
5. If the vacation starts immediately after an employee's regular days off, the employee will not be on call on those regular days off. The employee may also request not to be on call on their regular days off following the vacation period. If another employee is not on scheduled vacation the following week, the employee will not be on call on their days off following the vacation period; if another employee is on vacation the following week, the employee will go back on call for their regular days off following their vacation period.
6. A similar procedure will be utilized for the non-winter period with requests being submitted by February 15 for the April 15 – November 15 time period. The number of employees who will be allowed off at the same time will be determined by the Airport Operations Manager based on staffing needs.

## **APPENDIX J (cont'd)**

- M. ~~Employees who plow the access road or Congress Street in a one person plow truck with wing are eligible for a \$2.00 stipend for the time spent plowing these two routes.~~
- N. ~~Employees assigned to plow the airfield during a plowing storm are eligible for a \$1.00 per hour stipend for the time spent plowing, excluding a sand and salt operation or chemical application.~~

### **II. In-Charge Differential Stipend**

~~In an effort to provide a more comprehensive in charge coverage at the Jetport, a one (1) of the third shift employees may be designated to be in charge as described below:~~

- A. ~~The in charge responsibilities shall be for the third work shift at the Jetport. The general responsibilities assigned shall be to the person designated as in charge during operation hours which Jetport management normally are not present.~~
- B. ~~The Jetport administration has developed a detailed job description outlining the specific responsibilities of this in charge position.~~
- C. ~~The Department shall post and fill this in charge differential position within the Department in accordance with the collective bargaining agreement. All Airport Maintenance Worker III's are eligible to apply for this position. The City and Union will mutually agree upon the selection criteria for this position.~~
- D. ~~The rate of compensation for this in charge differential shall be \$1.25 per hour in addition to the person's appropriate seniority step of pay grade 18 including any current shift differentials.~~

### **III. List of Approved Tools**

Listed below are the tools that will be provided to employees hired by the Jetport (new hires or transfers) on or after July 1, 1996. The list may also be used by employees eligible for a tool allowance as a guideline for determining what tools to request approval to purchase with their tool allowance.

#### **A. Hand Tools**

- 1 Leather tool apron
- 1 Canvas tool tote
- 1 Pair safety glasses
- 1 Pair hearing protectors
- 1 SAE metric socket wrench set (= Craftsman #33623 or equivalent)
- 1 3/8" to 7/8" open end box ratchet wrench set
- 1 6" adjustable wrench

## APPENDIX J (cont'd)

|   |                                 |
|---|---------------------------------|
| 1 | 8" adjustable wrench            |
| 1 | 10" adjustable wrench           |
| 1 | utility knife                   |
| 1 | torpedo level                   |
| 1 | 24' carpenter level             |
| 1 | line level                      |
| 1 | "wiggy" electrical tester       |
| 1 | wall outlet tester              |
| 1 | hot stick tester                |
| 1 | 4-in-one screwdriver            |
| 1 | nail hammer                     |
| 1 | ball peen hammer                |
| 1 | 6" taping knife                 |
| 1 | 10" taping knife                |
| 1 | electrical crimper/stripper     |
| 1 | drywall saw                     |
| 1 | 5-in-one paint tool             |
| 1 | 14" mud trowel                  |
| 1 | quick square                    |
| 1 | 6" combo square                 |
| 1 | 8" linesman's plier             |
| 1 | 6" pliers                       |
| 1 | 8" needle nose pliers           |
| 1 | 8" diagonal cutting pliers      |
| 1 | multi-sized notched trowel      |
| 1 | cement finishing trowel         |
| 1 | 12" channel lock pliers         |
| 1 | razor scraper                   |
| 1 | 2" putty knife                  |
| 1 | chalk line                      |
| 1 | 6" vise grips                   |
| 1 | 10" vise grips                  |
| 1 | needle nose vise grips          |
| 1 | nut driver set (5/32" to 9/16") |
| 1 | 30' tape measure                |
| 1 | file set                        |
| 1 | pipe cutter #10 Rigid           |
| 1 | pipe cutter #20 Rigid           |
| 1 | straight pair of aviation snips |
| 1 | wire stripper                   |
| 1 | fuse puller (large)             |
| 1 | pipe wrench 8"                  |
| 1 | 10" pipe wrench                 |
| 1 | punch set (nail and drift)      |
| 1 | set wood chisels                |

## **APPENDIX J (cont'd)**

- 1 set cold chisels
- 1 "T" allen wrench set
- 1 pocket allen wrench
- 1 speed wrench 1/2" drive
- 1 hacksaw
- 1 mini hack saw
- 1 mini mag light case
- 1 3/8" drive ratchet extension set
- 1 1/2" drive ratchet extension set
- 1 drill index
- 1 drill holster
- 1 dead blow hammer
- 1 screwdriver set
- 1 wire brush
- 1 wrecking bar
- 1 wonder bar
- 1 caulking gun
- 1 grease gun
- 1 pair 6 "C" clamps
- 1 rivet tool
- 1 7 pc. 3/8" drive allen wrench set
- 1 17 pc. metric combination wrench set
- 1 8 pc. ratchet wrench set
- 1 12 pc. 1/2" drive impact socket set

