

CITY OF PORTLAND, MAINE
Standing Committee on Sustainability and Transportation
Councilor Spencer Thibodeau (D2), Chair
Councilor Belinda Ray (D1)
Councilor Jill Duson (D3)

Agenda
March 20, 2019
5:30 PM
Council Chambers

1. Review and approve minutes from February 27
 - a. Minutes from February 27, 2019
2. Sustainability Program Updates
 - a. Sustainability Updates for March 2019
3. Presentation and Discussion
Public comment may be taken
 - a. Opportunities for Improving Metro Service
Greg Jordan, General Manager
 - b. Green Building Ordinance
4. Other Business

CITY OF PORTLAND, MAINE

Standing Committee on Sustainability and Transportation

Councilor Spencer Thibodeau (D2), Chair

Councilor Belinda Ray (D1)

Councilor Jill Duson (At large)

Draft Minutes February 27, 2019

Members Present: Councilor Thibodeau, Councilor Ray, Councilor Duson

Staff Present: Jon Jennings, Troy Moon, Ashley Krulik, Bruce Hyman, Jen Thompson

Meeting was called to order at 5:34 PM. Councilor Ray moves to approve minutes from January. Councilor Duson, seconded. All those in favor 3-0.

Sustainability Program Updates

Troy Moon reviewed the items on the Sustainability Program Update memo

Councilor Duson:

- Energy Benchmarking - does "City buildings" include school buildings? Mr. Moon responded that yes it does.
- Flower Show - are we going to have a booth or a panel? Mr. Moon responded that we are leading a panel discussion with land care professionals and South Portland representatives.

Councilor Ray:

- Energy Benchmarking - are you feeling hopeful that we will get the information we need from CMP? Mr. Moon responded that yes, they have been more responsive and appear to be trying to help.

Councilor Thibodeau:

- Pesticide Ordinance - is there a postcard? Mr. Moon responded, yes, it is being distributed. We are also developing a brochure and continuing with social media.

Martin Luther King Jr. Recognition

City Manager Jon Jennings presented and reviewed memo. Thanked the taskforce and Councilor Ali for his leadership on this project. Recommendation of location of memorial has been determined to be the plaza area of Bayside Trail. City has developed draft RFQ to move into design phase of memorial. Budget for this effort is \$100,000, from sale of land on Thames Street. There are potentially other funding sources if needed. Councilor Duson and Reverend Ken Lewis to co-chair selection committee to select members of design selection committee.

Councilor Duson - honored to serve as co-chair. Suggestion to reference Abyssinian Meeting House and Freedom Trail.

Steps for next month: Work with two Chairs to finalize design selection committee. Bring back final RFQ for the committee to approve. Committee to narrow down list of memorials. Will need to fund artists to vet designs. Suggested process: design selection committee to review all respondents, narrow down, and then provide financial support to build out larger design for selection. There are no preconceived ideas around what the memorial should be.

Councilor Ray:

- Clarified that it will be the design selection committee reviewing designs. Once final design is determined, Sustainability and Transportation Committee to review and approve.
- Where will selection committee meet? Mr. Jennings responded: anywhere they would like. Meetings will be open to the public. There will be notifications of these meetings on the City website.

Councilor Duson:

- Will work with Reverend Lewis to determine design selection committee.

Green Building Ordinance

Discuss whether elementary school construction projects are required to follow green building code.

Jen Thompson, Corporation Council presented. Not providing opinion on whether it applies to a specific project, reviewing the guidelines of the ordinance. The language of the ordinance says it “applied to all new construction and renovation projects.” “Renovation project” is defined as total renovation cost is greater than or equal to the value of the property per the tax assessor. How are we valuing projects? In the case of the school, the cost of the renovation is less than the value of the school (\$11 million renovation, \$16 million value of that school). Therefore there was no exemption, but this project did not fall within the “renovation” requirement.

Councilor Thibodeau:

- “New construction” vs. “Renovation” definitions - is a building addition new construction or a renovation? “New construction” is not defined in the ordinance, but is often considered a new building on an undeveloped piece of land. Councilor Thibodeau feels that something new that doesn’t affect existing structure would be considered “new construction.”

Councilor Duson:

- Not looking to have dueling legal opinions between City and School definitions of the ordinance
- City sees itself as being concerned about sustainability. We have a longstanding sustainability plan. Talk about sustainability in new comp plan. We encourage students/young people to be more sustainable.
- Surprised that whether or not the schools follow the green building code would be a matter of controversy.
- School board developed memo that school buildings are not City buildings for purposes of compliance of the green building code.

