1. Regular City Council Meeting Agenda Only
   Documents:
   AGENDA ONLY 02-05-2018.PDF

2. Regular Agenda And Packet For 2-5-2018
   Documents:
   AGENDA AND PACKET FOR 02-05-2018.PDF

3. Addendum - Special Minutes 01-31-2018
   Documents:
   01-31-2018-SPECIAL MINUTES.PDF

4. Addendum - Tab 15 Order 143-17/18
   Documents:
   ADDENDUM TO CIVIL SERVICE AMENDMENT.PDF
The Portland City Council will hold a regular City Council Meeting at 5:30 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

PROCLAMATIONS:

Proc 21-17/18 (Tab 1)  Proclamation Honoring Angela Calvo, Fire Department, as Employee of the Month for December 2017 – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

Order 144-17/18 (Tab 2)  Order Authorizing Waterfront Concert Festivals Presented by Waterfront Concerts, LLC on the Maine State Pier and Approving Contracts and Permits Therefor – Sponsored by Jon P. Jennings, City Manager.

The Public Assembly Facilities Department is requesting approval to maintain holds and confirmations through their office, for the Waterfront Concerts in 2018 similar to the process currently used for events at their other facilities. Each concert will fall under the same guidelines enforced by the City of Portland (Parks, Recreation & Facilities Management). Administrative control over the usage of the Maine State Pier would be maintained.
This provision is being requested so Waterfront Concerts can more actively market the Maine State Pier as a viable option for artists looking for summer outdoor concerts in Maine. This would apply only for the 2018 outdoor concert season.

This Council Order will allow the Recreation & Facilities Management Department the flexibility to manage the potential events presented by Waterfront Concerts for the 2018 Summer Season. Following the 2017 Concert Series, Staff feels it has been a positive experience and a good working relationship. Waterfront Concerts will continue to work closely with the City, Casco Bay Ferries, Ready Seafood and other existing businesses on improving the overall operation and coexisting in the area of the Maine State Pier. Efforts were made and will continue to be made in minimizing sound levels, and adhering to the determined curfew (which was demonstrated throughout the 2017 series). Included in the agenda backup is detail from the 2017 season referencing noise complaints received via Police Department, e-mail, and phone.

Order 145-17/18 (Tab 3)  Order Declaring May 13, 2018 the Portland Sea Dogs Mother’s Day 5K Race Festival – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the Portland Sea Dogs Mother’s Day 5K Race to be held on Sunday May 13, 2018. The formation of runners and start time will be on Park Avenue in front of the Expo and the Ice Arena. The start time of the race is 9:15 a.m.

Race route and street closures are included in the agenda backup.

Order 146-17/18 (Tab 4)  Order Declaring June 21 to June 23, 2018 the 2018 Greek Heritage Food Festival – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the 2018 Greek Heritage Food Festival to be held on June 21, 22, and 23, 2018 on Holy Trinity Greek Orthodox Church grounds and a portion of Pleasant Street in front of the church. The hours of the Food Festival are 11:30 a.m. to 9:30 p.m.

Order 147-17/18 (Tab 5)  Order Declaring June 23, 2018 the Allagash Street Fair Festival – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the Allagash Street Fair Festival to be held on Saturday June 23, 2018 from 1:00 p.m. to 6:00 p.m. The Festival will use Industrial Way, as well as the adjacent businesses grounds.

Street closures are included in the agenda backup.

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

Order 148-17/18 (Tab 6)
Order Granting Municipal Officers' Approval of Maine Lobster Shack. Application for a Class I FSE with Outdoor Dining on Private Property at 425 Fore Street – Sponsored by Michael Russell, Director of Permitting and Inspections Department.

Application was filed on 1/2/2018. New City and State Applications. Applicant was granted a Class III & Class IV License on June 19, 2017 and is applying to upgrade to Class I.

Five affirmative votes are required for passage after public comment.

Order 149-17/18 (Tab 7)
Order Granting Municipal Officers' Approval of Rising Tide Brewing Company LLC DBA Rising Tide Brewing Company LLC. Application for a Class III & IV FSE with Entertainment without Dance limited to 16 hours per week and Outdoor Dining on Private Property at 103 Fox Street – Sponsored by Michael Russell, Director of Permitting & Inspections Department.

Application was filed on 1/5/2018. New City and State applications. Applicant currently holds a Brewery with Entertainment without Dance limited to 16 hours per week and Outdoor Dining on Private Property.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

Com 14-17/18 (Tab 8)
Communication Re: Appointments to the Dr. Martin Luther King Recognition Task Force – Sponsored by Mayor Ethan K. Strimling.

This Communication appoints the following persons to the Dr. Martin Luther King Recognition Task Force:

Blanca Santiago
Dawud Ummah
Regina Phillips
Merita McKenzie
Daniel Minter
Danielle Conway
Councilor Pious Ali, Chair

As a Communication this item requires no public comment or formal Council action.