### **B. Battery/Power Tools**

- 1 3/8" drill - power
- 1 cordless drill/driver - battery
- 1 circular saw - power
- 1 sabre saw - power

### **C. Other**

- 1 paint brush assortment
- 1 wood bit set
- 1 lockout/tagout equipment
- 1 roller tray
- 1 9" paint roller
- 1 4" paint roller

## **APPENDIX K**

### **Welding Career Ladder - MEMORANDUM OF UNDERSTANDING**

The City of Portland and AFSCME Local 481 have reached the following mutual understanding concerning the implementation of the career ladder program for Welders under the Labor and Trades Collective Bargaining Agreement:

1. The 3rd Class Welder Assistant position is an entry level position and the successful applicant must meet the hiring requirements of the City. The pay grade is 15 under the classification plan (Appendix B-1).
2. The 2nd Class Welder Machinist position is for new employees and/or any 3rd Class Welder Assistant who meets the following criteria:
  - A. Has received a "Unlimited Thickness Plate" certification as issued by the American Welding Society, and
  - B. Demonstrates the ability to read blueprints and perform shop mathematical calculations; and
  - C. Possesses some knowledge of machinist and sheet metal trades, and
  - D. Has at least three (3) years of experience in welding work of a journeyman level.
  - E. Possesses a Class B License

Placement at pay grade 18 shall occur when the employee has provided written proof of receipt of the certification and license listed in A and E, has successfully completed an in-house proficiency exam comprised of B and C, and documents the experience requirement listed in D. This new pay rate shall occur on the next scheduled pay period or shall be retroactive to the first pay period after written documentation is provided to the City by the employee and authorized by the Fleet Manager.

3. The 1st Class Welder Machinist position is for new employees and/or any 2nd Class Welder Machinist who meets the following criteria:
  - A. Has received a "Pipe Certification" as issued by the Maine Board of Boilers and Pressure Vessels and
  - B. Possesses a State of Maine Class B driver's license, and
  - C. Demonstrates proficiency in shop fabrication, field fabrication and rigging abilities, and
  - D. Demonstrates thorough knowledge of machinist and sheet metal trades, and
  - E. Demonstrates high level of skill in the use of shop tools and equipment, and
  - F. Has at least five (5) years experience in welding and machinist work above the journeyman level.

The pay grade for this position is 19. Placement at pay grade 19 shall occur when the



#### APPENDIX K (cont'd)

employee has provided written proof of receipt of the certification listed in A, the license required in B, has successfully completed an in-house proficiency exam comprised of C, D, and E, and documents the experience requirement listed in E. This new pay rate shall occur on the next scheduled pay period or shall be retroactive to the first pay period after written documentation is provided to the City by the employee and is authorized by the Fleet Manager.

4. Employees are responsible for annual re- certifications and re-licensures. Failure to maintain certifications and licensures shall result in loss of classification and pay status until such time as recertification or re-licensure is obtained. It shall be the employee's responsibility to inform the Fleet Manager of any change in status in certification or licensure. Failure to inform shall be grounds for discipline in accordance with the provisions of the Agreement.

AGREED TO BY:

\_\_\_\_\_  
City of Portland

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFSCME Labor & Trades

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFSCME Council 93

\_\_\_\_\_  
Date

## **APPENDIX L-1**

### **MAINTENANCE WORKER I CAREER LADDER – (Pay Grade 16)**

#### **BARRON CENTER**

##### **Absolute:**

Must have fulfilled the requirements of a Maintenance Worker and has been permanently classified as a Maintenance Worker for six (6) months.  
Must pass a safety course approved by the City's Safety Officer

##### **Primary (all Apply):**

Box Truck Operator (Internal)  
Front End-Loader Certification (internal)  
Working knowledge of Nursing Home State and Federal Regulations (Internal Test >70%)  
Ability to operate 4X4 pick-up with plow (internal)  
Demonstrated ability to prioritize work tasks, work independently and make sound decisions (Internal)

##### **Secondary: (Select Three)**

Metal Stud Framing Certification (Internal/External)  
Plumbers License or Apprentice/Journeyman level of training  
Electrician's License or Apprentice/Helper level of training  
Finish Carpentry (internal/external)  
Drywall Repair Certification (Internal/External)  
Plumbing Repair Certification (Internal)  
Computer Proficiency in Microsoft Office Suite (Internal/External)  
Building Fire Alarm Working Knowledge (Internal via Supervised Alarm Drills)

December 2008

## **APPENDIX L-1**

### **MAINTENANCE WORKER III CAREER LADDER – (Pay Grade 18)**

#### **BARRON CENTER**

##### **Absolute:**

- Fulfills the requirements of Maintenance Worker I and has been permanently classified as a Maintenance Worker I for a minimum nine (9) months
- Possesses physical strength and ability to perform the essential functions of the job
- Must pass 30-hour OSHA 1910 class approved by the City's Safety Officer

