

REGULAR CITY COUNCIL MEETING 5:00 PM
JANUARY 31, 2018

1. Agenda Only

Documents:

[AGENDA ONLY.PDF](#)

2. Agenda And Packet

Documents:

[CITY COUNCIL AGENDA AND PACKET 2018-01-31.PDF](#)

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

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

AGENDA
SPECIAL CITY COUNCIL MEETING
JANUARY 31, 2018

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) December 17, 2017 Regular City Council Meeting Minutes
At the January 3, 2018 City Council meeting this item was postponed to the next meeting.

(Tab 2) January 3, 2018 Regular City Council Meeting Minutes

PROCLAMATIONS:

APPOINTMENTS:

CONSENT ITEMS:

**Order 139-17/18 Order Declaring Sundays on the Boulevard Festival Days in 2018 –
(Tab 3) Sponsored by Jon P. Jennings, City Manager.**

This order declares Sundays on the Boulevard from May 5 through September 23, 2018, from 9:00 a.m. to 4:00 p.m., as festival. The Boulevard will be closed from Vannah Avenue to Payson Park. Street closures are included in the agenda backup material.

**Order 140-17/18 Order Declaring May 28, 2018 the Memorial Day Parade and
(Tab 4) Ceremony Festival - Sponsored by Jon Jennings, City Manager.**

This order declares the Memorial Day Parade and Ceremony Festival to be held on May 28, 2018, on Congress Street from Longfellow Square to Monument Square from 10:30 a.m. to 12:00 p.m.

Street closings are included in the agenda backup.

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

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

ORDERS:

AMENDMENTS:

Order 141-17/18 (Tab 5) Amendment to Portland City Code Chapter 14 Re: Interim Planning Overlay District – Sponsored by the Planning Board, Sean Dundon, Chair.

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

On December 18th the City Council implemented a moratorium on new development applications and demolitions for the R-6 on Munjoy Hill, with a provision that interim review standards would be implemented within 65 days of the moratorium's effective date of December 4, 2017. The demolition moratorium remains in effect for the remaining 115 days, but applications for new Level I, Level II, and Level III site plan applications, as well as amendments to prior approvals, submitted after implementation of the Interim Planning Overlay District (IPOD) could be accepted for review under the interim standards.

The IPOD introduces dimensional and design standards that are in addition to any other standards applicable to new development in the R-6 zone. The proposed changes are based on trends identified in the course of an audit of development activity and trends in the R-6 zone, and includes changes to height, setbacks, parking placement, rooflines, rooftop appurtenances, and building materials. The interim standards are intended to provide more contextually appropriate new design, allow development to proceed, and form the basis for long-term changes in the zone.

Over the course of the remaining 115 days of the moratorium, staff will continue to investigate suitable amendments and/or additional tools to address concerns about demolitions and the character of new development on Munjoy Hill. Stakeholder outreach will be included throughout the process.

The R-6 Moratorium states that implementation of an interim ordinance shall be in place for the final 115 days of the 180 moratorium, which went into effect as of December 4. February 5 is the final meeting date to meet this deadline; therefore, this order contains an emergency enactor.

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

**Order 142-17/18
(Tab 6)**

Amendment to Zoning Map Re: Munjoy Hill Interim Planning Overlay District – Sponsored by the Planning Board, Sean Dundon, Chair.

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

The R-6 Moratorium states that implementation of an interim ordinance shall be in place for the final 115 days of the 180 moratorium, which went into effect as of December 4. February 5 is the final meeting date to meet this deadline; therefore, this order contains an emergency enactor.

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

**Order 143-17/18
(Tab 7)**

Amendment to Portland City Code Chapter 2 Administration Re: Civil Service – Sponsored by the Health and Human Services and Public Safety Committee, Councilor Belinda Ray, Chair.

The Health and Human Services and Public Safety Committee met on January 22, 2018 and voted unanimously to forward this item to the City Council with a recommendation for passage.

The proposed changes to the Civil Service Ordinance are intended to ensure that the hiring and promotion processes for the Police and Fire Departments are up to date and reflect current practices while meeting the needs of both the departments and the unions.

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

5:10 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)

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

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Street closings are included in the agenda backup.

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

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

ORDERS:

AMENDMENTS:

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The Health and Human Services and Public Safety Committee met on January 22, 2018 and voted unanimously to forward this item to the City Council with a recommendation for passage.

The proposed changes to the Civil Service Ordinance are intended to ensure that the hiring and promotion processes for the Police and Fire Departments are up to date and reflect current practices while meeting the needs of both the departments and the unions.

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

5:10 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Tab 1 1-3-18
1-17-18
1-31-18

IN COUNCIL REGULAR MEETING DECEMBER 18, 2017 VOL. 133 PAGE 170

ROLL CALL: Mayor Strimling called the meeting to order at 5:30 P.M. (Councilor Ray arrived during Arts in the Chamber).

ANNOUNCEMENTS:

PRESENTATIONS:

**Arts in the Chamber
African Dundada, Poet & Rapper**

RECOGNITIONS:

**Public Works Water Resources Division
Recipient of the New England Water Environment Association Asset
Management Award**

ANNUAL MEETINGS:

**Annual Meeting of the Corporator of Creative Portland - Sponsored
by Mayor Ethan K. Strimling.**

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to convene the Annual meeting of the Corporator of Creative Portland. Passage 9-0.

1. Accepting CP FY 2017 Activity and Financial Reports.

Motion was made by Councilor Thibodeau and seconded by Councilor Ray to accept the CP FY 2017 Activity and Financial Report. Passage 9-0.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to adjourn the Annual Meeting of the Corporator of the Creative Portland and convene the Annual Meeting of the Corporator of the Portland Development Corporation. Passage 9-0, 5:45 P.M.

1. Accepting PDC FY 2017 Activity and Financial Reports.

Motion was made by Councilor Costa and seconded by Councilor Ray to accept the PDC FY 2017 Activity and Financial Reports. Passage 9-0.

Order 125-17/18

**Order Terminating Portland Development Action Grant Program
and Transferring Unused Funds to Portland Development
Corporation Loan Fund - Sponsored by Tim Agnew, President,
Portland Development Corporation Board of Directors.**

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

IN COUNCIL REGULAR MEETING DECEMBER 18, 2017 VOL. 133 PAGE 170

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to recess the Annual meeting of the Corporation of the Portland Development Corporation and reconvene the regular meeting of the City Council. Passage 9-0, 5:55 P.M.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to approve the minutes of December 4, 2017 City Council Organizational Meeting Minutes December 4, 2017 Special City Council Meeting Minutes. Passage 9-0.

PROCLAMATIONS:

Proc 13-17/18 Proclamation Honoring the Oxford Street Shelter on the Occasion of Receiving the 2017 Innovation & Excellence Award from the National Alliance to End Homelessness – Sponsored by Councilor Justin Costa, Councilor Spencer Thibodeau, Councilor Pious Ali, Councilor Jill C. Duson, Councilor Kimberly Cook, Councilor Nicholas M. Mavodones, Jr., Councilor Belinda Ray, Councilor Brian Batson, and Mayor Ethan K. Strimling.

APPOINTMENTS:

Order 126-17/18 Order Appointing Constables for 2018 – Sponsored by Jon P. Jennings, City Manager.

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

Order 127-17/18 Order Authorizing Special Council and Outside Boards and Commissions Appointments for 2018 - Sponsored by Mayor Ethan K. Strimling.

Motion was made by Councilor Thibodeau and seconded by Councilor Batson.

Motion was made by Councilor Ray and seconded by Councilor Costa to lay Order 127 on the table and take it up after Order 110 and Order 124. Passage 9-0.

Motion was made by Councilor Costa and seconded by Councilor Ray to take up an item after 10:00 P.M. Passage 9-0.

Motion was made by Councilor Batson and seconded by Councilor Costa to remove Order 127 from the table. Passage 9-0.

IN COUNCIL REGULAR MEETING DECEMBER 18, 2017 VOL. 133 PAGE 170

Motion was made by Councilor Ray and seconded by Councilor Duson to postpone Order 127 to January 3, 2018. Passage 6-3 (Duson, Cook, Ray).

Mayor Strimling took Order 131 out of order with no objections.

ORDERS:

Order 131-17/18 Order Approving 22-Month Extension of Lease with General Services Administration Re: Transportation Security Administration Office Space at Jetport - Sponsored by the Economic Development Committee.

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

AMENDMENTS:

CONSENT ITEMS:

LICENSES:

Order 128-17/18 Order Granting Municipal Officers' Approval Pig Exchange, LLC dba Thirsty Pig, Renewal Application for an Entertainment without Dance at 37 Exchange Street – Sponsored by Michael Russell, Permitting and Inspections Director.

Councilor Thibodeau recused himself as his employer is actively representing the the Thirsty Pig.

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

Motion was made by Councilor Ray and seconded by Councilor Duson to amend Order 128 by putting a 1 year condition on the license, and for acoustic outside only. Passage 8-0 (Thibodeau recused).

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

Order 129-17/18 Order Granting Municipal Officers' Approval Maimi Food Truck LLC dba Maimi. Application for a Class III & IV at 339 Fore Street – Sponsored by Michael Russell, Permitting and Inspections Director.

Motion was made by Councilor Ray and seconded by Councilor Costa for passage. Passage 7-0 (Batson, Thibodeau out).

IN COUNCIL REGULAR MEETING DECEMBER 18, 2017 VOL. 133 PAGE 171

Order 130-17/18 **Order Granting Municipal Officers' Approval of Old Port Tap House dba Portland Beer Hub: Application for a Class III & IV FSE at 320 Fore Street – Sponsored by Michael Russell, Permitting and Inspections Director.**

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

BUDGET ITEMS:

Mayor Strimling asked to take Communication 8 up after Order 110 and 124.

COMMUNICATIONS:

Com 9-17/18 **Communication Re: Board of Harbor Commissioners Pilotage Fees - Sponsored by Jon P. Jennings.**

UNFINISHED BUSINESS:

Order 110-17/18 **Amendment to Portland City Code New Chapter 34 Pesticide Use - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.**

At the November 20, 2017 Council meeting this item was postponed to this meeting.

Motion was made by Councilor Costa and seconded by Thibodeau to postpone Order 110 to January 3, 2017. Passage 9-0.

Order 124-17/18 **Moratorium Re: Development and Demolition of Structures in the R-6 Zone on Munjoy Hill – Sponsored by Councilor Belinda Ray.**

It was given a first reading on December 4, 2017

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

Motion was made by Councilor Ray and seconded by Councilor Duson to amend Order 124 regarding emergency demolition and application in process exception. Passage 9-0.

Motion was made by Councilor Costa and seconded by Councilor Thibodeau to amend Order 124 by adding in the 11th paragraph after Planning Board; "and unless such applications were received prior to December 4, 2017. Notwithstanding, the forgoing staff may at its discretion review such applications as time permits. Passage 7-2 (Duson, Ray)

IN COUNCIL REGULAR MEETING DECEMBER 18, 2017 VOL. 133 PAGE 172

Motion was made by Councilor Cook and seconded by Councilor Ray to amend Order 124 by Emergency demolition and 90-day moratorium period. Motion failed 4-5 (Duson, Thibodeau, Costa, Ray, Strimling)

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage as amended. Passage 7-2 (Batson, Cook).

Com 8-17/18

Communication Re: Appointment of City Council Standing Committees – Sponsored by Mayor Ethan K. Strimling.

Motion was made by Councilor Costa and seconded by Councilor Ray to take up an item after 10:00 P.M. Passage 9-0.

Motion was made by Councilor Duson and seconded by Councilor Ray to suspend the rules to take up Communication 8. Passage 9-0.

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

Councilor Duson called the Question.

Motion was made by Councilor Ray and seconded by Councilor Cook to override the Mayors appointments of the City Council Standing Committees. Passage 8-1(Strimling)

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

Motion was made by Councilor Duson and seconded by Councilor Thibodeau to adjourn. Passage 9-0, 12:40 A.M.

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Katherine L. Jones, City Clerk

**IN COUNCIL REGULAR MEETING AMENDED MINUTES DECEMBER 18, 2017
VOL. 133 PAGE 172**

Motion was made by Councilor Cook and seconded by Councilor Ray to amend Order 124 by Emergency demolition and 90-day moratorium period. Motion failed 4-5 (Duson, Thibodeau, Costa, Ray, Strimling)

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage as amended. Passage 7-2 (Batson, Cook).

Com 8-17/18

Communication Re: Appointment of City Council Standing Committees – Sponsored by Mayor Ethan K. Strimling.

Motion was made by Councilor Costa and seconded by Councilor Ray to take up an item after 10:00 P.M. Passage 9-0.

Motion was made by Councilor Duson and seconded by Councilor Ray to suspend the rules to take up Communication 8. Passage 9-0.

~~Motion was made by Councilor Ray and seconded by Councilor Cook.~~

Motion was made by Councilor Ray and seconded by Councilor Cook to override Communication 8.

Motion was made by Councilor Duson ~~called the question~~ **and seconded by Councilor Batson to call the Question.**

Motion was made by Councilor Ray and seconded by Councilor Cook to override the Mayors appointments of the City Council Standing Committees. Passage 8-1(Strimling)

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

Motion was made by Councilor Duson and seconded by Councilor Thibodeau to adjourn. Passage 9-0, 12:40 A.M.

A TRUE COPY

Katherine L. Jones, City Clerk

*Tab 2 1-17-18
1-31-18*

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

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

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

Motion was made by Councilor Batson and seconded by Councilor Ali to postpone approval of the minutes until 1-17-2017. Passage 9-0.

PROCLAMATIONS:

Proc 19-17/18 Proclamation Honoring Deborah Andrews – Sponsored by Mayor Ethan K. Strimling.

Proc 20-17/18 Proclamation Honoring Officer Martin Ney as Police Officer of the Month for November 2017 – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

Order 132-17/18 Order Declaring April 22, 2018 the Portland 10-Miler Festival - Sponsored by Jon P. Jennings, City Manager.

Order 133-17/18 Order Declaring June 23, 2018 the Shipyard Old Port Half Marathon Festival – Sponsored by Jon P. Jennings, City Manager.

Order 134-17/18 Order Declaring April 21, 2018 the Urban Runoff/Green Neighbor Family Festival – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Thibodeau and seconded by Councilor Batson for passage of the consent items. Passage 8-0 (Cook out).

LICENSES:

Order 135-17/18 Order Granting Municipal Officers' Approval of Bob's Goes Electric LLC DBA Bob's Clam Hut. Application for a Class III & Class IV FSE with Outdoor Dining on Private Property at 111 Cumberland Avenue – Sponsored by Michael Russell, Permitting & Inspections Director.

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

BUDGET ITEMS:

COMMUNICATIONS:

Com 10-17/18 Communication Re: Appointment of City Council Standing Committees for 2018 – Sponsored by Mayor Ethan K. Strimling.

Motion was made by Councilor Mavodones and seconded by Councilor Batson to suspend rules to take up Communication 10. Passage 9-0.

Motion was made by Mayor Strimling and seconded by Councilor Ray to override Communication 10. Passage 9-0.

Motion was made by Councilor Batson and seconded by Councilor Costa to take up Communication 10B. Passage 9-0.

Motion was made by Councilor Costa and seconded by Councilor Thibodeau to override Communication 10 B. Passage 9-0.

Motion was made by Mayor Strimling and seconded by Councilor Ali to call the question. Passage 9-0.

Com 11-17/18 Communication Re: Maintenance at Ocean Avenue Landfill & Solar Project - Sponsored by Jon P. Jennings, City Manager.

Motion was made by Mayor Strimling and seconded by Councilor Duson to suspend the rules to accept public comment on Communication 11. Passage 9-0.

Com 12-17/18 Communication Re: 2017 Housing Committee Report – Sponsored by the 2017 Housing Committee, Councilor Jill C. Duson, Chair.

Com 13-17/18 Communication Re: Mayor's Recommendation for School Building Committee Appointees - Sponsored by Mayor Ethan K. Strimling.

Motion was made by councilor Costa and seconded by Councilor Batson to take up an un agenda item. Passage 8-0 (Thibodeau out).

Order 138-17/18 That the Council hereby makes recommendation to the City of Portland Board of Education that the following two individuals Mayor Strimling and Councilor Ali are appointed to the School Building Committee.

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

Motion was made by Mayor Strimling and seconded by Councilor Ali to amend Order 138 by adding the following to the School Building Committee, Councilors, Mavodones, Ray, Thibodeau, Costa, Strimling and to delete Councilor Ali. Passage 9-0.

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

Motion was made by Councilor Costa and second by Councilor Ray to postpone Com. 13 indefinitely. Passage 9-0.

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 69-17/18 Order Accepting a Donation of Vacant Land in the Redlon Area and Placing that Land, City-Owned Land and land Acquired through Foreclosure of Unpaid Taxes into the Portland Land Bank– Sponsored by the Land Bank Commission.

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

Motion was made by Mayor Strimling and seconded by Councilor Costa to amend Order 69 by “changing of Redlon area lots accepted”. Passage 9-0.

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

Order 110-17/18 Amendment to Portland City Code New Chapter 34 Pesticide Use - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

At the December 18, 2017 this item was postponed.

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

Motion was made by Mayor Strimling and seconded by Councilor Thibodeau to amend Order 110 by deleting “seventy five” and adding “two hundred and fifty “. Motion failed 1-8 (Duson, Mavodones, Cook, Ali, Batson, Thibodeau, Ray, Costa).

Motion was made by Mayor Strimling and seconded by Councilor Ray to amend Order 110 by adding language in section 34-3 to the “aggrieved

party". Motion failed 1-8 (Duson, Mavodones, Cook, Ali, Batson, Thibodeau, Ray, Costa).

IN COUNCIL REGULAR MEETING JANUARY 3, 2018 VOL. 133 PAGE 176

Motion was made by Councilor Thibodeau and seconded by Councilor Ray to amend Order 110 by deleting "March 1, 2018 and adding July 1, 2018". Passage 8-1 (Strimling).

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend Order 110 to have no termination date for the use of pesticides at high use athletic facilities. Motion failed 3-6 (Ali, Batson, Thibodeau, Ray, Costa, Strimling).

Motion was made by Mayor Strimling and seconded by Councilor Ray to reconsider the vote. Passage 9-0.

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend Order 110 to have no termination date for the use of pesticides at high use athletic facilities. Motion failed 3-6 (Ali, Batson, Thibodeau, Ray, Costa, Strimling).

Motion was made by Councilor Mavodones and seconded by Councilor Ray to amend Order 110 by "putting an exemption for use on invasive species".

Motion was made by Councilor Ray and seconded by Councilor Duson to amend the amendment putting an exemption for use on invasive species by adding "on city owned property". Passed 8-1 (Batson)

Motion was made by Councilor Mavodones and seconded by Councilor Ray for passage of the amendment as amended. Passage 7-2 (Batson, Strimling).

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend Order 110 by "deleting the waiver subcommittee".

Motion was made by Councilor Cook and seconded by Councilor Costa to amend the amendment to "delete the waiver subcommittee" by changing the language in section (B) "City Managers designee and again in section C, D and in section E". Passage 8-1 (Strimling).