Com 15-17/18 (Tab 9)
Communication Re: City Ordinance 17-113 – Sponsored by Mayor Ethan K. Strimling.
On November 5, 2013, Portland voters supported the passage of a City ordinance which allows the possession of up to 2.5 ounces of marijuana by adults age 21 and older. Section 17-113 went into effect on December 6, 2013. The ordinance allows for the possession of marijuana in a public place, but it prohibits the use of marijuana in public and the furnishing of or trafficking in the drug. Section 17-116 requires the Mayor to report to the City Council annually as to the implementation and enforcement of the ordinance.

As a Communication this item requires no public comment or formal Council action.

RESOLUTIONS:

Resolve 7-17/18 (Tab 10)


While under the previous president’s administration offshore drilling for gas and oil was not allowed off the East Coast, the federal government under President Donald Trump is considering a new program that would allow that. More than one hundred and forty other coastal town and city governments have voted to oppose offshore drilling for gas and oil exploration on the Outer Continental Shelf near their localities. On Maine’s own coastline, the subject of artists and the year-round destination of international and local visitors, the importance of keeping the ocean pristine is undeniable. At the same time, the risk of pollution and harm to aquatic life from offshore drilling are well known.

By this resolve, the Portland City Council would be put on record opposing offshore gas and oil drilling off the coast of Maine. The Resolve would be submitted to the Bureau of Ocean Energy Management in the Department of the Interior, which is accepting comment in the process of considering changes to the leasing program for oil and gas drilling off the coast of the United States.

Five affirmative votes are required for passage after public comment.

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

UNFINISHED BUSINESS:

This order appoints the following individuals to the Greater Portland Transit District for the calendar year 2018.

Mayor Ethan Strimling
Councilor Belinda Ray
Councilor Pious Ali
Jetport Director Paul Bradbury
Finance Director Brendan O’Connell

At the January 3, 2018, City Council meeting this item was postponed to the next meeting. Five affirmative votes are required for passage after public comment.

Order 137-17/18 (Tab 12) Amendment to Zoning Map Re: 233 Anderson Street and Vicinity – Sponsored by the Portland Planning Board, Sean Dundon, Chair.

On December 6, 2017, the Planning Board met and unanimously voted 5-0 (Stanley absent; Morrissette recused) to forward this item to the City Council with a recommendation for passage.

The proposed map amendment was requested for a parcel at 233 Anderson Street by the applicant 2 Walnut, LLC. to change the zoning from Low Impact Industrial (I-Lb) to Neighborhood Business (B1b).

The current zoning for the applicant’s vacant lot is split between the two zones and the applicant is seeking to have the entire parcel under the B-1b designation in order to develop a mixed-use development that would potentially include multi-family housing.

The Board recommended expanding the map amendment to include a portion of land owned by the State of Maine to avoid leaving a sliver of I-Lb immediately north of the applicant’s parcel.

This item must be read on two separate days. It was given a first reading on January 3, 2018. Five affirmative votes are required for passage after public comment.

Order 141-17/18 (Tab 13) 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. It was given a first reading on January 31. Seven affirmative votes are required for passage as an emergency after public comment.

**Order 142-17/18 (Tab 14)**

**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. It was given a first reading on January 31. Seven affirmative votes are required for passage as an emergency after public comment.
Amendment to Portland City Code Chapter 2 Administration
Re: Civil Service – Sponsored by the Health and Human Services and Public Safety Committee, Councilor Belinda S. 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. It was given a first reading on January 31. Staff is requesting emergency passage of this order. Seven affirmative votes are required for passage as an emergency after public comment.

ORDERS:

Order 150-17/18
Order Re-Establishing the Dr. Martin Luther King Recognition Task Force – Sponsored by Mayor Ethan K. Strimling.

On March 27, 2017 the City Council created the Dr. Martin Luther King Recognition Task Force (Order 173-16/17) to consider how the life and legacy of Dr. Martin Luther King may be best acknowledged and recognized in the form of renaming a street, park or similarly situated public space. The order included a sunset date of December 31, 2017. The Task Force requires additional time to complete its work and requests that the City Council re-establish the Task Force and requires a report to the City Council by May 31, 2018.

Five affirmative votes are required for passage after public comment.

Order 151-17/18
Order Approving the Agreement between Portland and Maine Department of Transportation Re: Paving Allen Avenue from Summit Street to Washington Avenue and Auburn Street – Sponsored by Jon P. Jennings, City Manager.

The City Council is being asked to approve a two-party agreement that will allow Maine Department of Transportation and the City to construct the Allen Avenue paving project in 2018.