##### **Primary (3 Required):**

- Boiler Operator or 4th class stationary engineer (external)
- American Welding Society certification (external)
- Certified HVAC technician (internal or external)
- Successfully complete OSHA competent person course approved by City Safety Coordinator (internal or external)
- Finish and/or framing carpentry certification (internal or external)
- Finish painter certification (internal)

##### **Optional (None required but 2 electives may replace maximum of 1 primary):**

- Riggers certification (external)
- Certified Facilities Management course (external)
- Ability to read construction plans (internal)
- Tape/plaster/sheet rock certification (internal)
- Any relevant requirement approved by the employee's Department Head
- Vinyl, carpet and tile installation certification (internal)
- Suspended ceiling installation certification (internal)
- Plumbers license or Apprentice/Journeyman level of training (external)
- Locksmith certification (external)
- Microsoft software certification (internal or external)

December 2008

## **APPENDIX L-2**

### **MAINTENANCE WORKER CAREER LADDER**

#### **SOCIAL SERVICES DIVISION**

The Custodial Worker is the entry level classification in the Division of Social Services. Employees hired within this classification must meet the qualifications on the following page.

The Custodial Worker is the first step on the Maintenance Worker Career Ladder. Employees who wish to move up the ladder into the Maintenance Worker, I & III classifications must meet the qualifications for each "step", as described in this appendix.

The management personnel with the Division of Social Services encourages you to pursue advancement through the Career Ladder. If you have any questions regarding the workings and specific requirements of the program, please speak to your Division Head or Union Representative.

December 2008

## **APPENDIX L-2 (cont'd)**

### **MAINTENANCE WORKER CAREER LADDER – (Pay Grade 14)**

#### **SOCIAL SERVICES DIVISION**

##### **Absolute:**

- Fulfills the requirements of Custodial Worker and has been permanently classified as Custodial Worker for a minimum of one (1) year
- Demonstrates the ability to work effectively with low-income clients including the homeless who have barriers to self-sufficiency.
- Demonstrates the ability to communicate with a diverse consumer group.
- Possesses physical strength and ability to perform the essential functions of the job and ability to withstand exposure to varied climatic conditions while performing job duties.
- Pass safety course approved by City's Safety Officer (internal or external)

##### **Primary:**

- Working knowledge of Division's safety rules and regulations (internal)
- Demonstrated ability to prioritize work tasks, work independently and make sound decisions (internal)
- Demonstrated ability to operate a variety of automotive and lawn maintenance equipment, including rototiller, skill saw, miter saw, air guns and 4X4 pick-up with a plow attachment (internal)
- Demonstrated ability to repair and maintain small motor equipment (internal)
- Basic carpentry certification (internal)

December 2008

## **APPENDIX L-2 (cont'd)**

### **MAINTENANCE WORKER I CAREER LADDER – (Pay Grade 16)**

#### **SOCIAL SERVICES DIVISION**

##### **Absolute:**

- Fulfills the requirements of Maintenance Worker and has been permanently classified as Maintenance Worker for three (3) months  
Must pass a safety course approved by the City's Safety Officer  
Possesses physical strength and ability to perform the essential functions of the job (in accordance with Appendix L)

##### **Primary:**

Demonstrates the proper operating techniques for the following Division equipment:

- 4X4 pickup truck with 7' plow attachment
- Walk behind snow blower
- Walk behind rotary motors
- Walk behind rototiller
- Leaf blower
- String trimmer
- Air-activated air-gun
- Bobcat Skid Turn
- Table Saw
- Miscellaneous power tools
- Carpentry certification (internal or external)

##### **Secondary:** (Select three)

- Ability to read construction plans and blueprints (internal or external)
- Building alarm/security system certification (internal or external)
- Personal safety/defense training certification (internal or external)
- Successfully complete ergonomics course approved by the City's Safety Coordinator (internal or external)
- Demonstrated knowledge of Hotel/Motel Fire Code regulations (internal or external)
- Drywall repair certification

December 2008

## **APPENDIX L-2 (cont'd)**

### **Maintenance Worker III Career Ladder (Pay Grade 18)**

#### **Social Services Division**

##### **Absolute:**

- Fulfills the requirements of Maintenance Worker I and has been permanently classified as a Maintenance Worker I for a minimum of three (3) months.
- Possesses physical strength and ability to perform the essential functions of the job (in accordance with Appendix L)
- Must pass OSHA course approved by the City's Safety Officer

##### **Primary:**

- Successfully complete supervisory course (internal or external)
- Demonstrated ability to interpret blueprint plans for building renovations (internal)
- Advanced building alarm/security system certification (internal or external)
- Demonstrated ability to train low income clients in basic maintenance tasks and basic employment skills (internal)

##### **Secondary:** (Select three)

- Plumbers course (internal or external)
- First Aid or CPR certification (internal or external)
- Successfully complete home wiring course or other electrical course approved by the Public Buildings Manager (internal or external)
- Successfully complete effective communication course approved by the Division Director
- Vinyl, carpet and tile installation certification (internal)
- Painting certification (internal)