- Not going to challenge school board, but hope that through review we do determine that new construction should be green building code certified, using LEED certified engineers.
- Even if renovated parts of buildings do not need to be LEED certified, new construction should fall within the ordinance. Feels that this school project involves new construction.
- Need to be consistent with what we are teaching students and our actions.
- Portions of project that are new construction, should meet City green building code.
- Asking Committee to consider drafting language with Corporation Counsel to clarify green building code standards for next 3 school projects.
- Jen Thompson responded that she would work with the Committee to draft this language.
- As a member of this building committee, has felt in conflict. Need to construct building and be able to pay for it. Asked architects/engineers about LEED certification analysis, waiting to receive. Provided to DABC but not BLAC committee. Bottom line is that understanding is that the cost difference is about \$1 million but feels that it is important that we comply with our own standards.
- Are there prior projects that have been completed that would have been green building certified if definitions had been clarified/amendment was made sooner? Feels that the definition may not have been the same for prior projects as it is being used for this project. Jen Thompson will look into prior projects.
- This line of inquiry will not come as a surprise to schools as Councilor Duson has informed them that this Committee is looking into the ordinance.
- Agree with Councilor Ray that she does not want to pull the rug out from the current school project. The amendment would not apply to this project, but would apply to future projects.

Councilor Thibodeau:

- Do we need to amend and define “new construction”?
- Do we need to define “municipal buildings”?
- Revise the definition of “renovation”?
- Jen Thompson responded that amendment would not need to go to the planning board and could therefore move more quickly.
- Think through how to assess the value of the building.
- Jen Thompson: value of work that is being done, separate building from the land, look into how to get most accurate assessment.
- Confirmed that “municipal buildings” includes schools. Jen Thompson replied, yes.

Councilor Ray:

- Is land and building included in assessed value? Jen Thompson responded, yes. This greatly increases the value of the property. Councilor Ray believes assessed value should be building-only.
- Do we separate construction cost from engineering, and other costs involved? Costs in memo were separated. Jen Thompson to review school board memo. Skirting our own ordinance is shameful.

- Is there still a chance that this school project may need to meet green building code?
Jen Thompson responded that she is unsure but does not believe that there has been a final determination on this, and will check with Jeff Levine. There is a general understanding that this project will not need to meet the green building code.

Jen Thompson:

- There are separate entities - the schools (the applicant) and the City (regulatory review). The applicant (the schools) determined that the schools do not need to comply, but the City (regulatory review) still needs to determine whether the school needs to comply.
- Need to have conversations with Public Works and School Department before making amendment to ordinance

Councilor Thibodeau:

Next Steps:

- Create and/or fix definitions in green building ordinance - "municipal buildings", "new construction," "renovation"
- Determine is assessed value should include land and building, or just building value
- Have amendment ready to be review during March meeting
- Outline potential impact amendment will have on near future municipal projects
- Amendment to go to full Council at April meeting

Councilor Ray: when we look at green building code, determine whether LEED is still the correct certification to use.

Councilor Thibodeau: Current IBC code is from 2007.

Housekeeping Items:

Close loop with Greg Jordan on funding for bus every 15 minutes goal - March meeting

Large Scale Fossil Fuel ordinance - being tabled to focus on other issues

Single use plastics - possibly meeting twice a month for a few months to work on single use plastics issue

Forest / Dartmouth Sidewalks & Ramps

Bruce Hyman, Transportation Program Manager, presented: Reviewed memo submitted to committee. Applied for project in 2012. MDOT approved in 2015. Council approved project in 2018. This intersection has ADA compliance issues. It provides important access to commercial and residential areas. Sewer project from Baxter Boulevard will be impacting this intersection, so this project focuses on west side of intersection. Add two ramps per corner, new push buttons and signal heads. Move fire infrastructure as needed. Final design and construction anticipated for 2020.

Councilor Ray:

- What are push buttons affixed to? Mr. Hyman responded - on some existing traffic signal poles, some new poles. Will be easily accessible.
- When the sewer separation project is done, is there money to do the other side? Mr. Hyman: if sewer project disturbs curbs, they will be required to construct ADA curb

ramps. If not, could be money within capital improvement plan or savings from this project.

Councilor Duson:

- Are sidewalks priority and cleared by the city? Mr. Hyman: Commercial abutments are required to clear sidewalks, do not believe it's part of the City plowed area. Will need to monitor once the project is done to ensure people can access push button.