Approving and signing this agreement would confirm the City’s intent to construct this project, pay 25% of the total project cost for paving Allen Avenue, and pay 100% of the cost to pave Washington Avenue between Allen Avenue and Auburn Street (330 ft.) and Auburn Street between Washington Avenue and Chapman Street (410 ft.)
The estimated total project cost to pave Allen Avenue is $425,000. The City’s 25% share would be $106,250. The estimated additional cost to pave Washington Avenue and Auburn Street is $170,000, which would be paid entirely by the City.

The total estimated City of the project cost is $276,250.

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

Order 152-17/18  
(Order Approving the Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Paving Cumberland Avenue from Elm Street to State Street – Sponsored by Jon P. Jennings, City Manager.)

The City Council is being asked to approve a three-party partnership agreement that will allow Portland Area Comprehensive Transportation System, Maine Department of Transportation and the City to move ahead with plans to pave Cumberland Avenue between Elm Street and State Street in 2019.

Approving and signing this agreement would confirm the City’s intent to undertake this project and pay 25% of the total cost. The estimated total project cost is $397,100. The City’s 25% share would be $99,275.

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

Order 153-17/18  
(Order Approving the Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Paving Danforth Street from High Street to Vaughan Street - Sponsored by Jon Jennings, City Manager.)

The City Council is being asked to approve a three-party partnership agreement, which would allow Portland Area Comprehensive Transportation System, Maine Department of Transportation, and the City to move ahead with plans to pave Danforth Street between High Street and Vaughan Street in 2019.

Approving and signing this agreement will confirm the City’s intent to undertake this project and pay 25% of the total project cost. The estimated total project cost is $706,600. The City’s 25% share would be $176,650.

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

AMENDMENTS:
AGENDA
REGULAR CITY COUNCIL MEETING
FEBRUARY 5, 2018

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

PROCLAMATIONS:

Proc 21-17/18 (Tab 1) Proclamation Honoring Angela Calvo, Fire Department, as Employee of the Month for December 2017 – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

Order 144-17/18 (Tab 2) Order Authorizing Waterfront Concert Festivals Presented by Waterfront Concerts, LLC on the Maine State Pier and Approving Contracts and Permits Therefor – Sponsored by Jon P. Jennings, City Manager.

The Public Assembly Facilities Department is requesting approval to maintain holds and confirmations through their office, for the Waterfront Concerts in 2018 similar to the process currently used for events at their other facilities. Each concert will fall under the same guidelines enforced by the City of Portland (Parks, Recreation & Facilities Management). Administrative control over the usage of the Maine State Pier would be maintained.
This provision is being requested so Waterfront Concerts can more actively market the Maine State Pier as a viable option for artists looking for summer outdoor concerts in Maine. This would apply only for the 2018 outdoor concert season.

This Council Order will allow the Recreation & Facilities Management Department the flexibility to manage the potential events presented by Waterfront Concerts for the 2018 Summer Season. Following the 2017 Concert Series, Staff feels it has been a positive experience and a good working relationship. Waterfront Concerts will continue to work closely with the City, Casco Bay Ferries, Ready Seafood and other existing businesses on improving the overall operation and coexisting in the area of the Maine State Pier. Efforts were made and will continue to be made in minimizing sound levels, and adhering to the determined curfew (which was demonstrated throughout the 2017 series). Included in the agenda backup is detail from the 2017 season referencing noise complaints received via Police Department, e-mail, and phone.

Order 145-17/18 (Tab 3) Order Declaring May 13, 2018 the Portland Sea Dogs Mother’s Day 5K Race Festival – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the Portland Sea Dogs Mother’s Day 5K Race to be held on Sunday May 13, 2018. The formation of runners and start time will be on Park Avenue in front of the Expo and the Ice Arena. The start time of the race is 9:15 a.m.

Race route and street closures are included in the agenda backup.

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Order 147-17/18 (Tab 5) Order Declaring June 23, 2018 the Allagash Street Fair Festival – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the Allagash Street Fair Festival to be held on Saturday June 23, 2018 from 1:00 p.m. to 6:00 p.m. The Festival will use Industrial Way, as well as the adjacent businesses grounds.

Street closures are included in the agenda backup.

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

**Order 148-17/18 (Tab 6)**
Order Granting Municipal Officers' Approval of Maine Lobster Shack. Application for a Class I FSE with Outdoor Dining on Private Property at 425 Fore Street – Sponsored by Michael Russell, Director of Permitting and Inspections Department.

Application was filed on 1/2/2018. New City and State Applications. Applicant was granted a Class III & Class IV License on June 19, 2017 and is applying to upgrade to Class I.

Five affirmative votes are required for passage after public comment.

**Order 149-17/18 (Tab 7)**
Order Granting Municipal Officers' Approval of Rising Tide Brewing Company LLC DBA Rising Tide Brewing Company LLC. Application for a Class III & IV FSE with Entertainment without Dance limited to 16 hours per week and Outdoor Dining on Private Property at 103 Fox Street – Sponsored by Michael Russell, Director of Permitting & Inspections Department.