December 2008

## **APPENDIX M**

### **TRADES WORKER II (pay grade 17)**

#### **PUBLIC BUILDINGS**

##### **Absolute:**

- Fulfills the requirements of Trades Worker I and has been permanently classified as a Trades Worker I for a minimum of 6 months.
- Must pass the 30-hour 1910 OSHA class approved by the City's Safety Coordinator

##### **Primary: (3 Required)**

- Knowledge and practices of roof repair on rubber membrane roofs, asphalt roofs, and metal roofs.
- Knowledge and practices of paint and wall finishes to include but not limited to paint types, caulking types, and the uses of proper products for each application.
- Knowledge and practices of hazard awareness to include lead paint, asbestos, mold, and other environmental and health hazards.
- Knowledge and ability to read and understand blueprints to be able to perform the work required

##### **External: (none required but 2 electives may replace maximum of 1 primary)**

- Knowledge of variety and grade of fasteners, and the proper use and application.
- Knowledge and ability to do construction layout for both new construction and renovations at a competent level.
- Knowledge and ability to install and repair VCT, carpet, hardwood and other flooring types at a competent level.
- Knowledge and ability to install and repair masonry products such as concrete pads, block walls, and brick work.

December 2008



## **APPENDIX M**

### **TRADES WORKER III (pay grade 19)**

#### **PUBLIC BUILDINGS**

##### **Absolute:**

- Fulfills the requirements of Trades Worker II and has been permanently classified as a Trades Worker II for a minimum nine (9) months
- Possesses physical strength and ability to perform the essential functions of the job
- Must pass 30-hour 1910 OSHA class approved by the City's Safety Coordinator

##### **Primary (3 Required):**

- Boiler Operator or 4th class stationary engineer (external)
- American Welding Society certification (external)
- Certified HVAC technician (internal or external)
- Successfully complete OSHA competent person course approved by Safety Officer
- Finish and/or framing carpentry certification (internal or external)
- Finish painter certification (internal)

##### **External: (None required but 2 electives may replace maximum of 1 primary):**

- Riggers certification (external)
- Certified Facilities Management course (external)
- Ability to read construction plans (internal)
- Tape/plaster/sheet rock certification (internal)
- Any relevant requirement approved by the employee's Department Head
- Vinyl, carpet and tile installation certification (internal)
- Suspended ceiling installation certification (internal)
- Plumbers license or Apprentice/Helper level of training (external)
- Locksmith certification (external)
- AutoCad Certification (internal or external)

December 2008

## **APPENDIX N**

### **ARBORIST I FORESTRY DIVISION**

The **Arborist** I is the entry level position for the Arborist classification in the Portland Public Services Department. Employees hired within this classification must meet the qualifications outlined in the Arborist I attachment. The Arborist I is also the first step on the Arborist Career Ladder.

Employees who wish to advance into the Arborist II and III classifications must satisfy the requirements at each level of the career ladder before they may move to the next level of the career ladder.

Management of the Public Services Department encourages you to pursue advancement through the Career Ladder. If you have any questions regarding the workings and specific requirements of the program, please speak to the Parks and Open Space Manager, City Arborist or your Union representative.

December 2008

## **APPENDIX N (cont'd)**

### **ARBORIST I FORESTRY DIVISION**

#### **Absolute Requirements:**

- Must possess valid Maine Class C Operator license at time of hire and must obtain valid Maine Class B motor vehicle operator's license within probationary period.
- Must possess Maine Arborist license at time of hire or obtain within one year of date of hire.
- Must possess and maintain a good driving record (pre-employment screening required).
- Possess basic knowledge of the hazards and applicable safety standards associated with arboriculture.
- Possess basic knowledge of arboriculture and landscape skills, tree identification, tree physiology, and insect and diseases of shade trees.
- High school diploma or equivalent.
- Possess physical strength and agility necessary to perform the essential functions of the position and the ability to withstand exposure to varied weather conditions while performing job duties.

#### **Primary Requirements:**

- Ability to understand and follow oral and written directions.
- Ability to establish and maintain effective working relationships with other employees, supervisors and the public.
- Ability to operate a variety of forestry equipment, including equipment used in Winter Operations.
- Possess willingness, ability and aptitude to climb and work in trees using a rope and saddle.
- Possess willingness to qualify for the position through department field test consisting of:
  - Climbing tree to 25' using rope and saddle.
  - Complete vehicle/equipment circle test.
  - Operate bucket truck.
  - Demonstrate proper technique in operating chainsaw and brush chipper.
  - Demonstrate proper tree pruning techniques
  - Identify specific species of trees.

#### **Training and Experience Desired:**

- Previous work experience or training in arboriculture.
- Documented electrical safety training or experience.
- Holds current Maine Arborist License or ISA Certification.
- Possess valid Maine Class B driver's license.