Councilor Thibodeau: another exciting project that the Council approved last year is Andrews Square. There is a meeting on March 6th at Reiche to review project.

Portland/South Portland Smart Corridor Study

Bruce Hyman presented: PACTS funded study part of 2016-2017 work plan. Joint study conducted by Cities of Portland and South Portland.

- Compliment land use and development within activity centers
- Project overseen by Advisory group from Portland, South Portland, MDOT
- Robust public engagement process
- Completed mostly in late winter 2018

Ned Codd, WSP Planning and Environmental Lead

- Presented PPT - goals, objectives,
 - Forest Ave should not be a barrier but act as a desirable Main Street
 - Recommendations do not involve reconstructing roadway but making improvements to existing corridor

Councilor Duson

- Pedestrians coming down Allen cannot get over snowbank - will crossings be shortened? Mr. Codd responded, yes.
- Pedestrian traffic is often students leaving Casco Bay High School walking to bus stop

Councilor Ray

- Have recommended Alternatives already been selected? Mr. Hyman responded that MDOT has preferences but final Alternatives have not been determined. Need to take into account recent changes - intelligent traffic signals.
- Encouraged to hear that traffic won't always be prioritized over other modes of transportation
- How would we accomplish queue jump? Mr. Codd responded: use curbside lanes that are also shared bus/bike lanes, that allow buses to get in front of queued traffic. Transit signal priority will allow bus to go first.
- Queue jumps creating any conflict between bus/bike? Mr. Codd responded, yes if the bus is coming every 5 minutes or so. Bus should not travel faster than 25 mph in shared lane.
- Where are we in process? Mr. Hyman responded: based on Committee thoughts, full Council workshop in the next month or so.
- Would like to select plan before workshop. Adopt vision that prioritizes pedestrians. Mr. Hyman responded that we'd need to negotiate vision with MDOT.

Councilor Thibodeau

- Is bike lane shielded by parking? Mr. Codd responded, yes, from State Street to Park Avenue.
- Ok with this going to the full Council workshop, and then circling back to this Committee for final comments
- How realistic is reconstructing ramps to Forest Ave from 295? Mr. Hyman responded that MDOT was comfortable with this idea being included in the report. City Manager is very enthusiastic about concept. Called a Single Point Urban Interchange.

Next step: Put plan out to full Council workshop with caveat that this Committee gets to review and comment again afterward.

Libbytown Study

Mr. Hyman presented PPT.

- Added that Libbytown Neighborhood Association has done a lot of work to find solutions and visualize improvements

Councilor Ray

- Are traffic counts current? Mr. Hyman - traffic counts include projections with full Thompson's Point build out, Maine Med garage, and increase in traffic.
- What role did MDOT play in analysis? Mr Hyman: Included in every step of the analysis and baseline data. Analysis includes tweaks from MDOT.
- Is MDOT still opposed to removing ramps? Mr. Hyman: In 2017 they still insisted on including ramps, this may change with City Manager pressure and new administration. MDOT has exclusive control over the ramps and a lot of say over the roadway because it connects to interstate.
- Would MDOT provide some funding to complete the plan? Mr Hyman, yes - from PACTS or MDOT.
- Outcome seems to be to move to 2-way traffic on both Park and Congress Streets.

Councilor Duson

- There are interconnected things we want from MDOT - including land for West School
- Making Park Street 2-way would make a huge difference for pedestrians
- Success would be greenlight for C2P2 plan, but need to negotiate with MDOT and determine funding. Should not be C2P2 or nothing - keep C1P2 option open depending on negotiations.

Councilor Thibodeau

- Consensus around C2P2 plan - move forward to workshop with full Council

Public Comment

- Channing Capuchino - St. John Valley and Libbytown Organizations
 - St. John Valley neighborhood association unanimously voted against C2P2 plan - concerns around train and hospital traffic, currently goes past 295
 - Think people will only use Congress and not Park Ave
 - In support of 2-way conversion of Park Ave
 - C2P2 would create same problems that outer Forest faces

- Zach - Hunter Street
 - Strongly supports C2P2

Next Steps:

- Workshop with full Council
- Public hearings/comment session during upcoming Committee meeting
- Vote

Add link to Libbytown Study on Sustainability Webpage

March 20 Meeting:

- Placeholder to write letter to CMP if we are not receiving the information that we need.
- Review green building code standards with Jesse Thompson and others
- Make amendment to green building code as it relates to City buildings
- Greg Jordan - Metro - bus every 15 minutes

April 17 Meeting:

- Focus on solar - historic districts (Jeff Levine), invite Casco Bay High students to talk about SolaRise project
- Earth Day celebration - pesticide ordinance educational event
- Potentially do two meetings to focus on solar and single use plastics

Motion was made by Councilor Duson to adjourn the meeting at 8:04 pm. Motion was seconded by Councilor Ray. All in favor. 3-0.