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage of the amendment as amended. Motion fails 3-6 (Ali, Batson, Thibodeau, Ray, Costa, Strimling).

Motion was made by Councilor Mavodones and seconded by Councilor Duson to amend Order 110 by adding "2023 Sunset Provision". Motion

failed 0-9 (Duson, Mavodones, Cook, Ali, Batson, Thibodeau, Ray, Costa, Strimling).

IN COUNCIL REGULAR MEETING JANUARY 3, 2018 VOL. 133 PAGE 177

Motion was made by Councilor Batson and seconded by Councilor Ray to amend Order 110 by adding "City owned golf course restricitons" . Motion failed 3-6 (Duson, Mavodones, Cook, Thibodeau, Ray, Costa).

Motion was made by Councilor Batson and seconded by Councilor Ray to amend Order 110 by "removing invasive insects' exemption". Motion failed 3-6 (Duson, Maovodones, Cook, Thibodeau, Ray, Costa).

Motion was made by Councilor Ali and seconded by Councilor Thibodeau to amend Order 110 by "increasing to four PMAC members with organic credentials". Motion failed 3-6 (Duson, Mavodones, Cook, Thibodeau, Ray, Costa).

Motion was made by Councilor Cook and seconded by Councilor Mavodones to send back to committee "would require that same notification requirements for permitted pesticides". Passage 9-0.

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

Motion was made by Councilor Ray and seconded by Councilor Mavodones to suspend the rules and take up an un-agenda item. Passage 9-0.

Com 10 C 17-18 Communication Re:Appointment of City Council Standing Committees for 2018 – Sponsored by Mayor Ethan K. Strimling.

order 127-17/18 Order Authorizing Special Council and Outside Boards and Commissions Appointments for 2018 - Sponsored by Mayor Ethan K. Strimling.

At the December 18, 2017 Council meeting, this item was postponed to this meeting.

Motion was made by Councilor Mavodones and seconded by Councilor Ray to suspend the rules and take up an un-agenda item. Passage 9-0.

Motion was made by councilor Thibodeau and seconded by Councilor Batson.

Motion was made by Councilor Ray and seconded by Councilor Batson to divide the question and remove the Greater Portland Transit District. Passage 9-0.

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

Motion was made by Councilor Ray and seconded by Councilor Batson to postponed order 127 A the Greater Portland Transit District to January 17, 2018. Passage 9-0.

IN COUNCIL REGULAR MEETING JANUARY 3, 2018 VOL. 133 PAGE 178

ORDERS:

Order 136-17/18 Order Authorizing City Manager to Enter into a Purchase and Sale Agreement with Ford Reiche for the Sale of City Property at 55 Portland Street – Sponsored by Councilor Pious Ali.

Motion was made by Councilor Ali and seconded by Councilor Ray for passage. Passage 8-1(Strimling).

AMENDMENTS:

**Order 137-17/18 Amendment to Zoning Map Amendment Re: 233 Anderson Street
(Tab 16) and Vicinity – Sponsored by the Portland Planning Board, Elizabeth Boepple, Chair.**

This is its first reading.

Motion was made by Councilor Batson and seconded by Councilor Thibodeau to adjourn. Passage 9-0, 11:17 P.M.

A TRUE COPY

Katherine L. Jones, City Clerk

Order 139-17/18
Tab 3 + 17-18
1-31-18

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**

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

**ORDER DECLARING SUNDAYS ON THE BOULEVARD
FESTIVAL DAYS IN 2018**

ORDERED, that Sundays from May 5, 2018 to September 23, 2018 are hereby declared to be Sundays on the Boulevard Festival Days; and

BE IT FURTHER ORDERED, that the Sundays on the Boulevard Festival Days area shall be Baxter Boulevard from Vannah Avenue to Payson Park; and

BE IT FURTHER ORDERED, that Baxter Boulevard from Vannah Avenue to Payson Park, east entrance, and the Payson Park west entrance road from the tip of the grass triangle to Baxter Boulevard shall be closed to traffic from 9:00 a.m. to 4:00 p.m. on every Sunday from May 5, 2018 to September 23, 2018; and

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

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

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit under §25-27 of the City Code to the Sundays on the Boulevard Committee, subject to the direction and control of the City Manager and to the following specific conditions:

1. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area; and
2. Assistance from City Departments will be in kind; and

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



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: December 28, 2017
RE: **Council Agenda Item – Sundays on the Boulevard**

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

Order declaring “Sundays on the Boulevard” as a weekly festival event and declaring Baxter Boulevard (fromannah Avenue to the entrance of Payson Park) be closed to traffic every Sunday, May 5 – September 23, 2018, 9am – 4pm, in order to allow the public to use that portion of the street as recreational space.

Since 2014, Portland City Council has approved the closing of Baxter Blvd. to vehicular traffic on Sundays in order to facilitate “Sundays on the Boulevard.” The boulevard closed from Vannah Ave. to Payson Park, Sundays (9am – 4pm).

The “Sundays on the Boulevard” committee (which includes city staff as well as Portland Trails, Bicycle Coalition of Maine, and Back Cove Neighborhood Assoc. representatives), would like to continue this tradition of recreational opportunity to the public and requests permission to close the boulevard on Sundays, from May 5 – September 23, 2018, with a time frame of 9am – 4pm. On some of those Sundays, there may be programmed events happening: music, bicycle demos, yoga class, paddleboard demos, etc.

To facilitate the closure, city staff erect barricades across the Blvd., and at times, there may city staff, as well as volunteers from advocacy groups and the Back Cove Neighborhood Association, in attendance at the barricaded intersections.

For “Sundays on the Boulevard,” streets listed below will be closed to vehicular traffic on Sundays (May 5 – September 23, 2018), 9am – 4pm:

Baxter Blvd. (From Vannah Ave. to Payson Park, boulevard east entrance)

Payson Park, west entrance road (from tip of Grass Triangle) down to Baxter Boulevard.

(continued)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

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

- Under no circumstances may alcoholic beverages be consumed or sold on the streets or park areas of said area during said festival;
- Assistance from City Departments will be in-kind.

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

Document prepared by Ted Musgrave, PAFD Event Coordinator

Order 140-17/18
Tab 4 1-17-18
1-31-18

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

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

**ORDER DECLARING MAY 28, 2018
THE MEMORIAL DAY PARADE AND CEREMONY FESTIVAL**

ORDERED, that Monday, May 28, 2018 is hereby declared to be the Memorial Day Parade and Ceremony Festival, sponsored by the American Legion, Harold T. Andrews Post No. 17; and

BE IT FURTHER ORDERED, that the Memorial Day Parade and Ceremony Festival area, which includes the parade route down Congress Street and intersecting streets, shall be Congress Street from Mellen Street to Temple Street, State Street from Cumberland Avenue to Congress Street, Dow Street from Congress Street to Brackett Street, High Street from Spring Street to Deering Street, Forest Avenue from Cumberland Avenue to Congress Street, Casco Street from Shepley Street to Congress Street, Center Street from Free Street to Congress Street, Preble Street from Cumberland Avenue to Congress Street, and Federal Street Extension from Congress Square to Temple Street; and

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

BE IT FURTHER ORDERED, that in the Memorial Day Parade and Ceremony Festival Area the following streets shall be closed to traffic at the following times on May 28, 2018:

Staging Area – 9:00 a.m. – 12:00 p.m.

Congress Street (from Mellen Street to State Street)
State Street (from Cumberland Avenue to Congress Street)
Dow Street (from Congress Street to Brackett Street)

Parade – 10:15 a.m. – 12:00 p.m.

Congress Street (from State Street to Temple Street)
High Street (from Spring Street to Deering Street)
Forest Avenue (from Cumberland Avenue to Congress Street)
Casco Street (from Shepley Street to Congress Street)
Center Street (from Free Street to Congress Street)
Preble Street (from Cumberland Avenue to Congress Street)

Ceremony at Monument Square – 10:00 a.m. – 12:00 p.m.

Federal Street Extension (from Congress Square to Temple Street); and

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

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to American Legion, Harold T. Andrews Post No. 17 under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. American Legion, Harold T. Andrews Post No. 17 shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. American Legion, Harold T. Andrews Post No. 17 shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area;
3. Permit Fees and Expenses for City Staff assistance shall be waived; and
4. Conditions for use of grounds, the positioning of volunteer flaggers at parade intersections, and requirements for food service, vending sales, and other items specified in permits issued from Public Assembly Facilities Division, shall be adhered to.

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



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

TO: Jon Jennings, City Manager
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management
DATE: December 28, 2017
RE: **Council Agenda Item – Memorial Day Parade**

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

Order declaring Memorial Day Parade be held **Monday, May 28, 2018**, on **Congress Street from Longfellow Square to Monument Square, approving street closings** for assembly area (from 9:00 a.m. – 12:00 p.m.) and along the parade route (from 10:30 a.m. – 12:00 p.m.), and **declaring the parade and ceremony at Monument Square a Festival.**

For many decades now, the Harold T. Andrew, Post No. 17, has organized the Memorial Day Parade activities to honor the dead and those Americans who have died in battle. The City of Portland assists this group by providing police officers (2 officers: lead and tail car), barricades, and preparing Monument Square for the ceremony which follows the parade. The parade route is Congress Street (both lanes), Longfellow Square to Monument Square. This year's parade is scheduled for Monday, **May 28, 2018**, from 10:30 a.m. to 12:00 p.m.

The parade route and Festival area will also be closed to street vendors pursuant to Section 19 -17 of the Portland City Code and is reserved for the use of the City's Public Assembly Facilities Division for the purpose of permitting vendors for the event, subject to the direction and control of the City Manager.

There is no METRO Bus service that day.

Streets and adjoining sidewalks and squares that are to be closed for the event (and will act as the Festival grounds) are as follows:

Staging Area – 9:00 a.m. – 12:00 p.m.

Congress Street (from Mellen Street to State Street)

State Street (from Cumberland Ave. to Congress Street)

Dow Street (from Congress Street to Brackett Street)



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

The above streets may be posted "no parking" at the discretion of parade organizers, so that the assembly area can be free of vehicles.

Parade - 10:15 a.m. - 12:00 p.m.

Congress Street (from State Street to Temple Street)

High Street (from Spring Street to Deering Street)

Forest Avenue (From Cumberland Avenue to Congress Street)

Casco Street (from Shepley Street to Congress Street)

Center Street (from Free Street to Congress Street)

Preble Street (from Cumberland Avenue to Congress Street)

The above streets may be posted "no parking" at the discretion of parade organizers.

Ceremony at Monument Square - 10:00 a.m. - 12:00 p.m.

Federal Street Extension (from Congress Square to Temple Street)

Federal Street Extension posted "no parking."

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to the Harold T. Andrews Post for the use of the above-described area for said parade and ceremony, subject to the following conditions:

- The Harold T. Andrew Post shall indemnify the city and hold it harmless from and against all claims arising out of activities during said parade and ceremony, and shall take out and maintain public liability insurance coverage in the amount of at least **\$400,000** combined single limit for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the Memorial Day Parade and Ceremony,
- Permit Fees and Expenses for City Staff assistance, shall be waived,



Sally L. DeLuca
Director

Department of Parks, Recreation & Facilities

Andrew J. Downs
Director

Public Assembly Facilities Division

- Conditions for use of grounds (positioning volunteer flaggers at parade intersections) and requirements for food service, vending sales, and other items specified in a permit issued from PAFD shall be adhered to, and
- Under no circumstances may alcoholic beverages be sold on the streets or public property of said area during said parade and ceremony.

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

Document prepared by Ted Musgrave, PAFD Event Coordinator

Order 1411-17/18
Tab 5 1-31-18

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

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

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14
Re: INTERIM PLANNING OVERLAY DISTRICT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

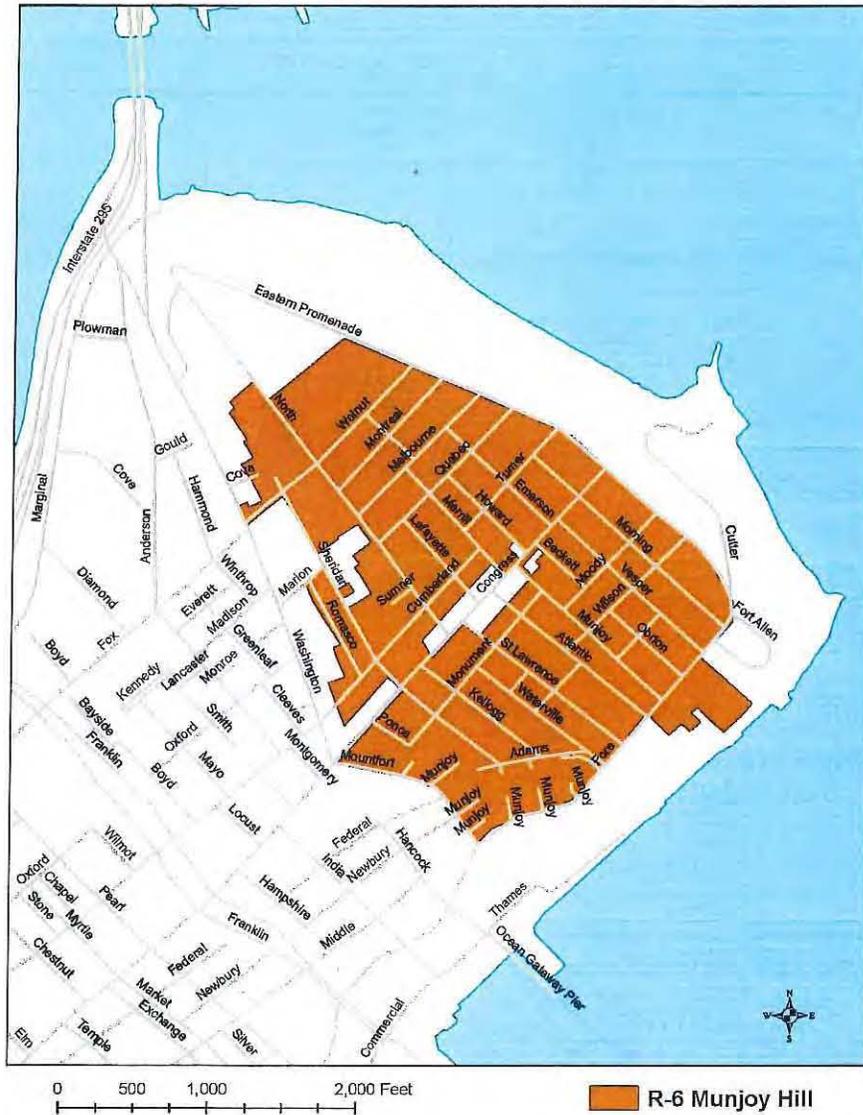
That Chapter 14, Sections 14-488 is hereby amended as follows:

Sec. 14-140.5. Munjoy Hill Interim Planning Overlay District
(IPOD)

There shall be a Munjoy Hill Interim Planning Overlay District (the "District"). This District shall remain in effect until June 4, 2018, after which time it shall immediately expire on said date and this Section 14-140.5 shall be removed from the Code of Ordinances.

Diagram 14-140.5.a.: Munjoy Hill Interim Planning Overlay District Boundaries

(a) **Area of Effect.** This District will apply in the highlighted area depicted on the map below and includes all properties in the R-6 zoning district in an area east of



Washington Avenue and Mountfort Street, north of Fore Street, and west of the Eastern Promenade.

(b) **Effect of the District.** In addition to the standards contained in Chapter 14, Division 7 of the Portland City Code that are applicable to properties in the R-6, zone all properties within this District shall meet the standards in this Section 14-140.5. In cases of conflict between this Section and other sections of Chapter 14 or the *City of Portland Design Manual* and *City of Portland Technical Manual*, the standards in this Section shall control.

(c) **Dimensional Standards.** Within the District, the following dimensional requirements supersede those outlined elsewhere in Chapter 14:

Maximum Height	35'; 45' for developments of 3 units or more on a lot over 2000 sf. Rooftop appurtenances other than chimneys shall not exceed permitted heights.
Minimum Side Yard Setback	Buildings of height up to 35': As per the underlying zoning Buildings of 35' or more: 10' except that one side may be reduced to 5' if the other sides in sum are increased by the same amount.
Stepbacks	Stepback requirements in the underlying zoning shall not apply to side yards.
Minimum Side Yard Setback on a side street	5'; or the depth of the immediately abutting street-facing yard (see Diagram 14-140.5.b.), whichever is less.
Minimum Rear Yard Setback	As measured from a building: 20% of the maximum depth of a lot but no less than 10'. As measured from rear decks, porches, or similar unenclosed appurtenances: 7.5' As measured from accessory structures with a ground coverage of 144 square feet or less: 5'

(d) Design Standards. Within the District, developments are not eligible for the "Alternative Design Review" process outlined in the *City of Portland Design Manual* for the R-6 zone. In addition, the following design standards shall supersede any conflicting standards:

1. All buildings shall use traditional roof forms as illustrated in Diagrams 14-140.5.c-f. Flat roofs are only permitted in buildings of 3 or more units;
2. The first floor shall contain "active living space" with windows for at least 50% of the width of the front façade in total, as illustrated in Diagram 14-140.5.g. Active living space does not include circulation space;
3. Parking shall be located in the rear of a building, and in no case

within the front 10' depth of the building. The only exception shall be for lots smaller than 2,000 sf., which shall be permitted one garage door on the front façade no wider than 30% of the building width, but no less than 9 feet. In that case, the garage door shall (1) be of high quality design, consistent with the character and pattern of the rest of the façade, including windows as appropriate; and (2) be located on one side of the façade. See Diagrams 14-140.5.h-i.;

4. Rooftop appurtenances other than chimneys shall be integrated into the design or placed out of view from public rights-of-way;
5. Building materials shall be high quality and of a scale consistent with traditional residential materials.

(e) **Severability.** To the extent any provision of this Section 14-140.5 is deemed invalid by a court of competent jurisdiction, the balance of this Section that shall remain shall be considered valid.

BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective on February 7, 2018, as required by Order 124-17/18. Moratorium Re: Development and Demolition of Structures in the R-6 Zone on Munjoy Hill.

MEMORANDUM
City Council Agenda Item

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

FROM: Christine Grimando, Senior Planner

DATE: January 12, 2018

SUBJECT: Munjoy Hill Interim Planning Overlay District

SPONSOR: Elizabeth Boepple, Planning Board Chair

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading January 17, 2018 **Final Action** February 5, 2018

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

The R-6 Moratorium states that implementation of an interim ordinance shall be in place for the final 115 days of the 180 moratorium which went into effect as of December 4th; February 5th is the final meeting date to meet this deadline.

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

Staff will be available to answer questions.

I. ONE SENTENCE SUMMARY

The Munjoy Hill Interim Planning Overlay District (IPOD) is proposed to govern development in the R-6 on Munjoy Hill for the remaining 115 days of the demolition moratorium, while the Department of Planning and Urban Development creates permanent changes to the Land Use Code to mitigate demolition and design trends in the area.