## **APPENDIX N (cont'd)**

### **ARBORIST II FORESTRY DIVISION**

#### **Absolute Requirements:**

- Fulfilled the requirements of an Arborist I.
- Valid Maine Class B Motor Vehicle Operator's License
- Possess physical strength and agility to perform the essential functions of the position
- Satisfactorily complete 10-hour OSHA course relevant to Forestry that is approved by the City's Safety Coordinator
- Possess aptitude to qualify for the position by completing field test consisting of:
- Properly set up tree and climb up to 55' using proper ANSI approved techniques, using a 'throw-ball' and 'foot-lock' or 'hip-thrust' techniques.
  - Properly set up aerial lift truck to reach desired targets within a tree up to 65' in height. (Internal)
  - Complete circle check and demonstrate operating techniques on Brush Chipper, Stump Grinder and Log Loader. (Internal)
- Complete leaf and twig identification test for native and exotic trees. (Internal)
- Pass basic EHAP, (Electrical Hazard Awareness Program) test (Internal).

#### **Primary Requirements:**

- Maine Arborist License (External)
- Maine Pesticide Applicator's License with either category 3A or 6D (municipal or ornamental). (External)
- Certified to operate and perform basic maintenance of Forestry equipment: Chain saw (including chain sharpening), brush chipper, stump grinder, log loader, aerial lift. (Internal)
- Possess CPR and First Aid certification. (Internal or external)
- Knowledge and understanding of ANSI and OSHA requirements and standards pertaining to arboriculture, including: ANSI Z.133, A300, and OSHA 1910.331/269.
- Obtained 'skilled' level in the use of ropes, pulleys and lowering devices.
- Certified in the planting, fertilization and watering of trees and shrubs. (Internal)
- Certified to operate the following winter operations equipment: sidewalk plow equipment, 4X4 with plow (trained to plow roads and parking lots), one-ton pickup truck, walk behind snow blower and skid steer. Certification includes demonstration of proper and safe operating techniques, performance of a thorough circle check and demonstration of the ability to perform routine maintenance on the equipment. (Internal)
- Ability to supervise a small crew of workers as required. (Internal)
- Ability to work productively with other team members within division and department.

July 2005

## **APPENDIX N (cont'd)**

### **ARBORIST III FORESTRY DIVISION**

#### **Absolute Requirements:**

- Fulfilled requirements of the Arborist position.
  - Has been an Arborist II for at least 90 working days.
  - Completed Traffic Control Safety Training, Certified MDOT Traffic controller.
  - Possess the physical strength and agility to perform the essential functions of this position.
  - Satisfactorily complete 30-hour 1910 OSHA course.
  - Possesses aptitude to qualify for position by completing 'Master Level' field test or actual 'on-the-job' demonstration consisting of:
    - **Climbing demonstration test** – consisting of tying knots, climbing with throw ball, rope & saddle and to various targets within a tree, and aerial rescue.
    - **Rigging demonstration** – rigging tree for removal using various lowering devices, blocks, lines, knots and pulleys.
    - **Equipment demonstration** – proficient operation and knowledge of safety, maintenance and mechanical systems of the following Forestry equipment:
      - **Chainsaw**, including troubleshooting, chain sharpening, bar adjustment, operation, safety requirements and standards.
      - **Brush Chipper**, troubleshooting, knife changing, maintenance, operation, safety requirements and standards.
      - **Stump Grinder**; review hydraulics, safety features and requirements, maintenance, operation.
      - **Log Loader**, setup, safety requirements, hydraulics, operation: loading and unloading, boom lift capacities, maintenance, safety requirements and standards.
      - **Aerial lift truck**, setup for large tree pruning, reaching specific targets within the tree, safety requirements: manufacturers, OSHA and ANSI standards, maintenance of hydraulics, booms and all systems.
- (Note – Internal demonstration and written tests with time restraints.)**

#### **Primary Requirements**

- Certified Line Clearance Arborist, meeting OSHA 1910.269 requirements, such as National Arborists Association's (NAA) Electrical Hazard Awareness Program (EHAP) or approved equal including climbing and bucket truck aerial rescues within the time requirements. (External)
- Maine Pesticide Applicator's License with categories 3A and 6D, Outdoor Ornamentals and Municipal Right of Way. (External)
- Maine Arborist License. (External)
- Maine Class B Motor Vehicle Operator's License. (External)

## **APPENDIX N (cont'd)**

### **ARBORIST III**

#### **Primary Requirements (cont'd)**

- Certified on Arboricultural safety standards for Tree Care Operations, Pruning, Line Clearance Tree Trimming, Nursery Stock, and Forestry Equipment. (Internal)
- International Society of Arboriculture (ISA) Arborist Certification, or attend arboricultural training of 30 hours within a three (3) year period. (External)
- Certified to operate the following winter operations equipment: dump truck with plow and sander, and front end loader. Certification includes demonstration of proper and safe operating techniques, performance of a thorough circle check and demonstration of the ability to perform routine maintenance on the equipment. (Internal)
- Ability to supervise small crews and maintain accurate documentation records.
- Ability to work productively with other team members within division and department, and develop good working relationships with contacts outside of the Department.