Application was filed on 1/5/2018. New City and State applications. Applicant currently holds a Brewery with Entertainment without Dance limited to 16 hours per week and Outdoor Dining on Private Property.

Five affirmative votes are required for passage after public comment.

**BUDGET ITEMS:**

**COMMUNICATIONS:**

**Com 14-17/18 (Tab 8)**
Communication Re: Appointments to the Dr. Martin Luther King Recognition Task Force – Sponsored by Mayor Ethan K. Strimling.

This Communication appoints the following persons to the Dr. Martin Luther King Recognition Task Force:

Blanca Santiago
Dawud Ummah
Regina Phillips
Merita McKenzie
Daniel Minter
Danielle Conway
Councilor Pious Ali, Chair

As a Communication this item requires no public comment or formal Council action.

**Com 15-17/18 (Tab 9)**
Communication Re: City Ordinance 17-113 -- Sponsored by Mayor Ethan K. Strimling.
On November 5, 2013, Portland voters supported the passage of a City ordinance which allows the possession of up to 2.5 ounces of marijuana by adults age 21 and older. Section 17-113 went into effect on December 6, 2013. The ordinance allows for the possession of marijuana in a public place, but it prohibits the use of marijuana in public and the furnishing of or trafficking in the drug. Section 17-116 requires the Mayor to report to the City Council annually as to the implementation and enforcement of the ordinance.

As a Communication this item requires no public comment or formal Council action.

RESOLUTIONS:

Resolve 7-17/18 (Tab 10) Resolution Opposing Oil and Gas Offshore Drilling Off the Coast of Maine – Sponsored by Mayor Ethan K. Strimling, Councilor Kim Cook, Councilor Pious Ali, Councilor Justin Costa, Councilor Jill C. Duson, Councilor Nicholas M. Mavodones, Jr., Councilor Spencer Thibodeau, Councilor Brian E. Batson, and Councilor Belinda S. Ray.

While under the previous president’s administration offshore drilling for gas and oil was not allowed off the East Coast, the federal government under President Donald Trump is considering a new program that would allow that. More than one hundred and forty other coastal town and city governments have voted to oppose offshore drilling for gas and oil exploration on the Outer Continental Shelf near their localities. On Maine’s own coastline, the subject of artists and the year-round destination of international and local visitors, the importance of keeping the ocean pristine is undebatable. At the same time, the risk of pollution and harm to aquatic life from offshore drilling are well known.

By this resolve, the Portland City Council would be put on record opposing offshore gas and oil drilling off the coast of Maine. The Resolve would be submitted to the Bureau of Ocean Energy Management in the Department of the Interior, which is accepting comment in the process of considering changes to the leasing program for oil and gas drilling off the coast of the United States.

Five affirmative votes are required for passage after public comment.

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

UNFINISHED BUSINESS:

This order appoints the following individuals to the Greater Portland Transit District for the calendar year 2018.

Mayor Ethan Strimling  
Councilor Belinda Ray  
Councilor Pious Ali  
Jetport Director Paul Bradbury  
Finance Director Brendan O’Connell

At the January 3, 2018, City Council meeting this item was postponed to the next meeting. Five affirmative votes are required for passage after public comment.

**Order 137-17/18 (Tab 12)**

**Amendment to Zoning Map Re: 233 Anderson Street and Vicinity**  
**- Sponsored by the Portland Planning Board, Sean Dundon, Chair.**

On December 6, 2017, the Planning Board met and unanimously voted 5-0 (Stanley absent; Morrissette recused) to forward this item to the City Council with a recommendation for passage.

The proposed map amendment was requested for a parcel at 233 Anderson Street by the applicant 2 Walnut, LLC. to change the zoning from Low Impact Industrial (I-Lb) to Neighborhood Business (B1b).

The current zoning for the applicant’s vacant lot is split between the two zones and the applicant is seeking to have the entire parcel under the B-1b designation in order to develop a mixed-use development that would potentially include multi-family housing.

The Board recommended expanding the map amendment to include a portion of land owned by the State of Maine to avoid leaving a sliver of I-Lb immediately north of the applicant’s parcel.

This item must be read on two separate days. It was given a first reading on January 3, 2018. Five affirmative votes are required for passage after public comment.

**Order 141-17/18 (Tab 13)**

**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. It was given a first reading on January 31. Seven affirmative votes are required for passage as an emergency after public comment.
Amendment to Portland City Code Chapter 2 Administration
Re: Civil Service – Sponsored by the Health and Human Services and Public Safety Committee, Councilor Belinda S. 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. It was given a first reading on January 31. Staff is requesting emergency passage of this order. Seven affirmative votes are required for passage as an emergency after public comment.