II. AGENDA DESCRIPTION

On December 18th the City Council implemented a moratorium on new development applications and demolitions for the R-6 on Munjoy Hill, with a provision that interim review standards would be implemented within 65 days of the moratorium's effective date of December 4, 2017. The demolition moratorium remains in effect for the remaining 115 days, but applications for new Level I, Level II, and Level III site plan applications, as well as amendments to prior approvals, submitted after implementation of the IPOD could be accepted for review under the interim standards.

The IPOD introduces dimensional and design standards that are in addition to any other standards applicable to new development in the R-6 zone. The proposed changes are based on trends identified in the course of an audit of development activity and trends in the R-6 zone, and includes changes to height, setbacks, parking placement, rooflines, rooftop appurtenances, and building materials. The interim standards are intended to provide more contextually appropriate

new design, allow development to proceed, and form the basis for long-term changes in the zone. Over the course of the remaining 115 days of the moratorium staff will continue to investigate suitable amendments and/or additional tools to address concerns about demolitions and the character of new development on Munjoy Hill. Stakeholder outreach will be included throughout the process.

III. BACKGROUND

In December 2017 the Council passed a 180-day moratorium on demolitions, with a moratorium on both demolitions and new construction within the first 65 days of the 180-day period, for the R-6 zone on Munjoy Hill. This action was taken in response to a recent concentration of demolitions of existing structures in the area, and accompanying concerns about the appropriateness of the design and scale of some of the new construction taking place. The moratorium was intended to pause new development activity and demolitions while interim and long term changes are prepared for the R-6 zone that can mitigate impacts to Munjoy Hill. The moratorium requires that interim development standards be put in place by the end of 65 days, to remain in place for the remaining 115 days. In response to this requirement, and based on staff's analysis of recent development trends in the R-6 zone, the IPOD proposes additional interim review standards that address scale and character of new development.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is to allow new development applications to move forward over the remaining time period of the moratorium while staff continues to evaluate additional tools for the area.

V. FINANCIAL IMPACT

Though there are no long term financial impacts anticipated for the City, this IPOD allows some property owners to proceed with projects before the end of the 180-day moratorium, mitigating potential short-term financial impacts on individuals and developers.

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

The report on the IPOD submitted to the Planning Board is attached as supporting analysis and context.

VII. STAFF RECOMMENDATION

Planning Staff supports the proposed Interim Planning Overlay District for the remaining duration of the R-6 moratorium.

VIII. PLANNING BOARD RECOMMENDATION

The Planning Board voted to recommend approval of the IPOD (6-0).

IX. LIST ATTACHMENTS

- A. Munjoy Hill Interim Planning Overlay District
- B. Planning Board Report 1-8-2018

C. Moratorium Re: Development and Demolition of Structures in the R-6 Zone on Munjoy Hill

Prepared by: Christine Grimando

Date: January 12, 2018

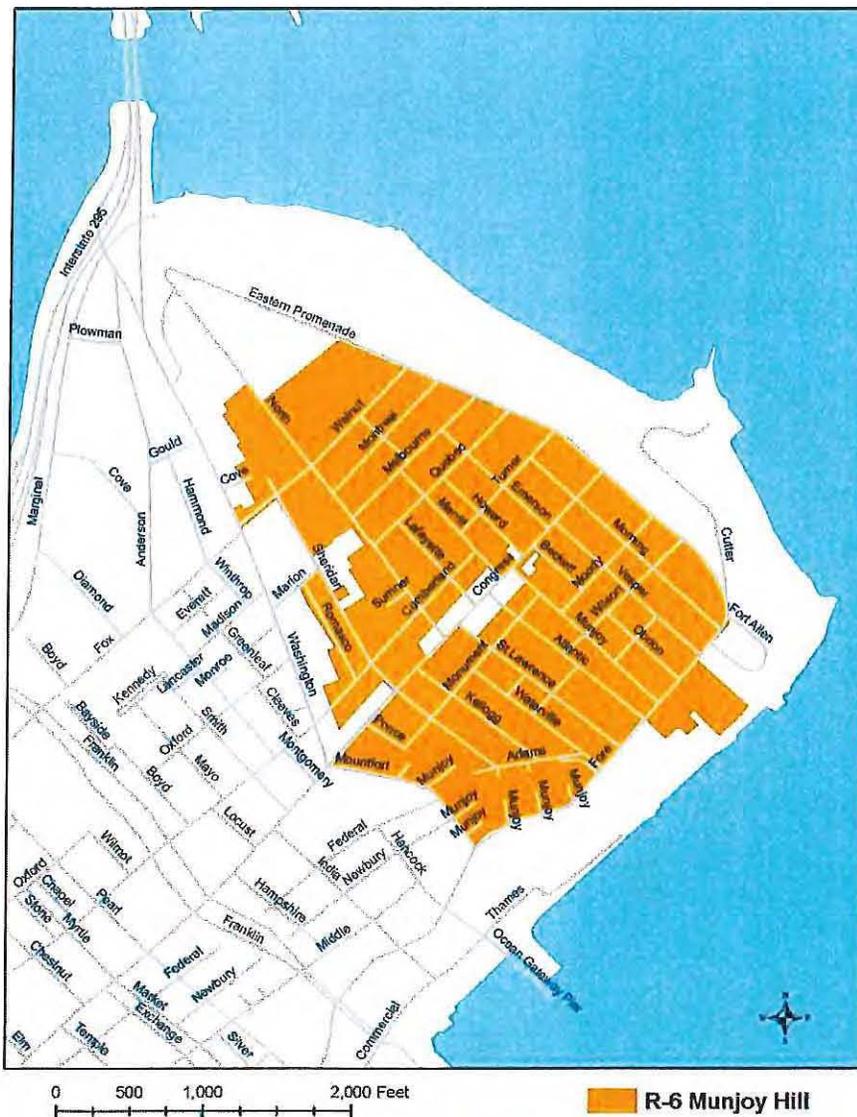
Sec. 14-140.5. Munjoy Hill Interim Planning Overlay District (IPOD)

There shall be a Munjoy Hill Interim Planning Overlay District (the "District"). This District shall remain in effect until June 4, 2018, after which time it shall expire and this Section 14-140.5 shall be removed from the Code of Ordinances.

1. Area of Effect

This District will apply in the highlighted area depicted on the map below and includes all properties in the R-6 zoning district in an area east of Washington Avenue and Mountfort Street, north of Fore Street, and west of the Eastern Promenade.

Diagram 14-140.5.a.: Munjoy Hill Interim Planning Overlay District Boundaries



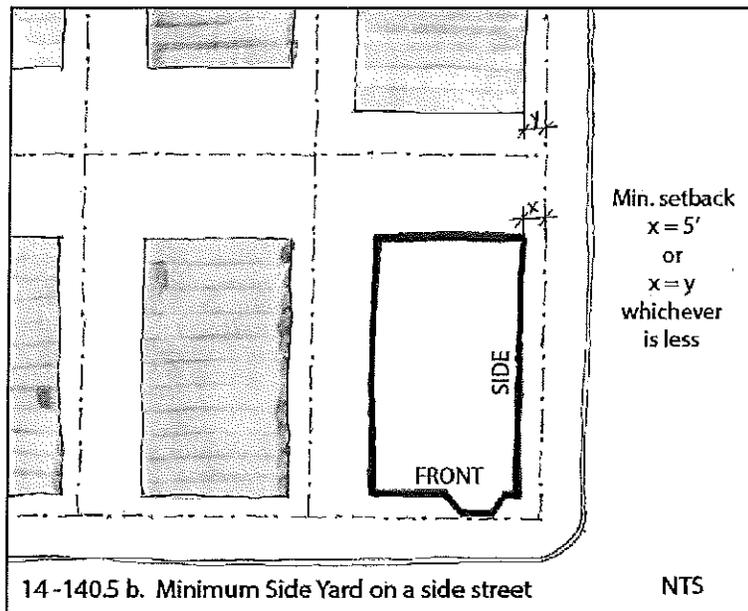
2. Effect of the District

In addition to the standards contained in Chapter 14, Division 7 of the Portland City Code that are applicable to properties in the R-6 zone all properties within this District shall meet the standards in this Section 14-140.5. In cases of conflict between this Section and other sections of Chapter 14, or the *City of Portland Design Manual* and *City of Portland Technical Manual*, the standards in this Section shall control.

3. Dimensional Standards

Within the District, the following dimensional requirements supersede those outlined elsewhere in Chapter 14:

Maximum Height	35'; 45' for developments of 3 units or more on a lot over 2000 sf. Rooftop appurtenances other than chimneys shall not exceed permitted heights.
Minimum Side Yard Setback	Buildings of height up to 35': As per the underlying zoning Buildings of 35' or more: 10' except that one side may be reduced to 5' if the other sides in sum are increased by the same amount.
Stepbacks	Stepback requirements in the underlying zoning shall not apply to side yards.
Minimum Side Yard Setback on a side street	5'; or the depth of the immediately abutting street-facing yard (see Diagram 14-140.5.b.), whichever is less.
Minimum Rear Yard Setback	As measured from a building: 20% of the maximum depth of a lot but no less than 10'. As measured from rear decks, porches, or similar unenclosed space: 7.5' As measured from accessory structures with a ground coverage of 144 square feet or less: 5'



4. Design Standards

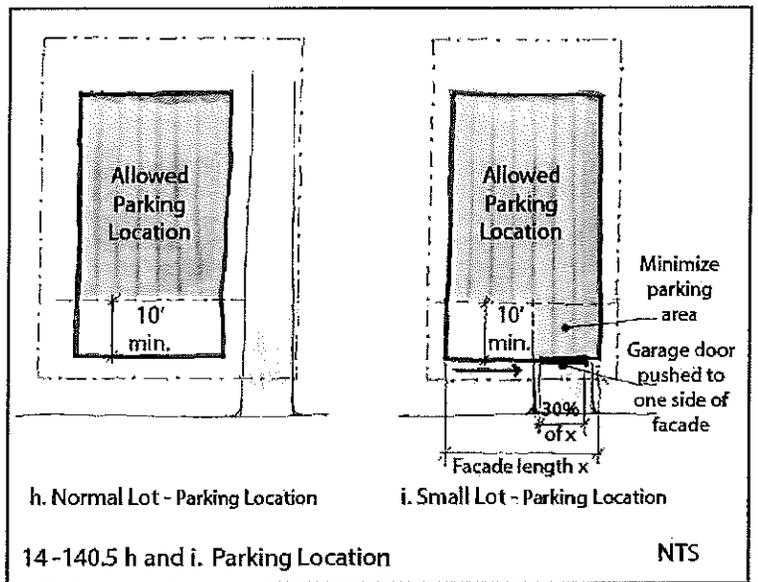
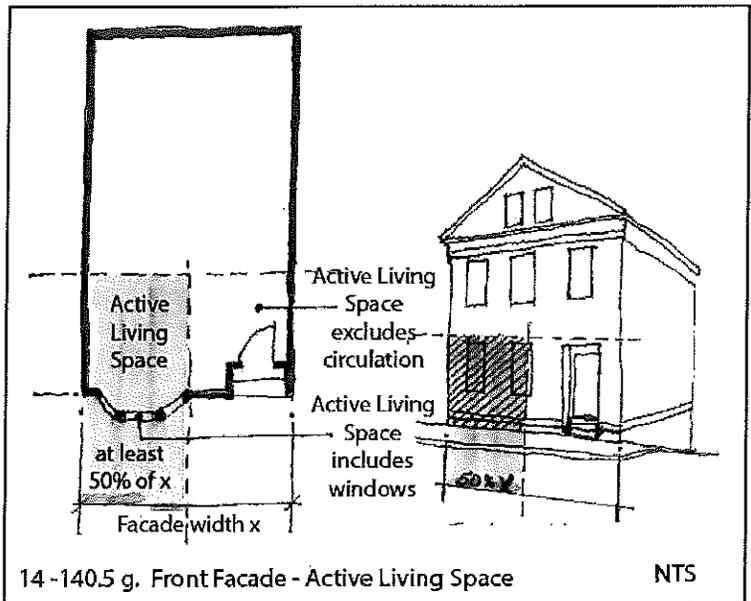
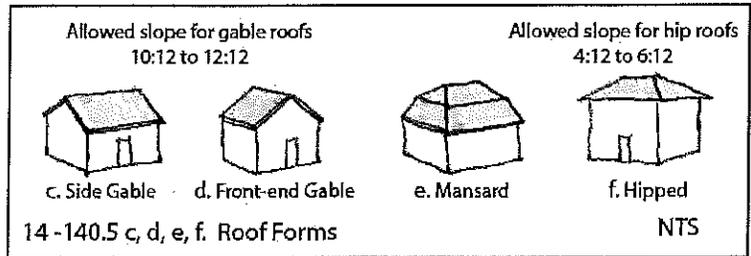
Within the District, developments are not eligible for the "Alternative Design Review" process outlined in the *City of Portland Design Manual* for the R-6 zone.

In addition, the following design standards shall supersede any conflicting standards:

- (a) All buildings shall use traditional roof forms as illustrated in Diagrams 14-140.5.c-f. Flat roofs are only permitted in buildings of 3 or more units;
- (b) The first floor shall contain active living space with windows for at least 50% of the width of the front façade in total, as illustrated in Diagram 14-140.5.g. Active living space does not include circulation space;
- (c) Parking shall be located in the rear of a building, and in no case within the front 10' depth of the building. The only exception shall be for lots smaller than 2,000 sf., which shall be permitted one garage door on the front façade no wider than 30% of the building width, but no less than 9'. In that case, the garage door shall (1) be of high quality design, consistent with the character and pattern of the rest of the façade, including windows as appropriate; and (2) be located on one side of the façade. See Diagrams 14-140.5.h-i;
- (d) Rooftop appurtenances other than chimneys shall be integrated into the design or placed out of view from public rights-of-way;
- (e) Building materials shall be high quality and of a scale consistent with traditional residential materials.

5. Severability

To the extent any provision of this Section 14-140.5 is deemed invalid by a court of competent jurisdiction, the balance of this Section that shall remain shall be considered valid.





**PLANNING BOARD REPORT
PORTLAND, MAINE**

**Interim Planning Overlay District
for Munjoy Hill R-6 Zone**

Submitted to: Chair Boepple and Members
of the Planning Board
Public Hearing Date: January 8, 2018

Prepared by: Christine Grimando, Senior Planner
Date: January 5, 2018

I. Introduction

On December 6, 2017, the Planning Board was presented a Communication with background on a set of zoning changes implemented to the R-6 zone in 2015, qualitative and quantitative R-6 zone audit findings on activity in the zone since 2015, as well as a summary of a six-month moratorium on new construction and demolitions in the R-6 zone on Munjoy Hill being considered by the Council.

On December 18th the City Council voted to approve a six-month moratorium on demolition in the R-6 district on Munjoy Hill. The moratorium includes a requirement for the implementation of interim zoning to govern development in the R-6 zone for the duration of the moratorium to be implemented within 65 days of December 4th. This Munjoy Hill Interim Planning Overlay District (IPOD) is the subject of the Planning Board's January 8th public hearing. The IPOD is a tool that provides temporary standards to guide development applications that are received during the remaining 115 days of the moratorium. The details of the audit are based on the critical design issues found in the course of the R-6 audit. A detailed overview of the IPOD follows.

II. Comprehensive Plan Policies

Portland's Plan 2030 has a number of goals and strategies supporting strong neighborhoods, quality design, and housing production. Neighborhoods that are zoned R-6 support, through their density and through their locations, Future Land Use principles, and the goals and strategies in the Housing and Environment Policy Guides (and by extension many of the Plan's transportation goals), including:

From "Future Land Use"

(Complete Neighborhoods are a City-wide planning principle and Munjoy Hill is an example of a robust Complete Neighborhood):

Portland's intent for its predominantly residential neighborhoods is one where all residents regardless of age, ability, or income have access to the basic necessities of daily life - high quality and affordable housing, schools and other civic functions, food, open space, other amenities and services - within a

walkable, bikeable distance. The city already has examples of these neighborhoods, each with its own social networks, physical form and scale, and distinct sense of identity. Neighborhoods such as Munjoy Hill and Deering Center, with their schools, expansive open spaces, small groceries, and restaurants, provide precedents for complete neighborhoods that can inform the evolution of other areas in the city.

From “Housing”:

- Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.
- Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.
- Encourage quality, sustainable design in new housing development.
- Reinforce existing housing tools, policies, and programs while continuing to explore emerging best practices.
- Evaluate whether current zoning allows for new development consistent with historic patterns of form, density, and/or use, as well as whether it allows for priority growth areas.

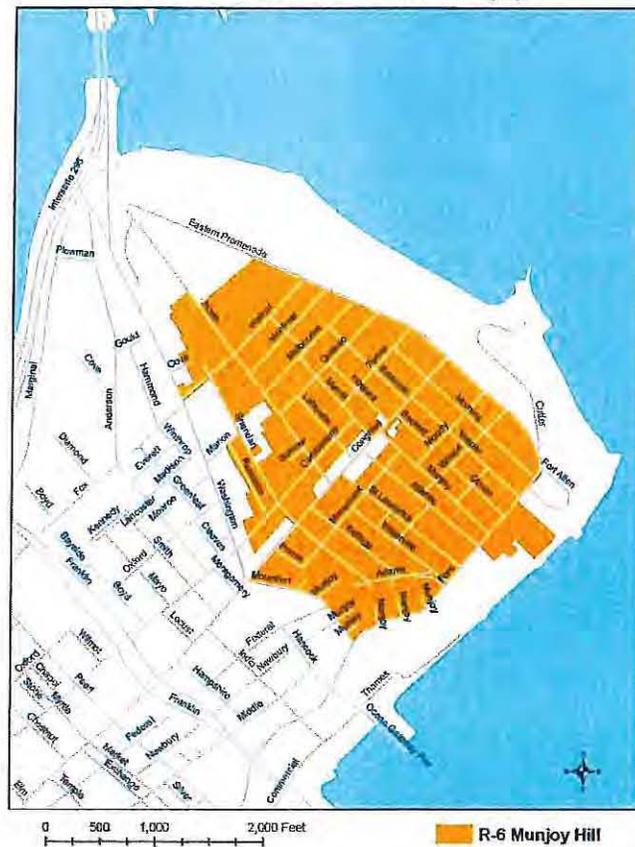
From “Environment”:

- Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.
- Continue to develop land use policies which support complete neighborhoods.

III. Moratorium Overview

The City Council held a first reading of the proposed moratorium on December 4th, a workshop on December 11th, and voted to approve it at a December 18th Public Hearing. The impetus for adoption was concern from some Munjoy Hill residents that the current residential development interest was resulting in an undue number of demolitions to existing structures, and infill development that was sometimes out of scale and character with existing neighborhood fabric. The moratorium was enacted to provide a temporary hiatus in development activity while the Department of Planning & Urban Development develops any necessary additional land use and design regulations to address both of these issues in the R-6 for Munjoy Hill. In addition,

Exhibit A: Area of R-6 Zone on Munjoy Hill



the moratorium will allow time for staff to conduct additional stakeholder outreach prior to making any recommendations.

The moratorium has two components:

- 1) The 180-day period beginning on December 4, 2017 during which no demolition permit applications may be accepted (demolition of 50% or more of the exterior surface and or/front façade of a structure).
- 2) An interim period beginning on December 4, 2017 and lasting for 65 days, during which no development applications, including Level I, Level II, or Level III site plans, shall be accepted, reviewed, or approved. The moratorium further states that in the interim period the Department of Planning and Urban Development shall develop an interim ordinance to govern development in the R-6 on Munjoy Hill for the remaining 115 days of the moratorium.