## **APPENDIX O-1**

### **AIRPORT MAINTENANCE WORKER CAREER LADDER**

The following procedures and criteria will be used for the purpose of hiring and promoting Airport Maintenance Workers at the Jetport.

#### **Initial Hire**

The criteria attached as Attachment I will be utilized to determine qualifications of all candidates who apply for Airport Maintenance Worker II positions. Notwithstanding Article 33.2 it is further understood that preference for hiring will be given to persons with prior aviation experience.

#### **Promotion to Airport Maintenance Worker III**

Successful applicants for Airport Maintenance Worker II vacancies will start at pay grade 16. They will move to Airport Maintenance Worker III at pay grade 19 in accordance with the following procedures:

- A. — The evaluation criteria outlined in Attachment II will be utilized to determine when an employee is qualified to progress to Airport Maintenance Worker III.
- B. — Evaluation of Non-City Employee Hire
  - 1. — Entry level pay grade 16
  - 2. — A three (3) month evaluation for promotion to pay grade 18.
  - 3. — A six (6) month evaluation for retention as a permanent City employee. At this time it will be determined if the employee should be promoted to pay grade 18 if the three (3) month promotion option was not exercised.
  - 4. — A nine (9) month evaluation for promotion to pay grade 18 if the six (6) month promotion option was not exercised.
  - 5. — One (1) year evaluation for promotion to pay grade 18 if the nine (9) month promotion option was not exercised; providing the employee possesses the necessary licenses and certifications, and satisfies the criteria listed in Attachment II.

November 1999

**APPENDIX O-1 (cont'd)**

C. — Evaluation of City Hire

1. — ~~Entry level pay grade 16~~
2. — ~~Thirty (30) working day evaluation for retention in the Department.~~
3. — ~~A three (3) month evaluation for promotion to pay grade 19.~~
4. — ~~A six (6) month evaluation for promotion to pay grade 19 if the three (3) month promotion option was not exercised.~~
5. — ~~A nine (9) month evaluation for promotion to pay grade 19 if the six (6) month promotion option was not exercised.~~
6. — ~~One (1) year evaluation for promotion to pay grade 19 if the nine (9) month promotion option was not exercised; providing the employee possesses the necessary licenses and certifications, and satisfies the criteria listed in Attachment II.~~

- D. — ~~The City and the Union agree that a new hire or a City employee hired from another Department may be promoted to pay grade 19 prior to the three (3) month evaluation if they satisfy all criteria referenced in paragraph A as determined by the Department Head or designee.~~

November 1999



## **APPENDIX O-1 (cont'd)**

### **ATTACHMENT I**

#### **AIRPORT MAINTENANCE WORKER II SELECTION CRITERIA**

##### **MINIMUM QUALIFICATIONS FOR INTERVIEW—**

~~State of Maine MVO License — Class B CDL.~~

~~Three years experience in the following:~~

~~Commercial snow removal operating minimum 5-ton truck or other heavy equipment.~~

~~Operation of earthwork vehicles and heavy equipment.~~

~~Operation and basic maintenance of hand and power tools.~~

~~Ability to successfully complete TSA access investigation per 49 CFR Part 1542 including fingerprint-based criminal history records check, a drug and alcohol test, and a physical assessment measuring cardiovascular fitness, flexibility, strength, endurance, color recognition, and night vision.~~

##### **PHYSICAL QUALIFICATIONS—**

~~Ability to withstand exposure to varied climatic conditions, work prolonged hours, and perform work related duties at times with less than normal amounts of sleep.~~

~~Ability to exert the moderate physical effort that is frequently required for regular periods of time to include lifting, bending, stooping, climbing, pushing, and movement of extremities.~~

~~Ability to talk, hear, and comprehend orders over a radio while operating equipment.~~

~~Successful completion of testing specified above once conditional offer of employment is made.~~

##### **EDUCATIONAL QUALIFICATIONS—**

~~Ability to read and understand mechanical instructions, wiring diagrams, FAA airport directories, maps, layout sketches, and blueprints.~~

~~Ability to write and perform basic mathematical calculations rapidly and accurately as required for FAA inspections forms, accident/incident reports, airfield condition reports, and work repair/request reports.~~

~~Ability to obtain, or possession of, professional licenses and certifications including, but not limited to, Electrician's Helper, Herbicide Applicator, Boiler Operator, Welding, Airfield Lighting, Airfield Condition Inspection, etc. or any other pertinent trade related license or certification related to the performance of the work.~~

July 2005

**APPENDIX O-1 (cont'd)**

**ATTACHMENT I (cont'd)**

OTHER QUALIFICATIONS—

Ability to speak in a clear and understandable manner on the radio and while dealing with tenants and the public.

Ability to operate trucks, tractors, and a variety of snow removal, mowing, and construction related equipment.

Extensive work experience and/or training and knowledge of materials and techniques involved in maintenance, construction, and repair activities or a varied nature as listed, but not limited to, the following:

Carpentry

Plumbing

Electrical

HVAC

Masonry

Drywall

Painting

Basic Building Construction

Basic Earthwork

Basic Landscaping

Operation and basic maintenance of hand and power tools, and light/heavy equipment.