Sustainability Updates

March 2019

Climate Action Planning

On February 28 we held the first events for One Climate Future, our joint climate action planning process with South Portland. During a morning session we engaged with equity partners - groups whose mission is not focused on climate action but who work with people in the community who we want to engage with. These include social service organizations, schools, neighborhood organizations, and organizations serving the immigrant community. Our goal was to explain how climate change will impact their constituents and discuss how we can collaborate to get input on the plan from them. During an evening session we met with our engaged partners -- groups or individuals who are already working on climate issues and who want to help us reach into the community to engage their friends, family, and neighbors in the planning process. In conjunction with our consulting team we are developing tools and resources that will help them do this including "meeting in a box" kits, social media posts, and key talking points.

On March 1 we met with members of the Climate Planning Process Committee whose members were appointed by the City Council. This group includes individuals from across the community who have special knowledge of key topics including housing, energy use, land use, economic development, and climate science. They will assist throughout the planning process by providing feedback about our work, providing technical information, connecting the planning team to other people in their networks, and serving as a sounding board for ideas.

We are working to gather data from around the community to complete a greenhouse gas inventory for the city as a whole. The completed inventory will serve as the benchmark year to measure progress toward our goal to reduce emissions 80% by 2050.

Other plan elements in the works include a One Climate Future website, an online survey tool that will allow anyone with internet access to participate on the planning process, and a highly visible kick off event to raise awareness.

Energy Benchmarking

Staff from the Maine PUC coordinated a call between the Sustainability Office and Central Maine Power to discuss the energy benchmarking ordinance. We explained what the ordinance requires of property owners and discussed how they might access data about their electric consumption from CMP. During the call we learned that CMP has issued an RFP to upgrade their customer service platform and that the RFP specified that the new platform should be designed to support energy benchmarking ordinances. It will also upgrade the "Green Button"

to make it much easier to share data. Unfortunately, this is still in the conceptual phase. In the meantime, we agreed with CMP to try out some ways to access whole building data for several buildings to see how they work. We'll work on that in the upcoming weeks. During the call I requested that CMP provide a letter describing the capabilities they have requested for the new customer service platform and/or be prepared to address the committee in person.

Pesticide Ordinance

The Pesticide Management Advisory Committee held its first meeting on March 11. During the meeting the group selected officers. These are:

- Jesse O'Brien, Chair
- Karen Snyder, Secretary
- Avery Kamila, Waiver Committee member

We also reviewed the responsibilities of the committee and started planning to increase outreach about the ordinance. The next meeting is April 2.

Outreach

Troy Moon met with staff from King Middle School who wanted information to integrate the climate action planning process into their Spring expedition.

Troy also made a presentation about Portland's sustainability program at the Maine College of Art.

On March 14 Sustainability Associate Ashley Krulik co-presented a webinar to the New England Municipal Sustainability Network about using social media to educate the public about sustainability. Matt Grondin from ecomaine was the other presenter.

We continue regular social media posts. Follow us on Facebook and Instagram at [@sustainableportlandme](#)



Troy Moon <thm@portlandmaine.gov>

Green Building Code

1 message

Jennifer Thompson <jlt@portlandmaine.gov>

Wed, Mar 13, 2019 at 2:00 PM

To: Troy Moon <thm@portlandmaine.gov>, Jeff Levine <jlevine@portlandmaine.gov>, Christopher Branch <cbranch@portlandmaine.gov>

Cc: Danielle West-Chuhta <dwchuhta@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

Hi Troy

Following the last Sustainability & Transportation Committee meeting, I have begun drafting possible amendments to the existing Green Building Ordinance and consulting with other members of City staff on the Committee's expressed concerns. I'm attaching a draft of very modest changes for consideration and outline two proposed paths, below. I welcome input and feedback from staff and the Committee on how best to handle this.