Exempted from the moratorium are:

- Demolition permit applications that were included as part of previous site plan approvals,
- Demolition due to the Building Authority determining a structure is dangerous to life or property (due to a condition that pre-dates the effective date of this Moratorium or is the result of fire, accidental catastrophic damage, or a natural disaster), and
- New site plan applications (complete or not) that were submitted prior to December 4th.

The full final text of the moratorium is included as Attachment 2.

IV. Key R-6 Findings

At the Planning Board's December 6th workshop, staff presented findings on activity and trends within the R-6 since text amendments were made to the zone in 2015. This included quantitative and qualitative assessment of overall development trends in the R-6 and on Munjoy Hill in particular. Some of the change underway in the R-6 zone is independent of zoning regulations and/or design guidelines, or in some cases precede the 2015 changes – a strong housing market and interest in Munjoy Hill, deferred maintenance for some of the older housing stock, and contemporary design trends, for instance – but staff strove to identify current development patterns and which were being shaped by current regulations. These findings, in conjunction from community feedback to date, form the basis for the proposed IPOD, and will inform ongoing work to refine regulations in the R-6 on Munjoy Hill.

Some key findings of the R-6 audit:

- Though there has been a significant amount of infill housing of a variety of housing types within the R-6 zone (89 net new dwelling units as of mid-2015), as intended, the same period has also resulted in a disproportionate number of demolitions based on Munjoy Hill. Demolition totals as of December 15th are as follows:

	Totals	Demolitions	Percentage of Total
Buildings in the R6 All	3,215	17	0.53%
Buildings in the R6 Munjoy Hill Only	1,149	13	1.13%

- Though the 2015 R-6 changes included parking exemptions for the first three units, which generated some concern this would exacerbate on-street parking pressures, there has been minimal utilization of this exemption to-date. New construction applications indicate that off-street parking provided (124) exceeds the total number of approved dwelling units (117,) meaning the overall parking ratio remains over 1 space per unit.
- There are several factors influencing the compatibility of scale and character of some of the recent R-6 construction with the neighborhood context, many of which can be addressed in development review standards, including:
 - Off-street structured parking location, particularly as it relates to ground floor design and ground floor façade design;
 - New materials and technology, as manifest in selection of cladding materials, the need for taller floor heights, and placement of rooftop appurtenances;
 - Existing setback and height limits were designed to allow for flexibility but in practice there has been an overall tendency of property owners and developers to maximize allowable square footage on a lot. Design standards, while helpful, have not been adequate to address this issue.
 - Building Code and life safety requirements, including ADA requirements, which influence building placement and entry requirements in ways that often diverge from traditional patterns of the peninsula’s neighborhood streets.

None of the factors in and of themselves limit the compatibility of infill, but as a set they can present design challenges that strategic amendment of zoning and design guidelines can mitigate. The IPOD concerns itself with dimensional and design standards that directs building placement, building proportions, parking location, active ground floor design, HVAC placement, and materials selection.

For a fuller exploration of factors influencing current design of new buildings, please refer to the December 6th [Communication](#). Some of the housing and demolition totals were updated and supplemented in a December 15th memo to the Council that is included as Attachment 4.

V. Proposed IPOD

Interim Planning Overlay Districts (“IPOD’s”) are a common zoning tool used nationally in similar situations, where existing codes are being evaluated but final recommendations are not yet complete. IPOD’s have been used instead of or, as is the case here, in conjunction with a moratorium. They allow for quick and temporary implementation of land use tools to address sensitive issues while allowing some development activity to proceed amidst a longer planning process. This IPOD is intended to be a temporary regulatory framework, usually stricter or more conservative than the underlying zoning, and

is meant to strike an effective balance of allowing some development activity to continue under modified regulations while final recommendations are being created.

The IPOD would govern site plan reviews during the six-month moratorium and is directly based on the dimensional and design issues identified in the R-6 audit work done to-date. Many communities nationally have used made use of IPODs to address identified issues while final tools were developed are diverse in size and location, including Pittsburgh, Brookline, an San Francisco (see Attachment 3 for several examples of IPODs from other communities in the U.S.).

The IPOD (Attachment 1) is proposed to in effect until June 4, 2018th. It is proposed as Sec. 14-140.5, an addition to *Division 7, R-6 and R-6A Residential Zones*. The area of effect is synonymous with the area of the moratorium, as shown on the above map, generally defined as all properties in the R-6 zoning district in an area east of Washington Avenue and Mountfort Street, north of Fore Street, and west of the Eastern Promenade. The IPOD is proposed as a set of additional standards for development in this subset of the zoning district – all other standards for development in the zone remain in effect, including R-6 zone regulations, any any pertinent site plan regulations and Design Guidelines, except that in the case of conflicting standards the IPOD standards prevail. Final recommendations, to be proposed prior to the end of the moratorium, may apply to the Munjoy Hill exclusively, or may in some instances warrant application zone-wide.

The substance of the IPOD falls into two categories: Dimensional Standards and Design Standards, and both categories are intended to produce new structures that show greater contextual sensitivity to the surrounding neighborhood in overall scale, mass, and character.

1. Dimensional Standards

Below is a summary of proposed dimensional standards of the IPOD, contrasted with existing regulations. The changes directly respond to issues found within the audit. For instance, the height is reduced from 45' to 35' for one- and two-family developments, and allows the current maximum height of 45' for 3+- family homes. The maximum height has been 45' for many years, preceding the 2015 changes, reflecting the presence of numerous 4-story buildings on Munjoy Hill and elsewhere in the R-6 zone. However, these larger buildings, though long part of the urban fabric of the peninsula, were invariably associated with multi-family buildings, while single family homes and duplexes tended to 3-stories and below. Similarly, changes to setbacks are proportionate to lot size and/or building size to encourage proportionately scaled new construction. These changes propose to mitigate impacts on adjacent lots while still allowing for a compact, relatively dense neighborhood pattern of a range of housing types and sizes, consistent with the purpose of the R-6 zone and the history of the neighborhood.

Within the IPOD, the following dimensional requirements supersede any outlined elsewhere in Chapter 14. Any standards not specifically addressed by the IPOD remain in effect.

	<i>Existing</i>	<i>IPOD</i>
Height Maximum	45'	35'; 45' for developments of 3 units or more on a lot over 2000 sf. Rooftop appurtenances other than chimneys shall not exceed permitted heights.
Side Yard Setback Minimum	5 ft, except that a side yard in the R-6 zone may be reduced to zero, provided that the cumulative side yard setbacks are not less than 10 ft.	Buildings of height up to 35': As per the underlying zoning Buildings of 35' or more: 10' except that one side may be reduced to 5' if the other sides in sum are increased by the same amount.
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. Does not apply to side yards on side streets.	Stepback requirements in the underlying zoning shall not apply to side yards.
Side Yard Setback on a Side Street Minimum	None	5'; or the depth of the immediately abutting street-facing yard, whichever is greater.
Rear Yard Setback Minimum	10 feet, except that accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.	As measured from a building: 20% of the maximum depth of a lot but no less than 10'. As measured from rear decks, porches, or similar unenclosed space: 7.5' As measured from accessory structures with a ground coverage of 144 square feet or less: 5'

2. Design Standards

Building design is regulated in the Land Use Code and in the City of Portland Design Manual, which includes specific standards for the R-6 zone. A number of design standards are proposed in the IPOD:

- The “Alternative Design Review” process outlined in the *City of Portland Design Manual* for the R-6 zone is removed as an option for new developments in the R-6 zone on Munjoy Hill, as this has been identified in the course of the audit as an option in need of further evaluation and potential modification in the coming months.
- The IPOD requires traditional roof forms, and limits flat roofs to buildings with 3 or more units. This requirement, like the dimensional standards, seeks to better replicate traditional patterns, which included triple-decker multi-family buildings as well as gable and mansard-roofed buildings.
- The IPOD requires the first-floor front façade to contain active living space to address common issues in the design of first floor space dedicated to structured parking. This standard directs attention at the critical influence of the design of the front-façade’s first floor on the feel and function of urban streets and is intended to address the urban design goal of “putting eyes on the street.”
- In addition to the active front façade standards, parking placement is further regulated to the rear of the building, with limited exceptions for smaller lots.
- Rooftop appurtenances, other than chimneys, are required under the IPOD to be integrated into building design or placed out of public view. Locations for rooftop appurtenances are often brought forward after review and approval of a building design – this standard requires rooftop

appurtenance placement to be reviewed as part of the overall design of the building where it currently is not.

- A standard for building materials to be high quality and consistent with traditional building materials is included, as well. There are some standards for building materials in the City of Portland Design Manual, but this addition in the IPOD strengthens the importance of applicant's addressing suitability of new materials in the overall design. The standard allows for a full range of contemporary materials to continue to be used as long as they retain the residential feel of the neighborhood.

The attached IPOD includes several illustrations to accompany the text for these standards. This is a helpful practice used by many other communities that we are seeking to adopt as part of our code as we move forward.

VI. Public Input

Public input about development trends on Munjoy Hill as well as on the moratorium and IPOD in particular has been provided in person, at neighborhood meetings, and via email (Section XI). There has been support for the moratorium in addition to some concern, particularly among property owners that anticipate plans for their own properties being altered or delayed. Thoughtful feedback and suggestions have been provided by Munjoy Hill residents in recent months, demonstrating a good deal of time, care and deliberation put in to this topic. Staff will continue to communicate with residents and the public throughout.

Recent feedback submitted via email (Attachment PC3) suggested that the IPOD include setback and height alterations similar to those staff is recommending. That feedback also recommended alterations to the parking and density standard that are not included in the IPOD. Staff analysis of patterns of new development on Munjoy Hill does not suggest either current minimum parking standards or density are creating negative impacts, and in fact have some positive benefits. The IPOD directly addresses numerous aspects of development scale and design, as each of these emerged aspects of current regulations that can be improved for improved results in the built environment.

As noted above, the parking provided in new projects in the R-6 zone regularly exceeds the minimum requirements, and even the previous requirement of 1 space per unit. The challenge of the newer project is therefore not addressed by reverting to the previous standard. In addition, requiring more off-street parking for relatively small projects often removes public parking from the street in cases where new curb cuts are created. Off-street parking minimums also have implications for new construction costs and neighborhood walkability.

Parking does create significant design issues however, and for this reason staff is recommending that the IPOD require better integration of parking into the design of buildings and layout of lots. Staff will continue to try to balance this complex topic in consideration of the City's regulations, design standards, and project review, but currently the most recent data available indicates that there is not only no need for increased minimum parking requirements in the R-6 zone, but potential detriment.

Density refers to the total number of housing units that can be built on a lot, but concerns that have been voiced about new construction have focused on the scale of new design, often new single- and two-

family homes, rather than the quantity of households on Munjoy Hill. As the R-6 has traditionally been, and currently strives to be, a walkable urban neighborhood of diverse housing types, no changes to permitted density are currently proposed. *Portland's Plan 2030*, as well as recent years of housing policy direction from the City Council, support new housing creation, and have been supportive of enabling infill in existing neighborhoods such as those in the R-6 zone in particular.

Staff will continue to discuss these and other concerns that may arise with all stakeholders in the coming months.

VII. Next Steps

The Planning Board will need to make recommendations on the IPOD to the City Council, and the Council will need to adopt it within 65 days, with a public hearing in February. Following this, applications for new development in the R-6 zone on Munjoy Hill may be accepted and reviewed under the IPOD standards, though the moratorium on any proposed demolitions remains in place until the end of the 180 days.

Following IPOD adoption, staff will continue to develop long-term proposals for the zone, based in part on the findings of the R-6 audit, in part on feedback received to date, and in part through public outreach with Munjoy Hill Neighborhood Association, Greater Portland Landmarks, Portland Society for Architects, property owners, developers, and other stakeholders. Proposals for additional R-6 standards will be brought forward by April, for passage in June 2018. A spectrum of tools is being explored, from making the IPOD standards permanent on Munjoy Hill or zone-wide, to a Munjoy Hill-specific overlay that could take the form of something called a Neighborhood Conservation District, to the creation of a new Local Historic District, or some combination of these and other tools. As befitting a significant policy endeavor with implications for housing, neighborhood character, and sustainability, the City's comprehensive plan, *Portland's Plan 2030*, will be consulted throughout the process.

VIII. Staff Recommendations

The staff recommends that the Planning Board find the proposed IPOD to be consistent with the Comprehensive Plan and recommend to the City Council its adoption.

IX. Motions for the Board to Consider

On the basis of information contained in the Planning Report and testimony presented at the public hearing, the Board finds:

The proposed IPOD (is or is not) in conformance with the City of Portland Comprehensive Plan and therefore (recommends or does not recommend) approval of the proposed zoning amendments to the City Council.

X. Attachments

1. Proposed IPOD (Text Amendments to Portland Land Use Code, Div. 7, R-6 Residential Zone, 14-140.5
2. Adopted Moratorium
3. IPOD Examples
4. Supplemental memo to City Council (December 15, 2017)

XI. Public Comment

- PC 1 Chase
- PC 2 Macleod
- PC 3 Snyder/Agopian

Order 124-17/18

Amended to add the language of the amendment titled “Emergency Demolition and Application-in-Process Exception”: 9-0 on 12/18/2017

Amended to add after the words “Planning Board” in the fifth from the last paragraph: “unless such applications were received prior to December 4, 2017. Notwithstanding the forgoing, staff may at its discretion review such applications as time permits”: 7-2 (Duson, Ray) on 12/18/2017

Passage as amended and as an Emergency: 7-2 (Batson, Cook) on 12/18/2017

Effective 12/18/2018

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

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

MORATORIUM
RE: DEVELOPMENT AND DEMOLITION OF STRUCTURES IN THE
R-6 ZONE ON MUNJOY HILL

WHEREAS, in or around April 2015, the City of Portland’s Land Use Code was amended to allow for more infill development and reconstruction in the City’s R-6 zone in an effort to advance the City’s goal to produce additional housing; and

WHEREAS, that change in zoning has helped meet City goals for new housing production, resulting in approximately 92 net new housing units overall; and

WHEREAS, a significant portion of the R-6 zone in the City of Portland is located on Munjoy Hill; and

WHEREAS, of the 92 net new units overall, 29 of them have been on Munjoy Hill; and

WHEREAS, this redevelopment has included the demolition of thirteen (13) housing structures on Munjoy Hill over a thirty (30) month period and the construction of larger housing structures, many of which do not adequately fit with the neighborhood context; and

WHEREAS, there are currently at least two additional buildings on Munjoy Hill planned for demolition pending site plan review and approval; and

WHEREAS, buildings for sale on Munjoy Hill are being actively marketed for their teardown potential;

WHEREAS, the rest of the R-6 zone has seen demolition of only four (4) housing structures as a result of new development; and

WHEREAS, there is a strong likelihood that the R-6 zone on Munjoy Hill will continue to be subjected to this demolition pressure; and

WHEREAS, at present there is a need for additional regulation in the City's Land Use Code to address these aforementioned increases in demolitions and to further refine regulations regarding the character and size of permissible replacement buildings in the R-6 Zone on Munjoy Hill; and

WHEREAS, pursuant to 30-A M.R.S. § 4356(1)(B), there is concern that existing City Land Use Code provisions, regulations or other laws are inadequate to address the aforementioned development and demolition pressures in the R-6 zone on Munjoy Hill and to prevent the public harm from these demolitions, the associated residential developments, and their collective impacts on the fabric of this particular neighborhood; and

WHEREAS, after sufficient notice and a public hearing, there is strong support for this Moratorium on the City Council; and

WHEREAS, it is typical for City staff to conduct a review of significant zoning changes after they have been in place for approximately 2 years and to recommend revisions that improve their effectiveness; and

WHEREAS, that process is underway but will require at least one hundred and eighty (180) days for City staff to fully develop and implement any necessary amendments to address negative impacts of demolitions on Munjoy Hill while also helping to achieve City housing production goals; and

WHEREAS, in the judgment of the Portland City Council, these facts and conclusions outlined above create an emergency within the meaning of 30-A M.R.S. § 4356(1) and the City Charter, and require the following Moratorium as immediately necessary for the preservation of the public health, safety and welfare;

NOW THEREFORE, BE IT ORDERED that, pursuant to its authority in 30-A M.R.S. §§ 3001 and 4356, the Portland City Council hereby ordains that a Moratorium is imposed on any and all demolition applications (as defined and except as exempted below) in the R-6 zone on Munjoy Hill depicted on the map attached hereto as Exhibit A; and

BE IT FURTHER ORDERED, that no demolition permit applications for demolition of 50% or more of the exterior surface of and/or the front façade of a structure, shall be accepted by the City, for any and all property located in the R-6 zone on Munjoy Hill in the City of Portland (see Exhibit A) for the entire period of this Moratorium, unless that demolition is part of a site plan application submitted prior to the effective date of this moratorium or the Building Authority determines that the building is dangerous to life or property due to a condition that pre-dates the effective date of this Moratorium or is the result of fire, accidental catastrophic damage, or a natural disaster; and

BE IT FURTHER ORDERED, that this Moratorium shall go into effect and be applicable as of December 4, 2017, and remain in effect for one hundred and eighty (180) days thereafter, unless extended, repealed, or modified by the Portland City Council; and

BE IT FURTHER ORDERED, that, in addition to the moratorium on demolition permits outlined above and for all of the reasons outlined above, for an interim period beginning on December 4, 2017 and lasting for sixty-five (65) days thereafter, no development applications for properties located in the R-6 zone on Munjoy Hill, specifically including any and all Level I, II or III Site Plan applications and revisions thereto, shall be accepted, reviewed, approved, or otherwise acted on by the Planning Authority or the Planning Board unless such applications were received prior to December 4, 2017. Notwithstanding the forgoing, staff may at its discretion review such applications as time permits; and

BE IT FURTHER ORDERED, that in that interim period the City's Department of Planning and Urban Development shall draft an interim ordinance to govern development in the R-6 zone during the remaining one hundred and fifteen (115) days of the aforementioned demolition Moratorium for review and approval by the City Council; and

BE IT FURTHER ORDERED, that the interim ordinance shall only apply to applications received after the effective date of this Moratorium and that any site plan applications, together with any revisions thereto, submitted prior to December 4, 2017, or demolition applications submitted prior to December 4, 2017 or associated with a site plan application submitted prior to December 4, 2017, shall be reviewed in accordance with the ordinance and regulations in effect on the date of submission; and

BE IT FURTHER ORDERED, that to the extent any provision of this Moratorium is deemed invalid by a court of competent jurisdiction, the balance of the Moratorium that shall remain shall be considered valid; and

BE IT FURTHER ORDERED, that in view of the emergency cited in the preamble above, that it is hereby found and determined by the Portland City Council that it is necessary that this Moratorium take effect immediately as an emergency pursuant to Article II, Section 8 of the City of Portland Charter.

order 142-17/18
Tab: 6 1-31-18

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**

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

**AMENDMENT TO ZONING MAP
RE: MUNJOY HILL INTERIM PLANNING OVERLAY DISTRICT**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following temporary map change amendment and specifically placing a Munjoy Hill Interim Planning Overlay District on the area of the City of Portland depicted in the map below; and

BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective on February 7, 2018, as required by Order 124-17/18. Moratorium Re: Development and Demolition of Structures in the R-6 Zone on Munjoy Hill.