ORDERs:

Order 150-17/18
Order Re-Establishing the Dr. Martin Luther King Recognition Task Force -- Sponsored by Mayor Ethan K. Strimling.

On March 27, 2017 the City Council created the Dr. Martin Luther King Recognition Task Force (Order 173-16/17) to consider how the life and legacy of Dr. Martin Luther King may be best acknowledged and recognized in the form of renaming a street, park or similarly situated public space. The order included a sunset date of December 31, 2017. The Task Force requires additional time to complete its work and requests that the City Council re-establish the Task Force and requires a report to the City Council by May 31, 2018.

Five affirmative votes are required for passage after public comment.

Order 151-17/18
Order Approving the Agreement between Portland and Maine Department of Transportation Re: Paving Allen Avenue from Summit Street to Washington Avenue and Auburn Street – Sponsored by Jon P. Jennings, City Manager.

The City Council is being asked to approve a two-party agreement that will allow Maine Department of Transportation and the City to construct the Allen Avenue paving project in 2018.

Approving and signing this agreement would confirm the City’s intent to construct this project, pay 25% of the total project cost for paving Allen Avenue, and pay 100% of the cost to pave Washington Avenue between Allen Avenue and Auburn Street (330 ft.) and Auburn Street between Washington Avenue and Chapman Street (410 ft.)
The estimated total project cost to pave Allen Avenue is $425,000. The City’s 25% share would be $106,250. The estimated additional cost to pave Washington Avenue and Auburn Street is $170,000, which would be paid entirely by the City.

The total estimated City of the project cost is $276,250.

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

Order 152-17/18 (Tab 18)  
Order Approving the Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Paving Cumberland Avenue from Elm Street to State Street – Sponsored by Jon P. Jennings, City Manager.

The City Council is being asked to approve a three-party partnership agreement that will allow Portland Area Comprehensive Transportation System, Maine Department of Transportation and the City to move ahead with plans to pave Cumberland Avenue between Elm Street and State Street in 2019.

Approving and signing this agreement would confirm the City’s intent to undertake this project and pay 25% of the total cost. The estimated total project cost is $397,100. The City’s 25% share would be $99,275.

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

Order 153-17/18 (Tab 19)  
Order Approving the Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Paving Danforth Street from High Street to Vaughan Street - Sponsored by Jon Jennings, City Manager.

The City Council is being asked to approve a three-party partnership agreement, which would allow Portland Area Comprehensive Transportation System, Maine Department of Transportation, and the City to move ahead with plans to pave Danforth Street between High Street and Vaughan Street in 2019.

Approving and signing this agreement will confirm the City’s intent to undertake this project and pay 25% of the total project cost. The estimated total project cost is $706,600. The City’s 25% share would be $176,650.

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

AMENDMENTS:
WHEREAS: Angela Calvo of the Fire Department has been named the City of Portland Employee of the Month by a committee of her peers and selected for this distinct honor from a workforce of over 1,300; and

WHEREAS: This award is presented in recognition of Angela's work as a Fire Lieutenant/Paramedic with over 17 years of service. Angela provides experienced leadership as an EMS Supervisor for Medcu and performs her job in the most professional and compassionate manner imaginable. Angela leads by example and is recognized for her dedication to supporting her peers and providing guidance; and

WHEREAS: Angela is currently involved in creating a cornerstone project for paramedic programs where an EMTP student would ride in the fly car at the end of their training. This would be a final evaluation of the student's skills to operate independently as a paramedic, as well as giving final guidance to the student before graduation; and

WHEREAS: Angela is also part of the TQA Committee at Medcu working to promote and develop training based upon Quality Assurance. Angela is self-motivated and always places the best interest of her peers before herself. Angela further demonstrates this in seeking out and attending any training or conference that increases her skills to provide better services to those she supervises. Angela truly is an asset to the Fire Department and to the City.

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

Signed and Sealed this 5th day of February, 2018

Ethan K. Strimling, Mayor
City of Portland, Maine
ORDER AUTHORIZING WATERFRONT CONCERT FESTIVALS PRESENTED BY WATERFRONT CONCERTS, LLC ON THE MAINE STATE PIER AND APPROVING CONTRACTS AND PERMITS THEREFOR

ORDERED, that Waterfront Concert Festivals on Maine State Pier are hereby declared as a series of Festivals in 2018 to be presented by Waterfront Concerts, LLC on behalf of event beneficiaries, which will be non-profit organizations; and

BE IT FURTHER ORDERED, that the City Manager is authorized to grant permits to the Festival organizers, Waterfront Concerts, LLC, on behalf of each of the event beneficiaries, pursuant to Sections 25-27 of the Portland City Code for the following activities:

➢ Waterfront Concerts, LLC will have the use of the Maine State Pier on all mutually agreeable dates of the Waterfront Concert Festivals on Maine State Pier; and any and all public announcement and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level and be configured by Waterfront Concerts, LLC and the City to focus volume on the Maine State Pier and its immediate environment; and