1. As you'll see, the attached draft amendment includes language aimed at narrowing the "property" used to compare the relative costs of renovations and property value to "existing buildings" rather than the whole of the property. That change was at the request of the Committee.
2. There was a request to examine the current standard for measuring "construction costs" for the purposes of comparing that cost with the value of the property (in order to determine whether a project is significant enough to meet the definition of a "renovation") and to ensure that all costs associated with a project be included in the calculation. I've drafted an amendment that is aimed at addressing the Committee's expressed concern that the current language is too limited. This amendment expands the kinds of costs included in the calculation (this list is based in part on the costs that the Schools indicated had been excluded from the calculation of "construction costs" for the Lyseth project).
3. Although there was a request from the Committee that an amendment be drafted to make the ordinance applicable to additions, a review of the existing code reveals that language to that effect already exists. Please see the definition of "renovation" at subsection (c). I welcome guidance on whether that existing language addresses the Committee's concerns or needs to be amended further.
4. There was concern that the ordinance is not clear in terms of its applicability to school buildings. As I tried to explain, I actually do not think that there is any ambiguity about that point. Currently, the Ordinance applies to, among other things, "all new construction and renovation projects to be owned or occupied by the City of Portland that are 2,000 square feet in floor area or greater . . ." The City of Portland owns the school properties so, to me, there is no need to call out the schools separately. See e.g. <http://www.portlandassessor.com/searchdetail.asp?Acct=374%20%20B012001>. Indeed, the language of the ordinance articulates which standards will be applied to schools so suggesting that it somehow doesn't apply to them is not consistent with the language of the code.

With respect to the Lyseth project, the School District's attorney did not argue that school buildings aren't owned by the City or that the ordinance doesn't apply to schools simply because they are operated by the School District. Rather, he argued only that 1. the project does not meet the definition of a "renovation" because of the value of the property as compared to the cost of construction; and 2. the funding source for the project did not meet the definition of "funded by the City" for the purposes of applying the ordinance to other projects. Of course, to the extent they continue to exist, I welcome comments or questions on that point.

5. Finally, in talking with staff about these proposals, a number of other concerns about the ordinance have been raised, including authority to grant waivers and the extent to which LEED remains the best standard to apply. There is a desire on the part of some City staff to make further amendments not discussed by the Committee. My understanding is that there are no projects that are pending or foreseeable that will be impacted by this ordinance in the next several months such that there is likely time to develop a more comprehensive "fix" of the ordinance. So, staff's suggestion is that action on this matter be postponed a bit more in order to allow staff time to propose additional changes to the committee rather than make amendments in a piecemeal fashion. Of course, if that is not the Committee's preference, it can certainly take up and vote on these amendments next week and leave additional changes to another time.

I hope this helps. Please do let me know if there are questions or concerns or if you think I've missed any points raised by the Committee. I'll be available at the meeting on Wednesday as well.

Best,

Jen
Jennifer L. Thompson
Associate Corporation Counsel
City of Portland
207.874.8915

2 attachments

 **Applicability of LEED Ordinance to Lyseth Project (1).PDF**
1208K

 **Chapter 6 -Green Building amendment 03.11.2019.docx**
29K

Sec. 6-165. Purpose.

The purpose of this article is to establish the energy performance requirements for constructing and renovating city buildings and certain publicly-funded building projects with the goal of planning, designing, constructing, and managing to maximize energy performance, minimize adverse environmental impacts, provide healthy work places, conserve natural resources, and promote sustainable development in Portland. (Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12)

Sec. 6-166. Definitions.

The following words and phrases shall be defined as set forth below for use in this article.

American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standards: ASHRAE is a building technology society which publishes a recognized series of standards and guidelines relating to HVAC systems and performance. The Maine Uniform Building and Energy Code currently references ASHRAE Standard 90.1 which is an energy standard for buildings except low-rise residential buildings.

Conditioned Space: Any area within a building that is artificially heated or cooled by fixed equipment.

Funded in whole or in part: (a) Receipt of tax increment financing in an amount greater than two hundred thousand dollars (\$200,000); or (b) receipt of grants by the City, HOME loans, Community Development Block Grant loans or Neighborhood Stabilization Program loans, the sum of which is greater than two-hundred thousand dollars (\$200,000.00).

Hardship: Some verifiable level of difficulty or adversity arising from factors identified in Sec. 6-170 or other circumstances beyond the control of the applicant, by which the applicant cannot reasonably comply with the requirements of this ordinance.

Infeasible: The existence of verifiable obstacles arising from the factors identified in Sec. 6-170 or other circumstances beyond the control of the applicant which render the applicant

incapable of complying with the requirements of this ordinance.

Leadership in Energy and Environmental Design

(LEED)Standards: A third-party rating system developed by the United States Green Building Council (USGBC) where credits are earned for satisfying specified green building criteria.