Order 143-17/18
Tab 7 0-31-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 2 ADMINISTRATION
RE: CIVIL SERVICE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. That Chapter 2, Article IV., Sections 2-46, 2-48, 2-49, 2-54, 2-58 to 2-67 and 2-76 of the Portland City Code are hereby amended to read as follows:

Sec. 2-46. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them unless the context otherwise indicates:

~~Appointing authority means the City Manager.~~

Cause. In the case of a member, "cause" shall mean just cause and shall include any act or omission which constitutes legal cause and includes, but is not limited to: violation of any departmental rule or rules; incompetent or inefficient performance of duty; or inattention to or dereliction of duties; insubordination; discourteous treatment of the public or a fellow employee; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; job suitability or physical unfitness to perform the normal duties of the position which the member holds; the use of intoxicating liquors, narcotics, or any other drug, liquid, or preparation on duty, or to such an extent that such use interferes with the efficiency or job suitability or physical fitness of the member, or prevents the member from properly performing the normal functions and duties of his or her position; misconduct; the commission of any disqualifying criminal offense; failure to report to the appropriate superior; errors, incompetence, misconduct, inefficiency, neglect of duty, or any other form of

misconduct or negligence of which the member has knowledge; ~~failure of a firefighter or firefighter/paramedic to pass the first fire drill school offered within the first two years of appointment;~~ and any other acts or omissions which would tend to directly discredit or injure the public service or would jeopardize the effective functioning of the department. In the case of a civil service commissioner or alternate, "cause" shall include any act or omission which constitutes legal cause, and includes but is not limited to: incompetent or inefficient performance of duty; unexcused absences from commission meetings; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; the commission or conviction for any disqualifying criminal offense, or any action by the Civil Service Commissioner or alternate intended to affect or influence, or which could reasonably be expected to affect or influence any decision of the City Manager, the Chief of either department, or the City Council with respect to the department, or of any member of the department with respect to the performance of his or her duty.

Charge means a written statement to the member describing the act or omission constituting cause for action taken or proposed to be taken.

Civil service commission means collectively the two independent subcommittees constituting the commission, i.e. the employment subcommittee and the police citizen review subcommittee.

Demotion means any reduction in rank within the department but shall not include any economic layoff.

Director of human resources shall mean the person designated by the City Manager to act as Director of Personnel for the City and his or her designees (also referred to herein as the "Director").

~~*Disqualifying criminal conviction* means the conviction for any disqualifying criminal offense. The term shall not include such a conviction if it has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure. Juvenile offenses shall not disqualify but may be considered among other factors if otherwise relevant to the proposed action.~~

~~*Disqualifying criminal offense* shall mean and include any~~

~~offense punishable by death or imprisonment for one (1) year or more under the law of the sentencing jurisdiction, whether or not such sentence is imposed or served; or any theft offense; or any sex offense; or any offense which involves dishonesty or false statement.~~

Member means any firefighter, firefighter/paramediefire officer, police officer, or superior officer appointed hereunder to any rank within the fire or police departments, except the chiefs thereof.

Promotion means any advancement in rank within the department, other than the rank of chief.

Rank means the position classification of any member to which he or she has been appointed hereunder within the fire department or police department but shall not include any contractual or other pay differentials between functions or grades within each rank.

Relative means grandfather, grandmother, father, mother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother, or half-sister, whether by half-blood or full blood, and whether by consanguinity or affinity.

~~*Working test period* means a probationary period during which the employee has no expectation of continued employment and may be removed for any reason, with or without just cause.~~

...

Sec. 2-48. Composition.

(a) The Civil Service Employment Subcommittee of the Civil Service Commission shall consist of three (3) commissioners and one (1) alternate who shall serve in the absence of any commissioner.

(b) The police citizen review subcommittee shall consist of seven~~ix~~ (76) commissioners ~~and one (1) alternate~~ who shall serve in the absence of any commissioner.

Sec. 2-49. Qualifications.

(a) *Qualifications of commissioners.* Every civil service commissioner and alternate shall be a resident of the City of Portland ~~and shall be of good moral character~~. In addition, the following persons shall not be eligible for appointment to, or service on the Commission:

- (1) Any present or former employee of the city, who was employed by the city within the previous ten (10) years;
- (2) Any present or former member of the City Council, who has held that position in the previous ten (10) years;
or
- (3) Any civil service commissioner who has completed three (3) consecutive full terms of three (3) years as provided in Chapter 2, Article III.

(b) Additional subcommittee eligibility requirements:

- (1) *Employment subcommittee.* The following persons shall not be eligible to serve on the employment subcommittee:

any relative of a present member of the police or fire departments.

- (2) *Police Citizen Review Subcommittee.* In order to ensure an objective and unbiased audit of the police department's internal affairs investigation process, any applicant for service on the citizen review subcommittee shall be disqualified from serving on said subcommittee if:

- a. any member of the applicant's immediate family is or has been a Portland police officer in the previous ten (10) years;
- b. the applicant or any member of his or her immediate family has been arrested by any member of the Portland police department within the previous ten (10) years, or has had the final disposition of any criminal proceedings resulting from such an arrest within the previous ten (10) years, whichever is longer;

- c. the applicant or any member of his or her immediate family has filed a complaint with the internal affairs unit of the Portland police department ~~alleging excessive force, civil rights violations or conduct on the part of a police officer that would constitute a criminal offense within the previous ten (10) years;~~ and
- d. the applicant or any member of his or her immediate family has brought suit against the City of Portland, the Chief of Police, the police department or any individual police officer for a cause of action arising out of an officer's performance of his or her duties; within the last ten (10) years, or has had such a suit finally disposed of within the previous ten years, whichever is longer.
- e. "Immediate family" as used herein shall mean and include spouse, domestic partner, children, grandchildren, parents, grandparents, and siblings.

...

Sec. 2-54. Officers.

Each subcommittee of the civil service commission shall annually elect one (1) of its members as the chair. Each subcommittee may, at its option, also elect one (1) of its members as the vice chair, to serve in the absence of the chair. The Director of Human Resources or his or her designee shall serve as secretary to the employment subcommittee and shall furnish any necessary administrative assistance. The corporation counsel or his or her designee shall serve as secretary to the police citizen review subcommittee and shall furnish any necessary administrative assistance to that subcommittee.

...

Sec. 2-58. Applicability; duties.

(a) *In general.* This division shall govern the appointment, reinstatement, promotion, demotion, layoff, suspension, resignation, or removal of members of the fire and

police departments of the city, other than the chiefs thereof, except to the extent that the Maine Public Employees Labor Relations Law and any collective bargaining agreement made in accordance therewith provides to the contrary.

(b) *Duties.* In addition to carrying out the duties described elsewhere in this article, it shall be the duty of the employment subcommittee:

- (1) To establish a system of personnel administration for members of the departments based on competition, merit principles, and scientific methods, and to prevent unlawful discrimination based upon race or color, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of a claim or right under Maine's Workers' Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law, or race, color, age, religion, sex, sexual orientation, physical or mental disability, ancestry, national origin, veteran's status or political affiliation;
- (2) To ~~provide the City Manager with~~oversee the process of creating lists of names of persons eligible for specific appointments;
- (3) To make suitable rules, from time to time, which rules shall not be inconsistent with this article, applicable statutes, or regulations. Proposed rules shall be submitted to the City Manager and shall become effective when approved by the City Manager. All such rules shall be recorded in the office of the City Clerk. ~~and~~
- ~~(4) To request and review reports of the chiefs of the police and fire departments detailing the departmental rules and regulations relating to physical fitness of members. When, and if, the commission determines that such rules and regulations are inadequate to ensure the physical fitness of either department, it shall report such inadequacy and make recommendation for improvement therein to the City Council.~~

~~Sec. 2-59. Minimum qualifications for appointments.~~

~~(a) Standards required. All candidates for appointment shall meet the minimum requirements set forth in this section and any additional requirements set forth hereafter or in the rules of the employment subcommittee not inconsistent herewith.~~

~~(b) Original appointments:~~

~~(1) Good character. Each candidate for original appointment shall be of good moral character and shall in all cases bear the burden of proof as to this requirement. No person shall be appointed who has a history which includes a disqualifying criminal conviction.~~

~~(2) Education and experience. Applicants must have a high school diploma or equivalency degree and have either: three (3) years of post high school employment experience(s) or three (3) years of education in a post-high school program at a school, college, or university; or any combination of post high school employment experience and post high school education totaling three (3) years.~~

~~a. Police applicants. To the extent and in the manner required by subcommittee rule, applicants for police original appointment shall submit evidence of passing the ALERT test.~~

~~b. Fire applicants. Applicants who wish to be considered for the position of firefighter/paramedic must be certified as a paramedic prior to being sent to the department on an eligible list and must be licensable as a paramedic in the State of Maine prior to appointment. An applicant may notify the Director of Human Resources that he or she is certified as a paramedic after placement upon an eligible list so that he or she may be considered for either a firefighter or firefighter/paramedic vacancy for the life of that list.~~

~~(3) Motor vehicle driver's license. Each candidate for original appointment shall possess a valid motor vehicle driver's license. If such license is from a state other than the State of Maine, the candidate~~

~~must not be disqualified from issuance of a State of Maine driver's license.~~

~~(4) Health. Candidates for original appointment shall be in good health and shall be subject to a fitness assessment, and a post offer medical examination, and in the case of police, a job suitability assessment, pursuant to the rules of the employment subcommittee. Such rules shall be developed in consultation with appropriate professionals and the chief of the department and, to the extent permitted by law, shall be determined by the employment subcommittee to be bona fide occupational requirements for appointment.~~

~~(5) Citizenship.~~

~~a. Police. Each candidate for original appointment to the police department shall be a citizen of the United States.~~

~~b. Fire. Each candidate for original appointment to the fire department shall either be a citizen or provide proof of eligibility to work in the United States.~~

~~(c) Promotional appointments:~~

~~(1) Promotion from successive ranks.~~

~~a. Police. Promotional appointments shall be made from successive ranks. No candidate shall be eligible for examination for his or her first promotional appointment until he or she shall have served a minimum of three (3) continuous years as a member in the department by the date of the written examination. No candidate shall be examined for a promotion to any other rank after the first promotion, until he or she shall have served a minimum of twelve (12) continuous months in the next lowest rank by the date of the written examination.~~

~~b. Fire lieutenant; fire/paramedic lieutenant.~~

~~i. Members hired prior to January 1, 1997:
Promotional appointments shall be made from successive ranks within each division of~~

~~suppression and emergency medical services and the time in service requirement shall mean time as a member in the division.~~

~~ii. Members hired on or after January 1, 1997: Promotional appointments may be made between the suppression and emergency medical services divisions and the time in service requirement shall mean time as a member in the department.~~

~~iii. Time in service requirements:~~

~~1. A member of the fire department hired prior to January 1, 1997, shall be eligible for examination for his or her first promotional appointment only after serving four (4) cumulative years as a member in the division in which promotion is sought; and~~

~~2. A member of the fire department hired on or after January 1, 1997, but prior to January 1, 2002, shall be eligible for examination for his or her first promotional appointment after serving four (4) continuous years in the department;~~

~~3. A member of the fire department hired on or after January 1, 2002, shall be eligible for examination for his or her first promotional appointment only after serving six (6) continuous years as a member in the department.~~

~~4. To be eligible for promotion, the member must complete the time in service requirement by the date of the written examination.~~

~~e. Fire Captain; Fire/Paramedic Captain. After the first promotion, a member shall be eligible for further promotion only after serving a minimum of twelve (12) continuous months in the next lowest rank within the division in which promotion is sought, such time in service requirement to be met by the date of the written examination.~~

~~d. Licensing. Any member promoted to an emergency medical services position must maintain his or her paramedic license in Maine as a condition of employment in that position.~~

~~(2) Other promotional appointments. Upon recommendation of the City Manager, the employment subcommittee may provide by rule for special procedures or different competitive examination for eligibility for appointment to second in command in the fire department or the police department since such rank requires particular and exceptional qualifications of a scientific, managerial, professional, technical, or educational character and said rule may waive any requirement of this article in such cases.~~

~~(d) Waiver. During periods of difficulty in recruitment, or when the number of employees eligible for promotion to a particular vacancy is insufficient to permit meaningful competition, the employment subcommittee may vary the requirements of this section 2-59 of subparagraphs (c) (1) a., b. or c. by rule, which rule shall not be effective for more than ninety (90) days.~~

~~(e) Rehire of former member by the same department. A former member of a department may be rehired by that department to an entry level position only upon a regular appointment in the manner set forth for an original appointment and such person shall be required to serve a new working test period of twelve months. In the case of re-hire in the police department, the member shall not be eligible for promotion until after completion of three (3) years of service in the police department after date of rehire. Solely in the case of a former firefighter or firefighter/paramedic who is rehired by the fire department, upon completion of the new working test period, said firefighter or firefighter/paramedic shall be credited with the actual amount of time served in the fire department in the position to which they are being rehired, said time to be credited solely toward fulfillment of the minimum period prior to eligibility for promotion. The date of re-hire shall serve as the date of hire for purposes of determining the applicable minimum service requirement prior to promotion in the fire department.~~

~~(f) Transfers between departments. Upon the written request of the member to the chief of his or her department, a~~

~~member in good standing within either department may be transferred from one (1) department to the other to an entry level position, subject to the following conditions and limitations:~~

- ~~(1) Both chiefs and the City Manager have approved said transfer;~~
- ~~(2) The employment subcommittee has determined that the member meets the minimum qualifications for original appointment into the new department set forth in this section and the rules of the employment subcommittee establishing physical standards for said new department;~~
- ~~(3) The benefits and wages of any member who is transferred under this subsection shall be determined prior to transfer, subject to any applicable collective bargaining agreements in effect, and/or to the agreement of the collective bargaining agent or agents;~~
- ~~(4) The implementation and scheduling of all transfers, once approved, shall be wholly discretionary with the City Manager;~~
- ~~(5) There shall be no right of appeal of any determination or decision of the chiefs or the City Manager which is made under this subsection;~~
- ~~(6) Any member requesting a transfer may be required to take a polygraph examination and a job suitability assessment to the extent required of original appointments;~~
- ~~(7) All transferees shall be required to serve a working test period as provided in section 2-67 below and must serve the minimum time required for eligibility for promotion as provided in this section 2-59(c)(1) above, except that the date of transfer shall serve as the date of hire.~~
- ~~(g) Reinstatement after voluntary termination.~~
- ~~(1) Entry level positions. If a person holding the rank of police officer, firefighter or firefighter/paramedic, who has completed his or her working test period in~~

~~the department, voluntarily terminates his or her employment in good standing, such member may, within thirty (30) calendar days from the effective date of the termination, request reinstatement to his or her former position. Such request shall be made in writing to the chief of the department, who shall forward such request with a recommendation thereon to the City Manager. The City Manager may, in his or her absolute discretion, grant or deny such request for reinstatement.~~

~~(2) Promotional positions. If a person holding a rank above police officer, firefighter or firefighter/paramedic voluntarily terminates his or her employment in good standing, such member may, within thirty (30) calendar days from the effective date of termination, request reinstatement to an entry level position in the department from which they terminated. Such request shall be made in writing to the chief of the department who shall forward such request with a recommendation thereon to the City Manager. The City Manager may, in his or her absolute discretion, grant or deny such request for reinstatement.~~

~~(3) Effect of reinstatement. Persons holding the rank of police officer, firefighter or firefighter/paramedic who are reinstated pursuant to this section and for whom a vacancy exists shall be afforded the rank, pay, grade and benefits previously held, except as otherwise provided in this section. Persons holding a rank above police officer, firefighter or firefighter/paramedic who are reinstated pursuant to this section and for whom a vacancy exists shall be returned to the rank of police officer, firefighter or firefighter/paramedic and shall be afforded a pay grade and benefits commensurate with the appropriate number of years served in the department. This subsection shall not be construed to mean that pay and benefits shall accrue during the period of separation from the department, nor during any periods of inactive duty such as those set forth in subsection (4) hereinafter. No accrued leave, sick leave, or other benefits for which the member was compensated upon termination shall be credited or restored to the member, unless such compensation is fully repaid by the member and accepted by the city. Retirement~~

~~benefits shall be credited upon repayment as provided by governing law.~~

~~(4) Waiting list. In those cases where no immediate vacancy exists at the time the privilege of reinstatement is granted, the member may be appointed to the first available vacancy declared by the City Manager, provided such vacancy is declared within six (6) months from the date of the reinstatement request. In the event that no vacancy is declared within said six-month period, the grant of reinstatement shall expire and the former member may be reinstated only upon a regular appointment in the manner set forth for original appointments under this division.~~

~~(5) No expectancy. Nothing in this section shall be construed as creating or implying a right or expectancy of future employment in any member who voluntarily terminates his or her employment.~~

~~(h) Temporary emergency medical services appointments. Persons may be appointed from the entry level fire eligible list to a firefighter/paramedic position on a temporary basis, up to a maximum of twelve (12) months, to fill in for a leave of absence or for other similar reason as determined by the City Manager. The chief shall request a list of candidates who wish to be considered for such temporary appointment, such list to be made up in alphabetical order from the eligible list from those persons who are paramedic certified and who wish to be considered for a temporary appointment. The names of all those meeting the conditions shall be sent to the chief. Any person on the eligible list may decline to be placed on a list for temporary appointment and such person shall remain on the eligible list without prejudice to his or her opportunity to be considered for permanent appointment. Prior to appointment to a temporary position, the candidates shall undergo an oral interview in a form determined by the chief, background investigation and the fitness test contained in the firefighter collective bargaining agreement, but shall not be required to undergo the oral board, medical examination, physical fitness assessment in sections 2-65 and 2-66 below. A person who is appointed to a temporary position hereunder continues to be eligible for permanent appointment during the time of such temporary appointment. Such person is also subject to removal by the fire chief from the temporary position at any time for reasons stated in writing to the employee, the civil service commission and the Director. Removal from the position shall be~~

~~treated in the same manner as removal during the working test period under section 2-67; further, such removal shall be deemed to be a disqualification resulting in removal from the eligible list pursuant to section 2-61(b) below. The person shall have the right to appeal removal from the eligible list only, as provided in section 2-61(b). Except as provided in section 2-61(c) below, in the event the eligible list from which the person was temporarily appointed has expired at the time of removal from, or expiration of, the temporary appointment, said person shall not be placed on a new eligible list, unless that person took and passed the examination for that new list. Time served as a temporary hereunder shall not count toward completion of the working test period nor for seniority for promotion unless such person is appointed to the position permanently with no break in service, in which case such time shall be counted. Any permanent appointment of a person who has had a temporary appointment shall be made only after completion of all of the hiring requirements for permanent appointment.~~

~~(i) Emergency appointments. During times of emergencies affecting the health, safety and welfare of the public as declared by the City Council, all provisions of this division with respect to appointments to both departments shall be suspended until such time as the City Council shall declare the emergency terminated. Appointments to both departments during such periods of declared emergency shall be made by the City Manager and shall be effective only during the period of the declared emergency.~~

~~(j) Consolidation of firefighting and emergency medical services.~~

~~(1) In general. Effective January 1, 1997, firefighting and emergency medical services were merged within the fire department as provided herein. In addition to the fire suppression ranks of deputy fire chief, fire captain, fire lieutenant and firefighter, there is a rank of deputy fire chief for emergency medical services, fire/paramedic captain, fire/paramedic lieutenant, and firefighter/paramedic. The position of paramedic was reclassified to that of firefighter/paramedic and that of paramedic lieutenant to that of fire/paramedic lieutenant, except as provided below for grandfathered employees, and each such new classification shall include full training in firefighting.~~

~~(2) "Grandfathering" of paramedics. Paramedics who do not choose to take the firefighter examination, or who take it but do not pass it, will be grandfathered in the position held on January 1, 1997, so long as there is no break in service. Grandfathered paramedics can take the firefighter examination at any time it is offered after the spring of 1997, but are subject to all of the conditions and requirements for original appointment prior to reclassification as a firefighter/paramedic.~~

~~(3) Elimination of paramedic positions. Paramedic positions will be eliminated as they become vacant.~~

Sec. 2-59.1. Minimum qualifications for original appointment to the fire department.