Ability to lead, train, and maintain effective working relationships with other employees.

Airport maintenance/operation experience preferred.

Shift work experience preferred.

Demonstrated ability and work experience involving periods of long hours on the job.

Demonstrated ability and work experience in being self motivated, self directed, responsible and able to recognize work needs in the absence of direct supervision.

WORK HISTORY

Safe work record (preventable accidents/injuries).

Good attendance record.

Good driving record.

Well recommended by previous employers, supervisors, and co-workers (dependable, reliable, honest, etc).

November 1999

## **APPENDIX O-1 (cont'd)**

### **ATTACHMENT II**

#### **AIRPORT MAINTENANCE WORKER**

#### **CRITERIA TO UPGRADE FROM PAY RANGE 16 TO 19**

1. — Greater than 90 percentile on written and oral examinations on airfield maintenance training including airport familiarization and radio usage, lighting systems, self inspection, emergency procedures, basic environmental management procedures, and winter operations.
2. — Successful completion of 30 calendar days of airfield inspection experience and training including winter/summer/day/night procedures.
3. — Successful completion of minimum eight hours of training by the Facilities Specialist staff to include basic operation and maintenance of the major building systems/equipment and landside properties, as well as City and contract responsibilities for same.
4. — Minimum three storm experience in hands on landside and airside winter operations or successful completion of eight hours training by the Operations staff. Demonstrated ability to operate a standard shift and spreader/ice control equipment.
5. — Possession of all required licenses as detailed in the Grade 18 job description or confirmed enrollment in appropriate courses leading to said licenses that are only seasonally offered.
6. — Successful completion of training in the following: CPR, use of fire extinguishers, confined space entry, MSDS usage, use of respirators and scaffolding, wildlife management, and spill/storm water pollution prevention procedures.
7. — Demonstrated capability and expressed willingness and confidence in ability to be effective as the sole representative of the Department at the airport at any given time.
8. — Demonstrated physical ability to perform all of the work entailed by the job description.
9. — Successful completion of HVAC training provided by Facilities staff

July 2005

**APPENDIX O-2**  
**CAREER LADDER FOR AIRPORT FACILITIES PERSONNEL**

Electrical

Requirements for Grade 18:

Journeyman license

Employees will be required to successfully complete written and practical demonstration of knowledge in the following areas:

- \_\_\_\_\_ Familiarity with Jet ways troubleshooting and diagnostics
- \_\_\_\_\_ Baggage handling systems (including basic Allen Bradley Programmable Logic Circuit commands)
- \_\_\_\_\_ Basic knowledge of Flight Information Display, Public Address and Transportation Information Display systems
- \_\_\_\_\_ Cat 5 installation
- \_\_\_\_\_ Basic understanding of security systems
- \_\_\_\_\_ Familiarity with electrical infrastructure at Jetport
- \_\_\_\_\_ Familiarity with emergency generators/life safety systems

Requirements for Grade 19:

Obtain Master Electrician license and successfully complete all requirements listed above for Grade 18

HVAC

Requirement for Grade 18:

Refrigeration Service Engineers Society license

Boiler license

Employees will be required to successfully complete written and practical demonstration of knowledge in the following areas:

Familiarity with energy management system

Operation of chiller

Understanding of heating system operation at terminal building (reset schedules, pumps, sequence of operation, etc.)

Understanding of operating principles for air handling system zones and sequence of operations

Understanding of and point by point review of energy management system under supervision of HVAC Technician

Requirement for Grade 19:

Obtain Master Plumber or Master Boiler license and successfully complete all requirements listed above for Grade 18

Upon attainment of grade 19 in accordance with this career ladder, employee may participate in beeper rotation with Facilities Technicians. However, there is no automatic movement to grade 19M positions. Airport Facilities Tech vacancies will continue to be filled through the City's job posting process.

July 2005

## APPENDIX P

The parties mutually agree to implement a Districting internal transfer agreement upon contract execution. When a Districting vacancy occurs, the following steps will occur prior to the posting of that vacancy through the City's job posting procedure:

1. Districting employees who are interested in moving to a different district will be eligible to submit a preference sheet listing the District of their choice.
2. Anyone who submitted a preference sheet will have their slot opened up; anyone who did not submit a preference sheet is guaranteed to stay in their District and their slot will not be opened up.
3. These preference sheets will be put in order of seniority and District assignments made based on the number of slots open in a given District. Employees will be given their preference in terms of assignment for a District that has open slots available when their request is reviewed (which is dependent on their seniority).
4. After this process is complete, it will be determined which District has an open slot that will be filled through the job posting process. Employees who take advantage of this internal procedure are not eligible to access Article 33.4 to return to their previous Districting assignment. Only the person who is selected for the vacancy that is posted by the City may exercise Article 33.4; if they worked in another District prior to their selection, they will not necessarily be returned to the District that they left.