BE IT FURTHER ORDERED, that the Festival Area, which is Maine State Pier, for all of the approved Festivals will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of Waterfront Concerts, LLC, and event beneficiaries for the purpose of conducting the Festivals, subject to the direction and control of the City Manager; and

BE IT FURTHER ORDERED, that the City Manager or designee is hereby authorized to issue a revocable permit for each Festival under Sections 25-26 thru 25-30 of Portland City Code to Waterfront Concerts, LLC and event beneficiaries subject to the following conditions:

• Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right-of-ways during each of the approved Festivals, other than to persons 21-years-old and older in designated areas with security provided by staff from the Portland Department of Parks, Recreation and Facilities and/or Waterfront Concerts.
• Waterfront Concerts, LLC shall indemnify the City and hold it harmless from and against all claims arising out of activities during all said Festivals/events approved hereunder, and shall take out and maintain general and liquor liability insurance coverage in the amount of at least $1,000,000 per occurrence for personal or bodily injury, death, or property for said purposes. Waterfront Concerts, LLC shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance. With respect to the Commercial General Liability Insurance, the CONTRACTOR shall name the CITY as an additional insured for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY;

• All conditions for use of grounds, specified in each permit for all Festivals approved hereunder issued from the Public Assembly Facilities Division, shall be adhered to;

• Waterfront Concerts, LLC shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at all of the approved Festivals;

• City permit fees and license fees, a fee per ticket sold and a percentage of revenue from sales of food, beverages and merchandise for events, as well as costs for city staff assistance will be paid by Waterfront Concerts, LLC; and

BE IT FURTHER ORDERED, that the Public Assembly Facilities Division staff or qualified volunteers will provide security at all of the approved Festivals; 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 Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of all of the Festivals approved hereunder; and

BE IT FURTHER ORDERED, that the City Manager is authorized to enter into an Agreement with Waterfront Concerts, LLC and event beneficiaries for the use of the Maine State Pier as described herein; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.
I am requesting that the following order be placed on the next City Council agenda (February 5, 2018): order authorizing Waterfront Concerts to produce a concert series on the Maine State Pier on various dates in the Spring/Summer of 2018.

We would like to formally request the authority to maintain holds and confirmations through our office, similar to the process we currently use for events at our other facilities. Each concert will fall under the same guidelines enforced by the City of Portland (Parks, Recreation & Facilities Management). Administrative control over the usage of the Maine State Pier would be maintained. We request this provision so Waterfront Concerts can more actively market the Maine State Pier as a viable option for artists looking for summer outdoor concerts in Maine. This would apply only for the 2018 outdoor concert season.

Waterfront Concerts would like to start putting holds on dates on the Maine State Pier for potential concerts in 2018. They may not use or confirm all of these dates, and they may be inclined to add additional dates. A “season” declaration will allow Waterfront Concerts the flexibility to confirm with the artists and agents in a more timely fashion.

Waterfront Concerts, a Maine limited liability company, has previously been approved to organize and present concert series in 2014, 2015, 2016 and 2017. The 2014 series consisted of (5) concerts, 2015 consisted of (27) concerts, 2016 consisted of (28) concerts, and 2017 consisted of (17) concerts. Over the four concert series over 100,000 attendees have been attracted to Portland’s Waterfront.

Waterfront Concerts is an experienced concert presenter which currently presents events at the Maine State Pier, Darling’s Waterfront Pavilion and the Cross Insurance Center in Bangor. They also present events at the Androscoggin Bank Colisée in Lewiston, Aura, Cross Insurance Arena, and Merrill Auditorium in Portland.

A negotiated per ticket fee, merchandise and food & beverage percentage along with expenses for all City services will be reimbursed by the organizers for each event. A similar agreement was in place for 2017, which rendered approximately $54,000 in NET revenue to the City of Portland.

Live music will be performed by bands from a stage set-up on the southeast waterside portion of the pier, oriented northwest towards Franklin Street. Any and all public announcement (PA) and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level (maximum 92 dB’s) and be configured by Waterfront Concerts’ contractor and the City to focus volume on the pier and its immediate environment, limiting any sound impacts in residential areas. City Staff will be present at each concert monitoring decibel levels and addressing any noise complaints received through Police Dispatch.
While the bulk of the Maine State Pier would be open only to ticket holders that day, access to the schooners that operate from the Maine State Pier would be preserved all day as would access to, and egress from, the adjacent Casco Bay Lines Terminal and garage, and business at the Portland Ocean Terminal. This past season Waterfront Concerts provided additional signage for Portland Schooner Company and The Frances. I would anticipate this type of collaboration to continue.

Beer and food will be made available on the Pier; Waterfront Concerts will be responsible for ensuring that all vendors at the festival have complied with appropriate license requirements, including food service, sale of alcohol and concert licenses. All Security for the event will be provided by the City of Portland’s Recreation & Facilities Management Department and Production Services of Maine.