(a) Standards required. Each candidate for original appointment to the fire department must meet the minimum requirements set forth in this subsection. The deadline by which these requirements must be met, the method of proving such requirements have been satisfactorily met, and any additional requirements shall be established by rule of the employment subcommittee:

- (1) Age. Have reached the age of twenty-one (21), or have reached the age of twenty (20) with two years of post-high school education.
- (2) Good character. Be of good character; which includes a personal history of honesty, fairness, and respect for the rights of others and for state and federal law. No person shall be appointed who has a history which includes a disqualifying criminal offense or conviction.
- (3) Education and experience. Have a high school diploma or general equivalency diploma (GED);
- (4) Licensing. Possess a valid State of Maine Emergency Medical Technician license of EMT-B or higher;
- (5) Motor vehicle driver's license. Possess a valid motor vehicle driver's license for the three (3) years immediately preceding the date of application. If such license is from a state other than the State of

Maine, the candidate must be qualified to receive a State of Maine driver's license; and

(6) Citizenship or immigration status. Be a citizen of the United States or eligible to work in the United States.

(b) Automatic disqualifiers. An applicant for original appointment will be automatically disqualified from the hiring process for any of the following characteristics, and as further established by rule of the employment subcommittee:

(1) Disqualified Individuals. Disqualification from participating in federal funded health care programs under the Social Security Act.

(2) Criminal Convictions/Conduct. Disqualifying criminal conviction;

(3) Protection Orders. An active Protection from Abuse or Protection from Harassment Order (temporary or permanent) served on the applicant;

(4) Military Service. Dishonorable discharge from the military or a bad conduct discharge from the military;

(5) Tattoos or Body Art. Tattoos, branding, body art or body markings that (a) indicate a criminal gang affiliation, (b) depict sexually explicit art or nudity, (c) are associated with hate groups or supremacist groups such as swastikas, pentagrams, or (d) otherwise violate the rules promulgated by the Fire Chief.

Sec. 2-59.2. Hiring process for original appointment to the fire department.

(a) Fire department hiring process. All applicants for original appointment to the fire department shall satisfactorily complete the minimum requirements in this section. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, may set minimum passing scores, and may impose additional requirements for original appointment.

- (1) Job-related aptitude capacity test. All applicants for original appointment must pass a job-related aptitude capacity test.
- (2) Physical fitness test. All applicants for original appointment must pass a physical fitness test.
- (3) Oral interview. All applicants for original appointment must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the employment subcommittee and designees of the fire chief. No member of the panel may be a candidate for the position nor a relative of a candidate.

(b) Conditional offer of employment. Upon successful completion of the job-related aptitude capacity test, the physical fitness assessment and the oral interview, the fire chief may evaluate the candidates and make a conditional offer of employment to qualified applicants, at his or her discretion. The conditional employee must successfully complete the following requirements. Failure to do so will result in revocation of the conditional offer of employment.

- (1) Background check. All applicants for original appointment must satisfactorily complete a background check, including criminal history, driving record, and credit check.
- (2) Medical examination. The applicant must satisfactorily complete a medical exam to determine whether the applicant is physically capable of performing the essential functions of the job.
- (3) Job suitability assessment. The applicant must satisfactorily complete a job suitability assessment.

(c) Rehire of former fire department member. In the sole discretion of the fire chief, a fire department member who voluntarily terminated his or her employment on satisfactory terms may be rehired to a vacant, entry-level position within one year of termination without completing the full process required by subsection (a) above. However, the member must satisfactorily complete a new medical examination and job suitability assessment, and must complete a new probationary period.

(d) Transfer between public safety departments. Upon the written request of the employee to the chief of his or her department, an employee in good standing within either department may be transferred from one department to the other to an entry level position, subject to the conditions and limitations established by rule of the employment subcommittee and with the approval of both chiefs and the City Manager. Police officers requesting a transfer to the Fire Department must successfully complete the Candidate Physical Abilities Test (CPAT) and provide proof of a valid State of Maine Emergency Medical Technician license. The Chief of Police may waive the police entrance exam for firefighters. All other hiring requirements must be successfully completed.

(e) Waiver. During periods of difficulty in recruitment, the employment subcommittee may vary the requirements of this section by rule, which rule shall not be effective for more than one hiring cycle.

Sec. 2-59.3. Disqualification and temporary withdrawal from fire application process.

In accordance with rules promulgated by the employment subcommittee, an applicant may be disqualified, or temporarily withdraw, from the application process as follows:

(a) Disqualification. After notice and an opportunity to be heard, the employment subcommittee or the fire chief may disqualify an applicant for original appointment.

(b) Temporary withdrawal of applicants for original appointments. An applicant for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time with the prior approval of the fire chief. During the period of temporary disqualification the applicant's eligibility for appointment shall automatically expire 12 months after the date the applicant passed the aptitude capacity test.

Sec. 2-59.4. Fire department promotional process.

(a) Minimum qualifications. All candidates for promotion within the fire department shall satisfactorily complete the minimum requirements in this section. The employment subcommittee may, by rule, establish processes and procedures to

implement these requirements, may set minimum passing scores, and may impose additional requirements for promotion.

(1) Time in service. Promotional candidates must have the following amount of time in service to be eligible for a promotion:

a. Six years of continuous service in the fire department for promotion from firefighter to lieutenant.

b. One year of continuous service as a lieutenant for promotion from lieutenant to captain.

(2) Training. Promotional candidates must possess the minimum amount of training, certification, and/or education for the rank to which he or she is seeking promotion.

(3) Departmental officer candidate program. Promotional candidates must participate in and complete a fire department officer candidate program, which may include job-shadowing, mentorship, and similar requirements.

(4) Assessment center exam. Promotional candidates must complete and pass an assessment center exam each year.

(5) Oral interview. All promotional candidates must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the employment subcommittee and designees of the fire chief. No member of the panel may be a candidate for the position nor a relative of a candidate. The president of the union, or his designee, shall have the right to observe, but not participate in, the interview.

(6) Job suitability assessment. Candidates must undergo a job suitability assessment. Assessments within three (3) years from the date of examination may be used, or the fire chief may require an updated job suitability assessment at any time. Assessments may be taken into consideration in the promotional process.

(b) Eligible promotion list. Promotional candidates shall be placed on a ranked certified promotional list. A separate list shall be made for each promotional rank.

(1) The list shall be ranked based on a methodology established by the employment subcommittee.

(2) The employment subcommittee shall also establish rules governing the validity of the list, including the minimum number of names required on the list, the duration and expiration of the list, and other requirements.

(c) Promoting from ranked certified promotional list. Promotions in the fire department shall be made from the ranked certified promotional list in their order of ranking, unless the candidate refuses the promotion, is disqualified for cause by the chief, or lacks the particular skill set required by the promotional vacancy. If the chief disqualifies a candidate for cause, he or she shall state the reasons for disqualification in writing.

(d) Command staff. The employment subcommittee may provide by rule for special procedures or different competitive examination for appointment to fire department command staff because such rank requires particular and exceptional qualifications of a scientific, managerial, professional, technical, or educational character and said rule may waive any requirement of this article in such cases.

(e) Waiver. When the number of employees eligible for promotion to a particular vacancy is insufficient to permit meaningful competition, the employment subcommittee may vary the requirements of this section by rule, which rule shall not be effective for more than one promotional cycle.

Sec. 2-59.5. Disqualification during fire promotional process.

After notice and an opportunity to be heard, the employment subcommittee or the fire chief may disqualify a candidate from participating in the promotional process, or may remove a candidate for promotion from the ranked certified promotional list.

Sec. 2-59.6. Fire department appeals and rights.

(a) Appeals from decisions of the fire chief. Except as otherwise provided, an applicant, candidate for original appointment, or candidate for promotion shall have the opportunity to appeal any decision made by the fire chief under this division to the employment subcommittee, pursuant to rules

established by the subcommittee. The subcommittee may, after hearing, uphold or overturn the fire chief's decision. The subcommittee shall provide the fire chief and the appellant with written notice of its decision and the reasons therefor.

(b) Appeals from decisions of the employment subcommittee. An appeal of a decision of the employment subcommittee under this section may be taken to the city council. The city council may, after hearing, uphold or overturn the employment subcommittee's decision. The council shall provide the subcommittee, fire chief, and appellant with written notice of its decision and the reasons therefor.

(c) Applicant rights. If a decision is overturned with respect to an applicant, the applicant shall continue through the remainder of the application process or be considered eligible for hire, as applicable. In the event an applicant is reinstated pursuant to this section, he or she shall have no right or entitlement to be considered for any vacancy that exists at or prior to the date of said reinstatement.

(d) Promotional candidate rights. If a decision is overturned with respect to a promotional candidate, that candidate shall 1) be allowed to continue through the promotional process; 2) be placed on or reinstated to the ranked certified promotional list; or 3) be promoted, as applicable. The decision maker shall specifically state the appropriate remedy.

(e) Vested rights. No rights shall vest in any person who is deemed to be a qualified applicant or who is placed on the ranked certified promotional list, and no names shall be carried over from one eligible list to another, except as otherwise provided in this section.

(f) Rulemaking. The employment subcommittee may promulgate rules to implement this section, including forms and deadlines for appeal.

Sec. 2-59.7. Fire department probationary period.

(a) Each member who is originally appointed to or rehired in the fire department, or who is promoted, pursuant to this division shall be a probationary employee for one (1) year from the date of appointment or promotion. This section shall not, however, apply to an employee who is recalled after layoff, so

long as he or she completed the probationary period prior to layoff.

(b) The fire chief may at any time during the probationary period reject any person appointed or promoted. The fire chief must state his or her reasons for rejection in writing, and provide those reasons to the employee and the employment subcommittee.

(c) In the case of a promotional candidate, any candidate rejected by the fire chief shall revert to the rank and pay status from which he or she was promoted.

(d) Any person rejected during the probationary period shall have no right of hearing or appeal under this division.

Sec. 2-60. Applications.

~~(a) Summary. Appointments to a position in the police or fire department shall be made only after completion of an application and passing a job related aptitude capacity test, placement upon an eligible list, and satisfactory completion of all other hiring requirements of this subchapter for appointment.~~

~~(b) Forms. Applications for appointment shall be made on forms prepared by the Director and approved by the employment subcommittee. All applications shall be accompanied by such certifications and other satisfactory evidence as to character, education, and if applicable, citizenship, as the employment subcommittee may establish by rule, or which the employment subcommittee may reasonably require of any particular applicant to satisfy itself of compliance with the minimum requirements of this division for eligibility. All applications shall be accompanied by a written waiver of rights with respect to the state criminal history record information act (16 M.R.S.A. § 611 et seq.), sufficient to permit the chief of the department and the members of the employment subcommittee to gain access to such records.~~

~~(c) Duration. Applications shall be valid only for the next examination, except that in the case of applications for police original appointment, such applications shall be valid for 180 days and may be accepted at the police department on the same day as the on-line test.~~

Sec. 2-60.1. Minimum qualifications for original appointment to

the police department.

(a) Standards required. Each candidate for original appointment to the police department must meet the minimum requirements set forth in this subsection. The deadline by which these requirements must be met, the method of proving that such requirements have been satisfactorily met, and any additional requirements shall be established by rule of the employment subcommittee:

- (1) Age. Have reached the age of twenty-one (21) by the date of appointment;
- (2) Good character. Be of good character; which includes a personal history of honesty, fairness, and respect for the rights of others and for state and federal law. No person shall be appointed who has a history which includes a disqualifying criminal offense or conviction.
- (3) Education and experience. Have a high school diploma or general equivalency diploma (GED) and meet the admission standards of the Maine Criminal Justice Academy.
- (4) Motor vehicle driver's license. Possess a valid motor vehicle driver's license for the three (3) years immediately preceding the date of application. If such license is from a state other than the State of Maine, the candidate must be qualified to receive a State of Maine driver's license.
- (5) Citizenship or Immigration status. Be a citizen of the United States or demonstrate a permanent right to work in the United States.

(b) Automatic Disqualifiers. An applicant for original appointment will be automatically disqualified from the hiring process for any of the following characteristics, and as further established by rule of the employment subcommittee:

- (1) Criminal Convictions/Conduct. Any conviction for a disqualifying criminal offense or engaging in conduct that qualifies as a disqualifying criminal offense as defined in Maine law and the entrance standards of the Maine Criminal Justice Academy, including having no convictions for or have engaged in any

conduct which would constitute Murder, Class A, Class B, Class C, or Class D crimes, or any provision of the Maine Criminal Code, Chapters 15, 19, 25, or 45 which include Theft, Falsification in Official Matters, Bribery & Corrupt Practices, and Drugs.

(2) Domestic Violence. Any conviction for a crime of domestic violence or any active Protection from Abuse Order (temporary or permanent) served on the applicant.

(3) Drug Activities. The use, purchase, or possession of illegal drugs or controlled substances within the five (5) years prior to the date of application.

The trafficking in and/or furnishing of marijuana, as defined in the Maine Criminal Code, is an automatic disqualifier from the hiring process. The use of marijuana is not an automatic disqualifier. The use of marijuana by an applicant will be assessed on a case by case basis; including, but not limited to, the frequency and recency of the use.

(4) Military Service. Dishonorable discharge from the military or a bad conduct discharge from the military.

(5) Tattoos or Body Art. Tattoos, branding, body art or body markings that (a) indicate a criminal gang affiliation, (b) depict sexually explicit art or nudity, (c) are associated with hate groups or supremacist groups such as swastikas or pentagrams, or (d) are on the applicant's face, neck or hands.

Sec. 2-60.2. Hiring process for original appointment to the police department.

(a) Police department hiring process. All applicants for original appointment to the police department shall satisfactorily complete the minimum requirements in this section. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, set minimum passing scores, and impose additional requirements for original appointment.

(1) Job-related aptitude capacity test. All applicants for original appointment must pass a job-related aptitude capacity test. The aptitude capacity test

may be waived for a police applicant who is a full-time employee with law enforcement duties and arrest authority in another jurisdiction at the time of application and is certifiable by the Maine Criminal Justice Academy.

(2) Physical fitness assessment. All applicants for original appointment must pass meet the Maine Criminal Justice Academy's physical fitness assessment standards prior to the oral interview. or Applicants may take the fitness test at the Portland Police Department or produce a current, valid letter from the Maine Criminal Justice Academy stating that the applicant has successfully completed the Academy's physical fitness assessment.

(3) Oral Board. An oral interview will be conducted with all applicants who have passed both the aptitude capacity test and the physical fitness assessment.

(b) Conditional offer of employment. Upon successful completion of the job-related aptitude capacity test, the physical fitness assessment and the oral interview, the Police Chief may evaluate the candidates and make a conditional offer of employment to qualified applicants, at his or her discretion. The conditional employee must successfully complete the following requirements. Failure to do so will result in revocation of the conditional offer of employment.

(1) Background check. A conditional employee must be fingerprinted and satisfactorily complete a background check, including, but not limited to, criminal history, prior substance abuse, driving record, and credit check.

(2) Polygraph. A conditional employee, shall be required to submit to a polygraph examination to the extent such examination is permitted by law.

(3) Medical examination. A conditional employee shall undergo a medical examination to determine whether the applicant is physically capable of meeting the standards established by the Maine Criminal Justice Academy.

(4) Job suitability assessment. Candidates for police original appointment shall be given a post-offer job

suitability assessment as required by the Maine Criminal Justice Academy.

(b) Transfer between public safety departments. Upon the written request of the employee to the chief of his or her department, an employee in good standing within either department may be transferred from one department to the other to an entry level position, subject to the conditions and limitations established by rule of the employment subcommittee and with the approval of both chiefs and the City Manager. Police officers requesting a transfer to the Fire Department must successfully complete the Candidate Physical Abilities Test (CPAT) and provide proof of a valid State of Maine Emergency Medical Technician license. The Chief of Police may waive the police entrance exam for firefighters. All other hiring requirements must be successfully completed.

Sec. 2-60.3. Disqualification and temporary withdrawal from police application process.

In accordance with rules promulgated by the employment subcommittee, an applicant may be disqualified, or temporarily withdraw, from the application process as follows:

(a) Disqualification. After notice and an opportunity to be heard, the employment subcommittee or the police chief may disqualify an applicant for original appointment.

(b) Temporary withdrawal of applicants for original appointments. An applicant for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time with the prior approval of the police chief. During the period of temporary disqualification the applicant's eligibility for appointment shall automatically expire 12 months after the date the applicant passed the aptitude capacity test.

Sec. 2-60.4. Police department promotional process.

(a) Minimum qualifications. All candidates for promotion within the police department shall satisfactorily complete the minimum requirements in this section. Promotional appointments shall be made from successive ranks. The employment subcommittee may, by rule, establish processes and procedures to implement these requirements, may set minimum passing scores, and may impose additional requirements for promotion.

(1) Time in service. Promotional candidates must have the following amount of time in service to be eligible for a promotion:

a. Three (3) years of continuous service in the police department for promotion from officer to the rank of Sergeant.

b. Twelve months of continuous service as a Sergeant in the police department for promotion to the rank of Lieutenant.

(2) Selection Components

a. An annual professional development course.

b. A job-related aptitude capacity test.

c. Consideration of the candidate's last completed performance evaluation immediately prior to the date of the aptitude capacity test.

d. Seniority in the department as of the date of the aptitude capacity test.

(3) Oral interview. All promotional candidates must satisfactorily complete an oral interview. The oral interview panel shall consist of one member of the employment subcommittee, a member designated by the president of each of the affected unions and three (3) members appointed by the police chief.

(4) Job suitability assessment. Candidates for the position of Sergeant must undergo a job suitability assessment. Assessments within three (3) years from the date of examination may be used, or the police chief may require an updated job suitability assessment at any time. Assessments may be taken into consideration in the promotional process.