Renovation:

- (a) At the time of the application, the **total construction and design costs (including, but not necessarily limited to, labor, materials, equipment, financing services, utilities, architectural design, consultant and engineer's fees)** ~~are~~ is greater than or equal to the market value of the ~~property-existing building~~ as determined by the ~~City's Tax Assessor~~;
or
- (b) A conversion from non-conditioned to conditioned space; or
- (c) **An addition of building gross square footage greater than or equal to the gross square footage of the existing building;** or

(Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12; Ord. No. 82-13/14, 11-4-13)

Sec. 6-167. Standards for new buildings and renovation projects.

All new construction and renovation projects to **be owned, or occupied by the City of Portland** that are of 2,000 square feet in floor area or greater shall be certified to the LEED Silver Standard using appropriate LEED Rating System, particularly those listed below thereof and whole thereof:

- (a) LEED 2009 for Commercial Interiors.
- (b) LEED 2009 for Existing Buildings, Operations, and Maintenance.
- (c) LEED 2009 for Healthcare.
- (d) LEED 2009 for New Construction and Major Renovations.

Commented [JT1]: The schools are owned by the City.

<http://www.portlandassessor.com/searchdetail.asp?Acct=374%20%20B012001>

(e) LEED 2009 for Schools.

All new construction and renovation projects to be funded in whole or in part by the City of Portland that are of 10,000 square feet in floor area or greater shall demonstrate, under any third-party certification system (e.g. LEED or Green Globes) or energy model signed by a licensed engineer, a certain percentage improvement in the proposed energy performance of the building compared to the baseline performance rating per ASHRAE Standard 90.1, being particularly the 2010 version thereof and the whole thereof, or equivalent standard if the ASHRAE Standard 90.1 is not applicable to the project. Such percentage improvement shall be thirty percent (30%) for new construction, twenty-five percent (25%) for existing buildings, and twenty percent (20%) for historic buildings.

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Copies of the LEED Rating Systems and ASHRAE Standard 90.1 are on file with the City Clerk.
(Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12; Ord. No. 82-13/14, 11-4-13)

Sec. 6-168. Submissions.

Upon submission of an application for a building permit for new construction or renovation projects that are required to meet the standards set forth in section 6-167, the applicant shall also submit the following, as applicable:

- (a) A LEED checklist, and a LEED application number (or other proof of LEED applications status); or
- (b) A third-party certification system document of verification; or
- (c) A preliminary energy model, along with a statement of certification from a licensed engineer that the project meets the standard(s); and

(d) A written explanation of how the building will obtain the applicable standards using design plans to demonstrate compliance where applicable (example: LEED submittal templates).
(Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12; Ord. No. 82-13/14, 11-4-13)

Sec. 6-169. Certificate of Occupancy.

A copy of the final submission of LEED documentation to the USGBC or final LEED certification decision, or a statement of final certification from a licensed engineer indicating that the project meets the standards along with any amendment to the preliminary energy model shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy for new construction or renovation projects that are required to meet the standards set forth in section 6-167. A temporary certificate of occupancy may be issued by the city if necessary prior to the submission of final LEED documentation to the USGBC.

(Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12; Ord. No. 82-13/14, 11-4-13)

Sec. 6-170. Partial exemption.

1. If it is a hardship or infeasible for an applicant to meet the standards set forth in section 6-167, the applicant may request a partial exemption from regulation. The burden is on the applicant to show hardship or infeasibility. Factors to consider in determining whether hardship or infeasibility exists include, but are not limited to:

- (a) Availability of green building materials and technologies; or
- (b) Compatibility of green building requirements with other government requirements and building standards; or
- (c) Required alterations to an historic building that would compromise its historic character; or
- (d) Specific circumstances that would defeat the purpose of the standards.

2. Any request for a partial exemption must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. In order for a partial exemption to be granted, the applicant must demonstrate all possible effort to maximize building performance according to the standards set forth in section 6-167 and shall indicate the maximum level of standards which are reasonably achievable for the building as follows:

- (a) In the case of a LEED standard requirement, the applicant will list the number of credits reasonably achievable and verified by each applicable licensed professionals.
- (b) In the case of ASHRAE 90.1 or equivalent standard requirement, the applicant will document the percentage above the standard that is reasonably achievable with a statement of certification from a licensed engineer.

If the partial exemption is granted, the applicant shall be required to comply with this ordinance in all other respects. A copy of the final submission of LEED documentation to the USGBC or a statement of final certification from each applicable licensed professionals or licensed engineer indicating that the project meets the level of standard presented at the time of application along with any amendment shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

(Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12; Ord. No. 82-13/14, 11-4-13)

Sec. 6-171. Appeals.