This Council Order will allow the Recreation & Facilities Management Department the flexibility to manage the potential events presented by Waterfront Concerts for the 2018 Summer Season. Following the 2017 Concert Series, Staff feels it has been a positive experience and a good working relationship. Waterfront Concerts will continue to work closely with the City, Casco Bay Ferries, Ready Seafood and other existing businesses on improving the overall operation and coexisting in the area of the Maine State Pier. Efforts will continue to be made in minimizing sound levels, and adhering to the determined curfew (which they have demonstrated throughout the 2017 series). Attached is detail from the 2017 season referencing noise complaints received via Police Department, E-mail, and Phone.

City Staff are supportive of the Waterfront Concerts – Concert Series.
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**JAKE OWEN**

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Calls in yellow represent repeat callers

- 129 individual calls
- 91 unique callers
- 4 calls for concerts at Thompsons Point included in original data
- 3 calls on nights we did not have a concert
- 13 emailed noise complaints - 6 on opening night.
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<td>Volbeat</td>
<td>Saturday</td>
<td>5.13.17</td>
<td>6:00 PM - 9:30 PM</td>
<td>53</td>
<td>Cloudy</td>
<td>SE</td>
<td>5 MPH</td>
</tr>
<tr>
<td>2</td>
<td>Disco Biscuits</td>
<td>Friday</td>
<td>5.26.2017</td>
<td>7:00 PM - 10:00 PM</td>
<td>54</td>
<td>Cloudy</td>
<td>N</td>
<td>13 MPH</td>
</tr>
<tr>
<td>3</td>
<td>Disco Biscuits</td>
<td>Saturday</td>
<td>5.27.2017</td>
<td>7:00 PM - 10:00 PM</td>
<td>58</td>
<td>Clear</td>
<td>SSE</td>
<td>11 MPH</td>
</tr>
<tr>
<td>4</td>
<td>Hot 104.7 w/ DJs, Khalid, French Montana, Kid Inc</td>
<td>Friday</td>
<td>6.17.17</td>
<td>6:00 PM - 9:45 PM</td>
<td>65</td>
<td>Cloudy</td>
<td>E</td>
<td>5 MPH</td>
</tr>
<tr>
<td>5</td>
<td>Slightly Stoopid</td>
<td>Sunday</td>
<td>7.2.17</td>
<td>3:30 PM - 8:30 PM</td>
<td>85</td>
<td>Sunny</td>
<td>E</td>
<td>15 MPH</td>
</tr>
<tr>
<td>6</td>
<td>Billy Currington</td>
<td>Friday</td>
<td>7.7.17</td>
<td>7:00 PM - 9:35 PM</td>
<td>64</td>
<td>Cloudy</td>
<td>SSE</td>
<td>8 MPH</td>
</tr>
<tr>
<td>7</td>
<td>311</td>
<td>Saturday</td>
<td>7.8.17</td>
<td>6:00 PM - 9:55 PM</td>
<td>68</td>
<td>Cloudy</td>
<td>S</td>
<td>9 MPH</td>
</tr>
<tr>
<td>8</td>
<td>Primus</td>
<td>Tuesday</td>
<td>7.25.17</td>
<td>6:00 PM - 8:55 PM</td>
<td>68</td>
<td>Cloudy</td>
<td>ESE</td>
<td>1 MPH</td>
</tr>
<tr>
<td>9</td>
<td>Pat Benatar</td>
<td>Wednesday</td>
<td>7.26.17</td>
<td>7:00 PM - 9:35 PM</td>
<td>75</td>
<td>Clear</td>
<td>S</td>
<td>10 MPH</td>
</tr>
<tr>
<td>10</td>
<td>Lifehouse</td>
<td>Saturday</td>
<td>8.5.17</td>
<td>6:00 PM - 8:55 PM</td>
<td>69</td>
<td>Cloudy / Rainy</td>
<td>SSE</td>
<td>11 MPH</td>
</tr>
<tr>
<td>11</td>
<td>Dark Star Orchestra</td>
<td>Sunday</td>
<td>8.6.17</td>
<td>7:00 PM - 9:35 PM</td>
<td>72</td>
<td>Clear</td>
<td>WNW</td>
<td>15 MPH</td>
</tr>
<tr>
<td>12</td>
<td>Galactic and Govt Mule</td>
<td>Wednesday</td>
<td>8.9.17</td>
<td>5:30 PM - 8:55 PM</td>
<td>79</td>
<td>Clear</td>
<td>S</td>
<td>16 MPH</td>
</tr>
<tr>
<td></td>
<td>Event Name</td>
<td>Date</td>
<td>Time</td>
<td>Condition</td>
<td>Wind Direction</td>
<td>Wind Speed</td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Joe Bonamasa</td>
<td>Friday 8.11.17</td>
<td>7:30 PM - 9:30 PM</td>
<td>Clear</td>
<td>SE</td>
<td>11 MPH</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Notes: 1 emailed noise complaint</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Noise Complaints: (5) 8 PM North St &amp; Peaks Island <em>86db</em>, 840 PM Eastern Prom <em>88db</em>, 9 PM Mountfort St <em>89db</em>, 925 PM North St <em>89db</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Old Crow Medicine Show</td>
<td>Tuesday 8.22.17</td>
<td>6:20 PM - 8:45 PM</td>
<td>Partly Cloudy</td>
<td>S</td>
<td>15 MPH</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Notes: 1 emailed noise complaint</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Noise Complaints: (2) 730 PM Montreal St<em>82db</em>, 805 PM North St <em>86db</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Dillon Francis</td>
<td>Sunday 9.10.17</td>
<td>5:51 PM - 9:00 PM</td>
<td>Cloudy</td>
<td>NNW</td>
<td>8 MPH</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Noise Complaints: (23) 7 PM Sawyer St So Po, 7:45 PM Portland Pier 84 db, 813 PM Franklin Terr So Po 83 db, 813 PM Sawyer St So Po 83db, 820 PM 4 from So Po, 830 PM 2 from Welch St PI, 82db / 104dB, 830 PM Smkh St So Po 82db / 104dB, 843 PM Somerset St 83db/105dB, 845 PM B St SoPo 83db/105dB 843 PM Harriet St SoPo 83db/105dB, 843 PM Pine St SoPo 83db/105dB, 843 PM Eismere St SoPo 83db/105dB, 843 PM Ocean St SoPo 83db/105dB 843 PM Preble St SoPo 83db/105dB, 851 PM South Grand SoPo 83db/97dB, 900 PM 4 from SoPo No Readings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Lettuce</td>
<td>Friday 9.15.17</td>
<td>6:00 PM - 10:00 PM</td>
<td>Cloudy</td>
<td>E</td>
<td>7 MPH</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Notes: (1) 928 PM @ Portland Pier 86db</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Jake Owen</td>
<td>Friday 9.22.17</td>
<td>7:05 PM - 9:55 PM</td>
<td>Mild</td>
<td>Overcast</td>
<td>Some wind</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Notes: (7)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>
ORDER DECLARING MAY 13, 2018 THE PORTLAND SEA DOGS
MOTHER’S DAY 5K RACE FESTIVAL