(b) Promotion list. Promotional candidates shall be placed on a certified promotional list. A separate list shall be made for each promotional rank.

(1) The list shall be prepared based on a methodology established by the employment subcommittee.

(2) The employment subcommittee shall also establish rules governing the validity of the list, including the minimum number of names required on the list, the duration and expiration of the list, and other requirements.

(c) Creation of certified list for promotional appointment.

(1) When requested to do so by the Chief, the employment subcommittee shall furnish a certified list of names from which a promotional appointment may be made.

(2) There shall be one eligible list maintained for police promotion in weighted score order for each promotional rank and the certified list shall be made up from the eligible list in the weighted score order. The certified list for promotional appointment shall contain the names of a minimum of three (3) and a maximum of five (5) applicants on the eligible list with the highest, aggregate scores.

(d) Command staff. The employment subcommittee may provide by rule for special procedures or different competitive examination for appointment to a sworn, non-union command staff position in the police department because such rank requires particular and exceptional qualifications of a scientific, managerial, professional, technical, or educational character and said rule may waive any requirement of this article in such cases.

(e) When the number of employees eligible for promotion to a particular vacancy is insufficient to permit meaningful competition, the employment subcommittee may vary the requirements of this section by rule, which rule shall not be effective for more than one promotional cycle.

Sec. 2-60.5. Disqualification during police promotional process.

After notice and an opportunity to be heard, the employment subcommittee or the police chief may disqualify a candidate from participating in the promotional process, or may remove a candidate for promotion from the ranked certified promotional list.

Sec. 2-60.6. Police appeals and rights.

(a) Appeals from decisions of the police chief. Except as otherwise provided, an applicant, candidate for original appointment, or candidate for promotion shall have the opportunity to appeal any decision made by the police chief under this division to the employment subcommittee, pursuant to rules established by the subcommittee. The subcommittee may, after hearing, uphold or overturn the police chief's decision. The subcommittee shall provide the police chief and the appellant with written notice of its decision and the reasons therefor.

(b) Appeals from decisions of the employment subcommittee. An appeal of a decision of the employment subcommittee under this section may be taken to the city council. The city council may, after hearing, uphold or overturn the employment subcommittee's decision. The council shall provide the subcommittee, police chief, and appellant with written notice of its decision and the reasons therefor.

(c) Applicant rights. If a decision is overturned with respect to an applicant, the applicant shall continue through the remainder of the application process or be considered eligible for hire, as applicable. In the event an applicant is reinstated pursuant to this section, he or she shall have no right or entitlement to be considered for any vacancy that exists at or prior to the date of said reinstatement.

(d) Promotional candidate rights. If a decision is overturned with respect to a promotional candidate, that candidate shall 1) be allowed to continue through the promotional process; 2) be placed on or reinstated to the ranked certified promotional list; or 3) be promoted, as applicable. The decision maker shall specifically state the appropriate remedy.

(e) Vested rights. No rights shall vest in any person who is deemed to be a qualified applicant or who is placed on the ranked certified promotional list, and no names shall be carried over from one eligible list to another, except as otherwise provided in this section.

(f) Rulemaking. The employment subcommittee may promulgate rules to implement this section, including forms and deadlines for appeal.

Sec. 2-60.7. Police department probationary period.

(a) Probationary period. A specified period of time during which the employee has no expectation of continued employment and may be removed from employment for any reason, with or without just cause.

(b) Original appointment. Except as otherwise provided below for police lateral transfers, every person receiving an appointment as a police officer shall be a probationary employee for a period of two (2) years from the date of appointment.

(c) Lateral transfers. A police lateral transfer who has two years of post-academy, full-time, continuous service as a police officer at the time of appointment shall be credited with up to twelve (12) months of service toward completion of the department's two year probationary period. Eligibility for promotional appointment shall be the completion of three (3) years of service in the Portland Police department.

(d) Promotional appointments. Every person receiving a promotional appointment shall serve a probationary period of one (1) year while occupying the position to which he or she has been appointed.

(e) Completion of probationary period. The police chief may at any time during the probationary period reject any person appointed or promoted to a position in the police department. The police chief must state his or her reasons for rejection in writing, and provide those reasons to the employee and the employment subcommittee. In the case of a promotional appointment, the officer shall revert to the rank and pay status from which he or she was promoted.

(f) No hearing or appeal. Any person rejected during the probationary period shall have no right of hearing or appeal under this section.

~~Sec. 2-61. Disqualification of candidates for original appointment by employment subcommittee; by chief.~~

~~(a) Disqualification by employment subcommittee.~~ The employment subcommittee may exclude any candidate for original appointment from any component of the hiring process, including the aptitude capacity test, refuse to certify him or her as eligible, remove him or her from any list upon sufficient evidence which demonstrates unfitness for duty, that there was a false statement made of a material fact on the application or

~~during the hiring process, or that there was cheating during the hiring process or where there has been a conviction for a crime, or where there has been excessive or illegal use of intoxicating liquors or drugs, or that the candidate is otherwise ineligible for appointment. Any candidate proposed to be excluded from any component of the hiring process or removed from any list shall be provided an opportunity to be heard prior to final action by the employment subcommittee.~~

~~(b) Disqualification by chief. The chief of the department may disqualify applicants for original appointment for failure to pass the polygraph examination, the background check or the physical fitness assessment or for reasons related to a temporary appointment under section 2-59(h) above or upon the unanimous recommendation of the oral interview board that the person not be further considered for appointment and stating the reasons for such recommendation. The chief of the department may accept, reject or modify such recommendation.~~

~~Written notice of said disqualification, and the reasons therefor, shall be provided to the applicant by such method as is specified by employment subcommittee rule, with copies thereof sent to the subcommittee and the Director. Upon disqualification by the chief, the applicant's name shall be removed from any list on which it appears. The applicant shall have the opportunity to appeal said disqualification to the employment subcommittee, which shall hold a hearing thereon, after which the subcommittee may uphold the disqualification or reinstate the person to the eligible list. The subcommittee shall provide the chief and the applicant with written notice of its decision and the reasons therefor.~~

~~(c) Reinstatement to list. If an applicant for original appointment is disqualified or removed from an eligible list by the employment subcommittee or by the chief of the department, and he or she appeals that decision and said appeal is resolved in favor of the applicant, he or she shall be reinstated to the eligible list on the basis of his or her original grade. In the event that the eligible list from which the applicant was disqualified has expired, and the applicant is not on the succeeding list in effect at the time of reinstatement, then the applicant shall be placed upon said list in effect at the time of reinstatement.~~

~~In the event an applicant is reinstated hereunder, said applicant shall have no right or entitlement to be considered for any vacancy which exists at or prior to the date of said~~

~~reinstatement provided, however, that he or she shall have the same rights as any other applicant to be considered for any vacancy which is authorized to be filled on or after the date of reinstatement. The applicant shall be entitled to stay on any eligible list on which he or she is placed hereunder until the list expires or until the applicant voluntarily withdraws, is removed for cause or is hired. In the case of disqualification from a police entry level eligible list only, the applicant, if reinstated, shall be reinstated to the list only so long as required to complete a total of twelve (12) months on the list from the date of initial placement on the list.~~

~~(d) Rules. The subcommittee shall provide rules governing the exercise of the power of removal or appeal therefrom, including the method of notice to be given under this section.~~

~~Sec. 2-62. Examinations.~~

~~(a) Aptitude capacity test. A job-related aptitude capacity written test to measure the skills and ability of the candidates for each rank of the police and fire departments shall be developed or recommended by the chief of the department and the director and approved by the employment subcommittee.~~

~~(b) Holding of aptitude capacity tests. The aptitude capacity test in each department shall be held annually for each rank, except as follows:~~

- ~~(1) The test for entry level firefighter and firefighter/paramedic positions shall be held every two (2) years. The same aptitude capacity test shall be used for both the entry level firefighter and entry level firefighter/paramedic position, with the creation of a single eligible list, with paramedic certification noted on the list. Such certification may be provided at any time during the life of the eligible list, but must be provided prior to an applicant's name being sent to the chief on an eligible list for a firefighter/paramedic position;~~
- ~~(2) The test for entry level police officer shall be an online test to be held as frequently as determined necessary by the police chief after consultation with the director or his or her designee. Each applicant may take the test up to twice in any rolling six month period, i.e. an applicant may take the test on January 15 and again on March 15, but not again until~~

~~September 16. The applicant may not re-take the test while on the eligible list; and~~

~~(3) Police captain tests shall be held only after the city manager has declared a vacancy in such position and authorized that it be filled.~~

~~(c) Waiver of aptitude capacity test.~~

~~(1) Police entry level lateral transfers. The entry level aptitude capacity test may be waived for any police applicants for original appointment who are full-time sworn officers in another jurisdiction at the time of application and are certifiable by the Maine Criminal Justice Academy (referred to as "lateral transfers"). Evidence satisfactory to the police chief of such status must be provided by the applicant at the time of application and is subject to the approval of the chief. In the event of any dispute as to such waiver, the police chief shall make a final determination as to waiver and such determination shall be within his discretion and shall not be subject to appeal. In no event shall any such dispute delay or prevent giving the test as scheduled. Persons approved for a lateral transfer shall be added to an existing police entry level eligible list in alphabetical order upon the chief's approval and their status as sworn officers shall be noted on the list and the date of their placement on the list shall be included. The chief, at his or her option, may request a list consisting solely of all persons who are sworn officers to fill one or more vacancies prior to, or in place of, requesting the full eligible list.~~

~~(2) The chief of either department may notify the director of human resources that it is not necessary to hold an aptitude capacity test because of lack of anticipated vacancies in that rank and, in the case of promotional tests, all affected unions agree in writing to said waiver.~~

~~(d) Additional fire entry level aptitude capacity tests. In addition to the foregoing, the chief of the fire department may request that an entry level aptitude capacity test be held prior to expiration of an eligible list and that candidates who pass said test be added in alphabetical order to the existing entry level eligible list. Said list, including any names added~~

~~to such list during its life, shall expire at the original applicable time, unless extended as provided below. Candidates on the original entry level list shall not be eligible to re-take the test. The chief may request an additional entry level test for either suppression or for emergency medical services or for both;~~

~~(e) Additional tests needed. In addition to the foregoing, the chief of either department may request that an aptitude capacity test be held more frequently than provided herein or after waiver under subsection (c)(2) above if either (i) the eligible list has expired pursuant to section (f) below, or (ii) it is anticipated that test will be needed in order to fill anticipated or actual vacancies. The director shall notify the chief of the department of an intent to hold the test no less than ten (10) calendar days prior to advertising said test. An existing eligible list, if any, shall terminate as of the date set by the employment subcommittee, unless names are to be added to an existing entry level list as provided in subsection (d) above. The foregoing shall not apply to the police entry level only test which may be held as needed.~~

~~(f) Notice. Applications for testing may be solicited at any time by the director. All such solicitations of applications shall be publicly advertised and held open for a minimum of fourteen (14) calendar days. In addition to, or in lieu of, the foregoing, applications for police entry level original appointment or entry level lateral transfers may be taken at any time or on an ongoing basis.~~

~~(g) Administration of aptitude capacity test. Except in the case of the police entry level test, the aptitude capacity test shall be administered by the director during which at least one subcommittee member will be available by telephone to assist the director if necessary. The police entry level test will be an online test administered by the police chief or his or her designee, with the director available by telephone to assist if necessary.~~

~~Sec. 2-63. Eligible list.~~

~~(a) Establishing an eligible list. The selection components used in the process to establish an eligible list shall be impartial and relate to the subjects which, in the opinion of the employment subcommittee, appropriately measure relative capacity of the persons examined to effectively carry out the duties and responsibilities of the position to which~~

~~they seek to be appointed. Such components shall include:~~

~~(1) Original appointments.~~

~~a. The eligible list for police original appointment will be created based upon a job-related aptitude capacity with a passing score of 70.~~

~~b. Firefighter and firefighter/paramedics. The eligible list for fire original appointment will be created based upon a job related aptitude capacity test with a passing score of 70.~~

~~(2) Promotional appointments.~~

~~a. Police. The eligible list for promotional appointment will be created based upon the following components:~~

~~i. A job-related aptitude capacity test with a passing score of 70.~~

~~ii. The candidate's last complete performance evaluation rating immediately prior to the date of the announcement of taking of applications for the written examination; and~~

~~iii. Seniority in the department as of the date of the written examination.~~

~~b. Fire. The eligible list for promotional appointments will be created based upon the following components:~~

~~i. A job related aptitude capacity test with a passing score of 70.~~

~~A. a basic subsection on supervision and management;~~

~~B. a subsection on advanced fire suppression; and~~

~~C. a subsection on advanced pre-hospital medical care skills.~~

~~The same aptitude capacity test shall be used for either a suppression or emergency medical services promotional rank, with the creation of a~~

~~suppression list and an emergency medical services list based upon the combined score of subsections A and B for suppression and subsections A and C for emergency medical services.~~

~~ii. For employees hired prior to January 1, 2002, a base score of thirty (30); or~~

~~iii. Effective July 1, 2005, for employees hired on or after January 1, 2002, a base score of up to a maximum of 30, based upon completion of officer candidate school modules, which modules and base score shall be subject to approval by the employment subcommittee, after recommendation from the fire chief; and~~

~~iv. Seniority in the department as of the date of the written examination.~~

~~v. A member of the fire department who wishes to be considered for either a suppression or an emergency medical services promotion from the same examination must take and pass subsection A as well as both subsections B and C. Further, in order to take subsection C, a member must provide evidence of paramedic licensure in the state of Maine at the time of application. In the event a member takes both subsections B and C, but only passes one subsection (in addition to subsection A)2, the member shall be included only on the eligible list for the subsection which he or she passed.~~

~~(b) Scoring.~~

~~(1) In general. The scores of the aptitude capacity test shall be determined by an impartial scorer and delivered to the director who shall draw up and maintain the eligible list(s).~~

~~(2) Original appointment. All applicants with a grade of~~

~~70 or above will be placed upon the eligible list in alphabetical order, with no numeric ranking. In the case of the police entry level eligible list, the date the applicant passed the test shall be posted on the list for the purpose of calculating the applicant's twelve months of eligibility under subsection (c)(2) below.~~

~~(3) Promotional appointment. The passing score on the aptitude capacity test is seventy (70). An applicant's position on the eligible list will be determined as provided below. Each component of the promotional examination shall be scored separately.~~

~~a. Police promotional scoring. A police applicant's position on the eligible list will be determined by the weighted sum of his or her score on the aptitude capacity test and the performance evaluation, plus seniority points. The score of the aptitude capacity test shall be given fifty (50) percent weight and the performance evaluation ratings shall be given forty (40) percent weight in relation to the total grade. Seniority will be calculated as one-half point for each year of service in the department up to a maximum of ten (10) points and added to the weighted scores of the test and the performance evaluation.~~

~~b. Fire promotional scoring. A fire applicant's position on the eligible list will be determined by the weighted sum of his or her score on the aptitude capacity test and the base score, plus seniority points. Each subsection of the aptitude capacity test will be scored separately and there will be a separate eligible list for suppression promotions and for emergency medical services promotions. The score for subsection A will be added to subsection B to give an aptitude capacity test score for suppression, and the score for subsection A will be added to subsection C to give an aptitude capacity test score for emergency medical services. This combined score of the aptitude capacity test (A+B or A+C) shall be given sixty (60) percent weight and the base score will be given 30 percent weight. Seniority will be calculated as one-half point for each year of service in the department up to a maximum of ten (10) points and added to the weighted scores of the test and the base score. The performance evaluation ratings shall not be scored, but may be taken into consideration by the chief prior to appointment. Effective July 1, 2005, for employees hired on or after January 1, 2002, the base score of 30 will be replaced by the base score of up to 30 based upon the score for completion of the officer candidate school modules.~~

~~(c) Performance evaluations. The chief of each department shall develop the form of the performance evaluation record which shall be used by the police and fire departments, provided that such performance evaluation shall include an evaluation by the member's immediate superior or, in the absence of the immediate superior, by a superior officer having personal and substantial knowledge of the member's performance, and the form of each evaluation shall be approved by the employment subcommittee.~~

~~(d) Seniority. Seniority in the department means total time served as a member of the department, and in addition in the police department, it includes time served as a police cadet to the extent provided by subcommittee rule.~~

~~(e) Duration of eligible lists.~~

~~(1) Except as provided for the police entry level eligible list, each eligible list shall be in effect for the following time period after the date on which it is first drawn up by the Director:~~

~~a. Firefighter and firefighter/paramedic original appointment: 2 years;~~

~~b. Fire lieutenant or captain appointment: 1 year;
and~~

~~c. Police sergeant, lieutenant or captain appointment: 1 year.~~

~~(2) The police entry level eligible list shall be a continuous list with persons being added and deleted, and shall not have an end date, but each person shall be placed upon the list by the director immediately upon passing the test and shall stay on the list for twelve (12) months from the date of such passage. The person's date of passage of the test shall be included on the list and that person's eligibility for appointment shall automatically expire 12 months after such date. By way of example, a person who passed the test on January 17, 2006, would be eligible to be considered for appointment through January 16, 2007.~~

~~(3) No more than one eligible list for a given rank shall be in effect at the same time. No rights shall vest~~

~~in any person who is on an eligible list, and no names shall be carried over from one eligible list to another, except as provided in section 2-61(e) of this article.~~

~~Sec. 2-64. Eligibility list for original appointment; Certified list for promotional appointment.~~

~~(a) Eligible list provided for original appointment. When requested to do so by the city manager, the employment subcommittee through the director shall furnish the eligible list of names from which an original appointment may be made.~~

~~(1) Original appointment.~~

~~a. Fire. The list for original appointment shall contain the names of all the applicants on the eligible list' in alphabetical order, with no numeric ranking, except the list for a firefighter/paramedic vacancy shall include only the names of those who have provided evidence to the fire chief of paramedic certification prior to the time the list is requested by the department.~~

~~b. Police. The list for original appointment shall contain the names of all the applicants on the eligible list in alphabetical order, with no numeric ranking. Unless the chief only requests the sworn police officers on the list, the eligible list for police original appointment shall include the names of all those who are on the eligible list as of the date the director provides the list to the department to begin the hiring process. Police entry level testing may continue during the hiring process and if the chief cannot fill the vacancies from the list sent over by the director, he or she may request that any additional names be sent over as a supplemental list until such time as all vacancies are filled. Applicants whose 12 months elapse while they are actively participating in the hiring process may continue in the hiring process until it is completed, but will be removed from the eligible list upon completion of that hiring process.~~

~~(b) Certified list for promotional appointment. When requested to do so by the city manager, the employment subcommittee through the director shall furnish a certified list of names from which a promotional appointment may be made.~~

~~(1) In general. The certified list for promotional appointment shall contain twice the number of names as there are vacancies to be filled, but in no case less than three names except as provided in section 2-64(2) below. Where the preparation of such a certified list cannot be made because the last two or more candidates received equal scores on the examination, the certified list shall include the names of all such equally qualified candidates. The names certified shall be the highest on the eligible list. If any candidate whose name appears on the certified list is disqualified, or withdraws prior to the appointment to fill the vacancy being made, the commission shall promptly certify the next name from the eligible list. The newly certified candidate shall then be given every examination previously administered to persons on that certified list.~~

~~a. Police. There shall be one eligible list maintained in weighted score order for each promotional rank and the certified list shall be made up from the eligible list in the weighted score order.~~

~~b. Fire suppression/EMS lists. There shall be one eligible list maintained in weighted score order for each promotional rank in the fire suppression promotional positions and one eligible list maintained in weighted score order for each promotional rank in the emergency medical services promotional positions. Candidates must state at the time of application which subsections of the promotional examination they will take and present evidence of paramedic licensure in the state of Maine if they wish to take the advanced pre-hospital medical care subsection and be considered for an emergency medical services vacancy.~~

~~Upon request for a certified list for either a suppression or emergency medical services vacancy, or for both, the certified list shall be~~

made up in weighted score order from those candidates who wish to be considered for the vacancy. Only those candidates who provided evidence of paramedic licensure in the state of Maine at the time of application for the promotion and passed the advanced pre-hospital medical care subsection of the examination shall be considered for an emergency medical services vacancy. Candidates on the eligible list for the available vacancy who have indicated that they wish to be considered for that vacancy will be put on the certified list based upon their weighted score order on that eligible list, assuming they met the paramedic licensure requirement in the case of an emergency medical services vacancy. By way of example, if a candidate is second on the suppression list and fourth on the emergency medical services list and there is one suppression and one emergency medical services vacancy, that individual will be listed on the certified list for the suppression position but will not appear on the certified list for the emergency medical services vacancy.