This agreement is effective upon contract execution and will continue through June 30, 2011. Either party may request a meeting during the term of the 2008-2011 contract to discuss problems that arise regarding the implementation of this agreement and changes may be made by mutual agreement.

Agreed to by:

\_\_\_\_\_  
City of Portland

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFSCME Council 93

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFSCME Local 481-00, Labor and Trades Unit

\_\_\_\_\_  
Date

## **APPENDIX Q**

### **HEALTH INSURANCE RESERVE ACCOUNT**

Health plan as proposed by the Health Insurance Advisory Committee referred to in Article 15.2.1.

- Implementation of the new Health Insurance plan (Revised 11/14/2014) would be no sooner than January 1, 2016.
- The wellness programs will be established prior to new Health Insurance Plan being implemented.
- The first year of implementation the proposed Health Insurance plan the deductible will be \$200 for single per year and \$400 for a family per year.
- The second year of implementation of the proposed Health Insurance plan the deductible will increase to \$400 for single per year and \$800 for a family per year.
- Established a reserve account as outline below:

#### **Health Insurance (City of Portland Employee Medical Plan) Reserve Account**

Upon implementation of the proposed value-based insurance design that includes wellness components, the City of Portland ("City") agrees to designate \$150,000 from fund balance to establish a reserve account. Thereafter, following the conclusion and audit completion of each fiscal year, the City will determine if the employee medical plan budget was over-funded or under-funded based on the overall medical budget that was set by the City for that fiscal year. If the medical budget is over-funded, then 15% (represents employee contributions) of that amount will be added to the reserve account. Likewise, if the medical budget is under-funded, then 15% of that amount will be deducted from the reserve account.

The purpose of the reserve account is to provide weekly premium relief to those active employees who contribute to the cost of health insurance for themselves and/or family members. When the reserve account has enough monies above the \$150,000 threshold to cover at least one week of employee contributions, then monies will be returned to active employees in the form of a non-payment obligation from each current contributing employee based on their weekly plan rate. The City will arrange for the non-payment obligation to occur in the second quarter of the following fiscal year.

To illustrate how this would work, below are two (2) examples with the assumed \$150,000 designated as funds for the reserve account.

#### **\*Example 1:**

Health Insurance Budget for fiscal year 2015 \$15,500,000

Health Insurance actual cost for fiscal year 2015 \$15,000,000

- Over-funding results in 15% of \$500,000 (difference between budget and actual) = \$75,000. \$75,000 added to \$150,000 so reserve account is \$225,000.

#### APPENDIX Q (cont)

- Currently, weekly employee contributions total approximately \$52,000.
- This example would produce premium relief in the form of a non-payment obligation of one (1) week for each current contributing employees based on their weekly plan rate in the second quarter of fiscal year 2016. The reserve account balance would then be \$173,000.

\*Example 2:

Health Insurance Budget for fiscal year 2015 \$15,500,000

Health Insurance actual cost for fiscal year 2015 \$16,000,000

- Under-funding results in 15% of \$500,000 (difference between actual and budget) = (\$75,000).
- \$75,000 would be deducted from the \$150,000 reserve account, leaving a balance of 75,000.

Human Resources and Finance will be responsible for recordkeeping of the reserve account.

Human Resources will continue to provide Labor/Management Health Insurance Advisory Committee with the quarterly reporting packet that includes timely information regarding actual health insurance expenditures compared to the budgeted amounts.

\*Examples are for illustration purposes only.



Order 58-1718  
Tab 21 9-18-17

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: SECOND 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 be effective through ~~November 3,~~  
2017 May 2, 2018. It may be extended for additional 180 day  
periods by the City of Portland, in accordance with 30-A M.R.S.  
§ 4356(2).

**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:** August 30, 2017

**SUBJECT:** Second 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:**

1<sup>st</sup> reading 8/18/2017 Final Action 10/2/2017

Can action be taken at a later date:    Yes   X   No (If no why not?); The Marijuana Retail and Social Club Licensing Moratorium will expire on November 3, 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) -- Danielle West-Chuhta will answer questions, if necessary.

**I. ONE SENTENCE SUMMARY**

The Marijuana Retail and Social Club Licensing Moratorium, which was approved as an emergency by the City Council in Order 222-16/17 on May 1, 2017, will expire on November 3, 2017 and should be extended an additional 180 days, to May 2, 2018, to allow local ordinances to be drafted in accordance with state rules once they are promulgated.

**II. AGENDA DESCRIPTION**

A second 180-day moratorium on licenses for recreational marijuana retail shops and social clubs was approved by the City Council by Order 222-16/17 on May 1, 2017, and will expire on November 3, 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 are not expected to be released until the beginning of 2018. City staff are developing draft ordinances to regulate the sale of

recreational marijuana, including licensing requirements, zoning restrictions, and safety rules, among other things.

### **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 before enacting rules of its own.

### **IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED**

The City intends to be part of a coherent system of state and local regulations for growing, selling and licensing social clubs that sell recreational marijuana.

### **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: August 30, 2017