Any applicant aggrieved by the decision of the director of planning and urban development may appeal that decision to the zoning board of appeals (Article VI. Board of Appeals, Sec. 14-541 - 14-553).

(Ord. No. 187-08/09, 4-6-09; Ord. No. 103-11/12, 2-6-12; Ord. No. 82-13/14, 11-4-13)

Sec. 6-172. Applicability.

This ordinance shall apply to new construction and renovation projects to be owned, occupied, or funded in whole or in part by the city of Portland for which site plan applications, building permit applications (not associated with an approved site plan), or funding assistance requests are submitted on or after the effective date of this ordinance. Any new construction or renovation that received an exemption under a previous version of this ordinance shall be considered to have a partial waiver under this ordinance, provided that the Director of Planning & Urban Development determines that the scope of the new construction or renovation has not changed the originally approved construction to an extent that would require review under this version of the ordinance. Any new construction or renovation project to which this ordinance is not applicable but which voluntarily meets any of the standards set forth in Section 6-167 or equivalent shall receive expedited review and permitting status

January 2, 2018

Xavier Botana, Superintendent
Portland Public Schools
353 Cumberland Avenue
Portland, ME 04101

Re: Applicability of Portland Green Building Code to Lyseth Renovation Project.

Dear Xavier:

You have requested our advice as to whether the Leadership in Energy and Environmental Design (“LEED”) Standards of the City of Portland Green Building Code (the “Green Code”) will apply to the Lyseth Elementary School Renovation and Construction Project (the “Lyseth Project”). The Green Code requires that certain “new construction and renovation projects” that are City-owned or occupied (“City-owned”) or that are City-funded, be designed and built to meet the LEED Silver Standard under the appropriate LEED 2009 Rating System. In our opinion, and for the reasons stated below, the Lyseth Project is not subject to the LEED Standards of the Green Code.

Lyseth Project Scope, Cost, and Funding Source

It is our understanding that the Lyseth Project will include renovations to the existing 45,863 building square feet as measured by the project architect (the tax assessor lists the total Lyseth building square footage at 49,444 square feet). The Lyseth Project also includes new construction of 14,972 building square feet.

The architect’s Total Project Cost Budget is \$15,250,830, broken down as follows:

Administration:	\$2,124,580 (this includes \$1,173,280 for “Construction Contingency,” \$351,985 for “Telecommunications Systems,” \$469,315 for “Furnishings, Fixtures, and Equipment,” and “75,000 for “Project Reserves”) ¹
Fees and Services:	\$1,393,000
Construction:	<u>\$11,732,800</u>
Total Project Cost:	\$15,250,380

¹ At least some of these administrative costs appear to be construction costs, potentially.

The Lyseth Project is funded by the City's issuance of general Obligation Bonds. To our understanding, the Lyseth Project is not funded by any tax increment financing, nor is it funded by other city-, state-, or federally-supported grants or loan programs.

City Assessor Information

The City of Portland Tax Assessor identifies Lyseth Elementary School, Lyman Moore Middle School, and associated land with a single Parcel ID Number (374 B012001), and as a single Property Location at 171 Auburn Street, comprising two buildings and 25.1178 acres of land. The assessor lists a "Building 1" on the property at 49,444 square feet and a "Building 2" on the property at 102,958 square feet. The property has an assessment of \$14,535,200, including a Building Value assessment of \$10,670,700 and Land Value assessment of \$3,864,500. According to City assessor Christopher Huff, the assessment breakdown on this property is as follows:

Lyseth Building:	\$3,516,120
Lyman Moore Building:	\$6,658,850
Site facilities (tennis courts, etc.):	\$500,000
Land:	\$3,864,500
Total Property:	\$14,535,200

City of Portland Green Code

Subject to certain hardship and infeasibility exemptions, the Green Code requires certain City projects to be certified to the applicable 2009 LEED Silver Standard. Included are City-owned projects that are that are "new construction and renovation projects . . . that are of 2,000 square feet in floor area or greater." Also included are certain City-funded "new construction and renovation projects . . . that are of 10,000 square feet in floor area or greater." For purpose of this analysis, we will consider first, City-owned new construction projects, second, City-owned renovation projects, and third, City-funded projects, whether new construction or renovation.

Green Code and City-owned New Construction.