- (2) ~~Insufficient names for certified list.~~ When there are insufficient names on an eligible list to make a certified list, that insufficient eligible list may be used if the chief and the city manager both request that it be used and the employment subcommittee determines that (i) holding of an examination would result in delay which would impair the ability of the department to meet its staffing needs in a cost-effective manner; or (ii) holding of an examination is not likely to result in additional names on the eligible list.

~~Sec. 2-65. Hiring process.~~

- (a) ~~Original appointment hiring process.~~
- (1) ~~Selection criteria.~~ Prior to receiving the names on the eligible list, the department shall submit written selection criteria to the director for review and approval.
- (2) ~~Application review.~~ The department shall review all of the written applications and resumes of all applicants

on the eligible list in order to select an appropriate candidate pool to continue in the hiring process, based upon the approved selection criteria. The review of applications and resumes shall be done by a review group composed of one employment subcommittee member, a member designated by the president of the affected unions, and three members appointed by the chief of the department from city personnel, which three members may include the chief or his or her designee. Pursuant to its affirmative action plan, the city has identified certain public safety positions as underrepresented as to both female and minority employees. So long as such underrepresentation is determined to exist, any applicants on the entry level eligible list for either department who have self-identified as a female or minority applicant will be included in that department's pool of candidates to interview.

- (3) ~~Physical fitness assessment.~~ Except as provided herein for applicants for police original appointment, all persons selected to be interviewed will be given the physical fitness assessment as provided in 2-66(a)(2) below. In the case of police original appointments, the chief may accept substitution of a valid letter from the Maine Criminal Justice Academy stating that the applicant has passed the Academy's physical fitness assessment within the 12 months immediately prior to the date of placement on the eligible list. Notwithstanding the foregoing, the chief of each department reserves the right to give the physical fitness assessment to some or all of the entry level applicants prior to resume review, including but not limited to doing such assessments on the same day as the written examination. Failure to pass the assessment shall disqualify the applicant from consideration for hire for a minimum of thirty (30) days after the date of such failure, but the applicant shall remain on the eligible list, unless removed by the chief or the employment subcommittee pursuant to section 2-61 above.
- (4) ~~Oral Board.~~ An oral interview will be conducted of all persons selected who have passed the physical fitness assessment. The oral board will consist of one employment subcommittee member, a member designated by the president of the affected unions, and three

~~members appointed by the chief of the department from city personnel, which three members may include the chief or his or her designee. The oral board shall evaluate the candidates based upon a "recommend/do not recommend" basis.~~

~~(5) Background checks. Following the oral interview, all persons who were recommended will go through a background check, as provided in section 2-66(b) below.~~

~~(6) Conditional job offer. Following completion of the above elements of the hiring process, the chief may make a job offer which shall be conditional upon the approval of the city manager, and conditional upon passing a medical examination, as provided in section 2-65 below. In addition, in the case of the police department, such job offer shall be conditional upon passing a polygraph examination and a job suitability assessment. The Director shall be notified of the chief's conditional job offer(s) in order to review the hiring process for compliance with the requirements of this ordinance.~~

~~(b) Promotional appointment hiring process. In addition to the written test, police evaluation score or fire base score, and seniority, the promotional hiring process shall include an oral board which will consist of one employment subcommittee member, a member designated by the president of each of the affected unions and three (3) members appointed by the chief of the department from either city or non-city personnel, or a combination thereof, which three (3) members may include the chief or his or her designee. A job suitability assessment will also be done as provided in subsection 2-66(c) below.~~

~~(c) No conflict. In no case shall any member of the oral board be a candidate for the position nor a relative of a candidate.~~

~~(d) Appointments from list. Every appointment shall be made from an eligible list for original appointment or certified list for promotional appointment and the City Manager shall notify the civil service commission of appointments made.~~

~~**Sec. 2-66. Physical standards and background investigation for original appointment; Job suitability assessment for promotion, for police lateral transfer and for police original appointment.**~~

~~(a) Physical standards for original appointment.~~

~~(1) Medical examination. All candidates on the eligible list for original appointment shall undergo a medical examination by a physician specified by the employment subcommittee, said medical examination to be done only after a conditional offer of employment has been made to the candidate. The examining physician shall report his or her findings in writing to the subcommittee with respect to whether the candidate is physically capable of meeting the standards established by rule of the subcommittee. If the physician's report indicates a disqualification which can be corrected, the candidate's name shall be returned to the eligible list except that such person shall not be again considered for appointment until such time as he or she furnishes satisfactory evidence that the disqualifying condition has been corrected. If the physician's report indicates a disqualification which cannot be corrected and which prevents the candidate from performing an essential function of the position with or without reasonable accommodation, the candidate's name shall be permanently removed from the eligible list pursuant to section 2-61 above.~~

~~(2) Physical fitness standards. In addition to the medical examination, the employment subcommittee shall establish by rule minimum standards and procedures for a physical fitness assessment of candidates for original appointment, which standards shall be determined by the subcommittee to be a bona fide occupational qualification or failure to meet them poses a safety hazard or cannot be reasonably accommodated in an individual case. Such physical fitness assessment shall be administered to each candidate by the department as provided in section 2-65(a)(3) above, and the result thereof shall be provided to the chief.~~

~~(b) Background investigation for original appointment.~~

~~(1) Fingerprinting. Candidates for original appointment to either department shall be directed to the police department where they shall be fingerprinted. All candidates shall execute any necessary waivers for the background check. The fingerprints and records of each candidate shall be checked against the local~~

~~police files, state police files and, if available, the files of the Federal Bureau of Investigation, in order to determine whether the candidate has been convicted of a disqualifying criminal offense.~~

~~(2) Polygraph. Candidates for original appointment to the police department shall be required to submit to a polygraph examination to the extent such examination is permitted by law.~~

~~(c) Job suitability assessment for promotional appointments, for police lateral transfers and for police original appointments.~~

~~(1) All candidates whose names appear on any certified list for promotional appointment may be required to be examined by a psychologist for job suitability, the results of which examination shall be used by the chief of the department and by the city manager. Examinations hereunder for promotional appointment shall be required every year, except that the chief may waive said requirement if such examination has been done within three years of the date of the candidate's appearance on a certified list, and the results are available for use by the chief and the city manager. The extent of said examination shall be determined by a psychologist on an individual basis and may be either pre-offer or post-offer, depending upon the content of the assessment, the psychologist's representation as to the purpose of the assessment and the department's preference.~~

~~To the extent permitted by law, the chief of either department may request that candidates on an eligible list undergo the job suitability examinations prior to drawing up a certified list if (1) doing so would overcome scheduling difficulties for a candidate and the candidate agrees to such scheduling and (2) doing so is necessary to ensure a timely appointment process. Nothing herein shall change a candidate's position on the eligible list or give him or her any vested rights therein.~~

~~(2) Candidates for police lateral transfer shall be given a post offer job suitability assessment.~~

~~(3) Candidates for police original appointment shall be~~

~~given a post offer job suitability assessment as required by the Maine Criminal Justice Academy.~~

~~(d) Failure to pass polygraph test or job suitability assessment for police original appointment or job suitability assessment for police lateral transfer or job suitability assessment for police or fire promotional appointment. Notwithstanding anything herein to the contrary, any candidate for police original appointment who fails to pass a polygraph test as required hereunder, or, in the case of a police original appointment, police lateral transfer or police or fire promotional appointment, who fails to meet the job suitability assessment pursuant to this section, shall be removed from any list on which the candidate appears pursuant to section 2-61 above, and shall not be eligible to retake the written test until two years from the date the eligible list from which the candidate was removed was made.~~

~~(e) Failure to appear or complete hiring requirements. Any candidate who fails to appear for, or to complete, any component of the examination process, or any other requirement of the hiring procedure, shall be disqualified as a candidate and removed from any list on which he or she may appear. Such disqualification shall be reported to the employment subcommittee by the Director. Upon request of the candidate, the employment subcommittee may, in its discretion, waive the disqualification herein if: (i) the subcommittee finds that the candidate had sufficient excuse for such failure; and (ii) it finds that any rescheduling necessitated by such failure can be accomplished in a timely manner and with no disruption of the hiring process. Any candidate disqualified hereunder may reapply for any succeeding examination.~~

~~(f). Temporary withdrawal of applicants for original appointments. Notwithstanding the foregoing, a candidate for original appointment may, for sufficient cause, temporarily withdraw from consideration for a limited period of time upon the prior approval of the chief of the department. Any denial of a request for temporary withdrawal by the chief may be appealed to the subcommittee which may grant the request if (i) the subcommittee finds that the candidate had sufficient cause for such request; and (ii) it finds that any rescheduling necessitated by request can be accomplished in a timely manner with no disruption of the hiring process. A candidate who is permitted to withdraw temporarily shall retain his or her place on the eligible list but shall not be considered for hire, or in the case of promotional appointment, shall not be placed on any~~

~~certified list requested during the period of temporary disqualification. "Sufficient excuse" or "sufficient cause" as used herein shall include, but not be limited to, death or serious illness of a family member; temporary illness or disability of the candidate; completion of an academic or training program, or similar excuse and cause.~~

~~(g) Duration of certified list. The certified list shall be limited to the vacancy or vacancies for which it was requested. The names of persons not appointed shall be returned to the eligible list from which they were drawn. Each candidate for promotion who is not appointed shall be given, upon request, a statement by the chief of the department as to the reason or reasons why he or she was not recommended for appointment; or if he or she was recommended, a statement from the City Manager as to why he or she was not appointed.~~

~~Sec. 2-67. Working test period.~~

~~(a) Except as otherwise provided below for police lateral transfers or as otherwise provided for re-hires under subsection 2-59(e), every person receiving any appointment or transferring pursuant to section 2-59 above shall be tested for a working test period of one (1) year while occupying the position to which he or she has been appointed or transferred, except that the working test period for original appointees or transferees to the police department shall be two (2) years. The period of the working test shall begin immediately upon appointment or transfer. The City Manager may at any time during the working test period reject for reasons stated in writing any person appointed to a position in either department. The City Manager shall forthwith report to the employment subcommittee in writing each rejection during such working test period, stating the date of the rejection and the reason for the rejection.~~

~~(b) Any person rejected during the working test period shall have no right of hearing, or appeal under this article, and in the case of a promotional appointment, shall revert to the rank and pay status from which he or she was promoted. No original appointment shall be effective beyond the end of the working test period unless, within ten (10) days preceding the end of the working test period, the City Manager shall report to the employment subcommittee in writing that in the opinion of the City Manager, the employee's work has been such as to indicate that he is willing and able to perform his duties in a satisfactory manner. Upon delivery of a favorable report from the City Manager, the appointment shall become permanent.~~

~~(c) A police lateral transfer who has prior service as a police officer at the time of appointment shall be credited with up to twelve (12) months of service toward completion of the department's two year working test period, provided, however, that eligibility for promotional appointment shall continue to be completion of three (3) years in the Portland police department.~~

...

Sec. 2-76. Functions and duties.

(a) *Duties.* The duties of the police citizen review subcommittee are as follows:

- (1) To determine whether police investigations into citizens' complaints by members of the public against police officers are thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures;
- (2) To report in writing to the City Manager periodically, but no less than annually beginning in January 2003, as follows:
 - a. on the subcommittee's determination as to the thoroughness, objectivity, fairness and timeliness of the police internal affairs' investigation of citizen complaints against police officers;
 - ~~b. a statistical analysis of all cases reviewed, including an analysis of trends and patterns of complaints or results of investigations of complaints; and~~
 - eb. any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, policies or training, and for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers.
- (3) To hold a public hearing at least annually to receive comments upon the police citizen complaint process.
- (4) Although it shall have access to individual internal

affairs reports in order to review investigative methods and procedures, all reports of the subcommittee shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable.

- (5) Reports of the subcommittee shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et.seq.
- (6) To make suitable procedural rules, from time to time, for the conduct of its duties. Proposed rules shall be submitted to the City Council and shall become effective only when approved by the City Council. All such rules shall be recorded in the office of the City Clerk.

(b) *Complaints to be reviewed.* ~~Effective with complaints completed, as defined in subsection (3) immediately below, on or after January 1, 2002, the subcommittee shall review the internal affairs investigation of the following citizen complaints against police officers:~~

- ~~1. complaints alleging excessive force;~~
- ~~2. complaints alleging civil rights violations;~~
- ~~3. complaints alleging conduct that would constitute a criminal offense; and~~
- ~~4. any other complaint which the subcommittee deems necessary to review in order to carry out its duties hereunder.~~

~~In addition to the foregoing, the subcommittee shall review any complaint upon request of the complaining party, subject to the January 1, 2002 completion date. The subcommittee shall review all completed internal affairs investigations of citizen complaints.~~

(c) *Timing of review.* All subcommittee reviews of citizen complaints shall take place only after final disciplinary action has been taken and all appeals exhausted or the case has been finally closed with no disciplinary action taken.

(d) Notification of review. The subcommittee shall notify the citizen complainant, in writing, of the subcommittee's

review and any findings made by the subcommittee regarding the thoroughness, objectivity, fairness and timeliness of the internal affairs investigation.

(~~ee~~) *Scope of authority.* The subcommittee shall conduct its duties solely to determine the thoroughness, objectivity, fairness and timeliness of the police department's internal affairs' methods and procedures in regard to citizen complaints against police officers, and the subcommittee shall have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The subcommittee shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer.

(~~fe~~) *Training.* Prior to assuming their duties hereunder, subcommittee commissioners shall attend training by city staff as to the subcommittee's duties and responsibilities, applicable state and local law and regulations, issues relevant to the conduct of the citizen review function, accepted police practices and the department's internal affairs investigation process. Such training shall be provided by the city at no cost to the subcommittee members.

(~~gf~~) *Resources.* To facilitate the effectiveness and objectivity of the police citizen review subcommittee, the city shall make available to the subcommittee the services of a technical advisor, as needed by the subcommittee. The technical advisor may be used for the purposes of training; briefing the subcommittee on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the subcommittee on aspects of the internal investigation process. The advisor shall be retained by the City Manager after consultation with the Chief of Police, representatives of the police unions and the subcommittee chairperson. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor.

The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the subcommittee to conduct its duties hereunder. In no case shall the subcommittee have access to police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the state Freedom of Access law.

MEMORANDUM
City Council Agenda Item

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

FROM: David Jackson, Chief of the Fire Department
Michael J. Sauschuck, Chief of Police

DATE: January 23, 2018

SUBJECT: Proposed Amendments to the Civil Service Ordinance

SPONSOR: HHS & Public Safety Committee
Last Meeting date: January 22, 2018

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading 1/31/18 Final Action 2/5/18

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

The Fire Department's hiring and promotion processes are at a juncture where they can not move forward without changes to the current ordinance; it is outdated and does not reflect the current practices of both the Fire and Police Departments.

PRESENTATION:

I. ONE SENTENCE SUMMARY

The proposed amendments to the Civil Service Ordinance ensure oversight of hiring and promotions in the Police and Fire Department; while allowing the Civil Service Commission to implement routine changes as needed.

II. AGENDA DESCRIPTION

This amendment would change Chapter 2 in the Portland City Code. The proposed changes to the Civil Service Ordinance are intended to ensure that the hiring and promotion processes for the Police and Fire Departments are up to date and reflect current practices while meeting the needs of both the departments and the unions.

III. BACKGROUND

Over time the Civil Service Ordinance has become outdated and an impediment to successful and effective hiring and promotion processes for both the Police and Fire departments. The ordinance no longer reflects the current practices of either department or meets the needs of the departments and the unions. The proposed changes to the ordinance will retain the most important sections of the ordinance; such as, minimum job qualifications, fundamental procedures for hiring and promotion and appeal rights; while allowing the Civil Service Commission to implement routine changes as needed.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

To improve and streamline the hiring and promotion processes for the Police and Fire Departments.

V. FINANCIAL IMPACT

None

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

**Memo to the HHS & Public Safety Committee
Proposed Amendments to the Ordinance**

Prepared by: Beth Anne Poliquin
Date: January 23rd, 2018

Bean/agendarequestmemo/rev 11/2015

MEMORANDUM

TO: Health and Human Services and Public Safety Committee
FROM: Chief Jackson and Chief Sauschuck
CC: Jon P. Jennings, City Manager
DATE: January 12, 2018
RE: Proposed Changes to the Civil Service Ordinance

Hiring and promotions in the Fire and Police Departments are governed by the Civil Service Ordinance, as well as the rules put in place by the Employment Subcommittee of the Civil Service Commission. Unfortunately, the ordinance is badly outdated, does not reflect the current practices of the either Department, and includes many legacy provisions from when the Fire Department moved to dual companies twenty years ago. Instead, the Departments have been working with their respective Unions and the Employment Subcommittee to make sure that their hiring and promotion processes are up to date and work to meet the needs of the Departments.

The proposed changes streamline the ordinance while keeping the most important pieces in place. These include minimum qualifications for new police officers and firefighters, the basic procedures for hiring and promotions, and the appeal rights of new hire and promotional candidates. The changes remove many of the smaller details that are more likely to change over time, including the timing of exams, the specific type of testing, and procedures for preparing forms. Instead, these details can be addressed at the Employment Subcommittee level, or at the Department level, depending on the nature of any changes. This format still ensures oversight over hiring and promotions in the Fire and Police Departments, but allows the process to be more responsive with more routine changes being implemented through the Employment Subcommittee, rather than amendments to the ordinance.

The Fire Union and both Police Unions have been involved in the changes to the ordinance and all three Unions support the proposal.

The proposed ordinance changes also make some edits to the qualifications for, and procedures of, the Police Citizen Review Subcommittee. Many of these changes were recommended by the Subcommittee itself, and they are in support of the changes proposed to their governing provisions.