The first prong of the Green Code imposes LEED Standards on "new construction" that is owned/occupied by the City. Under the Green Code, "All new construction and renovation projects to be owned, or occupied by the city of Portland that are of 2,000 square feet in floor area or greater" are subject to the LEED standards. City Ptld. Ordinances at 6-167 (emphasis added). The Lyseth Project will include more than 2,000 square feet of additions. However, the Green Code treats additions as renovations, not as new construction. It defines "[r]enovation" to include "[a]n addition of building gross square footage greater than or

equal to the gross square footage of the existing building.” City Ptld. Ordinances at Sec. 6-166, Definitions. Because the Green Code considers an addition to be a renovation rather than new construction, we do not believe the Lyseth Project to be subject to the LEED Standards as City-owned new construction of 2,000 square feet or greater.

Green Code and City-owned Renovation.

The second prong of the Green Code applies to a “renovation” owned/occupied by the City. As with new construction, “renovation projects to be owned, or occupied by the city of Portland that are of 2,000 square feet in floor area or greater” are subject to the LEED Standards. However, the Green Code defines a “Renovation” as follows:

Renovation:

- a. At the time of the application, the total construction cost is greater than or equal to the market value of the property as determined by the city’s tax assessor; or
- b. A conversion from non-conditioned to conditioned space; or
- c. An addition of building gross square footage greater than or equal to the gross square footage of the existing building; City Ptld. Ordinances at 6-166.

Thus, under the Green Code, a project is only considered a “renovation” if it has a certain threshold construction cost relative to the property assessed valuation (the “construction cost threshold”), or if it involves a conversion to “conditioned space,” or if it has a certain threshold square footage addition relative to the pre-existing building (the “size threshold”). According to our discussion with the architect, the Lyseth Project is not a conversion to conditioned space, and, as discussed below, the Lyseth Project does not meet either the construction cost threshold or the size threshold.

The Lyseth Total Project Cost is \$15,250,380, but the Construction Cost is only \$11,732,800, or less than the property valuation of \$14,535,200. Even if one were to include the administrative costs of \$2,124,580 as arguably constituting “construction cost” within the meaning of that term as used in the Green Code, that supplemented construction cost amount is only \$13,857,380, an amount that is still less than \$14,535,200, the market value of the property as determined by the City tax assessor.

While admittedly the construction cost of the Lyseth Project is greater than the appraised value Lyseth building alone (\$3,516,120), the Green Code property reference point is “the property as determined by the city’s tax assessor,” and the City assessor has determined the

Xavier Botana, Superintendent
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property to be the site as a whole, comprising 2 buildings on over 25 acres and having a property valuation of \$14,535,200.²

The Lyseth Project includes an addition of 14,972 square feet. This is far less than either the existing square footage determined by the architect for renovation (45,863 square feet) or the square footage of the existing Lyseth building as measured by the City assessor (49,444 square feet).

Accordingly, while the Lyseth Project involves the renovation of more than 2,000 square feet, it is not a “[r]enovation” within the meaning of the Green Code, and therefore is not subject to the LEED Standards as City-owned renovation of 2,000 square feet or greater.

Green Code and City-funded Projects

Under the third prong of the Green Code, the LEED Standards apply to a project “funded in whole or part by the City of Portland that are of 10,000 square feet in floor area or greater” City Ptld. Ordinances at 6-167 (emphasis added). The Green Code defines “funded in whole or part” to mean “(a) Receipt of tax increment financing in an amount greater than two hundred thousand dollars (\$200,000); or (b) receipt of grants by the City, HOME loans, Community Development Block Grant loans or Neighborhood Stabilization Program loans, the sum of which is greater than two-hundred thousand dollars (\$200,000.00).” City Ptld. Ordinances at 6-166. The Lyseth Project, however, is funded by the City’s tax exempt bonds. As such, the Lyseth Project is not “funded in whole or part by the City,” as defined by the Green Code, and therefore it is not subject to the LEED Standards on this basis either.

In summary, and for the reasons stated above, in our opinion the Green Code does not require the Lyseth Project to meet LEED Standards.

I trust that this is responsive to your inquiry. Please let me know if we may be of any further assistance.

Very truly yours,



E. William Stockmeyer

² Were the City to interpret “property” as the Lyseth building alone, a court might give that some deference. However, this interpretation of “property” in subsection (a) of the definition in section 1-166 would be inconsistent with subsection (c) of the definition, which uses “building” for purposes of the size threshold. In any case, in a phone conversation, the City assessor stated that he had already had discussions about this issue with the city legal department, which is in agreement that “property” means the entire property assessed at \$14,535,200.