ORDERED, that Sunday, May 13, 2018 is hereby declared to be the Portland Sea Dogs Mother’s Day 5K Race Festival, sponsored by the Portland Sea Dogs; and

BE IT FURTHER ORDERED, that the Portland Sea Dogs Mother’s Day 5K Race Festival area shall be Park Avenue from the Portland Exposition Building and Weymouth Street, west to Outer Congress Street, north on Stevens Avenue, southeast on Brighton Avenue; and south on Deering Avenue to the Fitzpatrick Stadium entrance; and

BE IT FURTHER ORDERED, that the following streets shall be closed at the following times:

• Both lanes of Park Avenue from Weymouth Street to St. John Street shall be closed to traffic from 8:50 a.m. to 9:20 a.m. for the start of the race;
• West-bound lanes of Park Avenue in front of William B. Troubh Ice Arena shall be closed to traffic from 7:30 a.m. to 9:30 a.m.; and

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

BE IT FURTHER ORDERED, that the Portland Sea Dogs Mother’s Day 5K Race 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 the Portland Sea Dogs under §§25-26 to 25-30 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

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

2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival area;

3. Conditions for use of grounds and requirements for food service, vending sales, and other items specified in an operating agreement issued from Public Assembly Facilities Division shall be adhered to;

4. The Portland Sea Dogs shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the Mother's Day 5K Race Festival;

5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the Portland Sea Dogs has agreed shall participate; and

6. The Portland Sea Dogs is responsible for paying associated city costs including but not limited to Police assistance, Parking Control Officer assistance, MEDCU assistance, Public Works assistance, Public Assembly Facilities Division assistance and permit fees, Business Licensing permit fees and "No Parking" sign fees; and

**BE IT FURTHER ORDERED,** that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.
I am requesting that the following order be placed on the next City Council agenda (Mon. Feb. 5):

**Order declaring Sunday, May 13, 2018, as Portland Sea Dogs Mother’s Day 5K Race Day.**

For many years the Portland Sea Dogs have held their Mother’s Day 5K Race. Attendance at the races is large: organizers expect 2,500 runners (race is capped at 3000 runners).

The Order should include the following items:

The **Portland Sea Dogs Mother’s Day 5K Race** be authorized for **Sunday, May 13, 2018**, to be held in Portland, specifically, Park Ave. - in front of the Expo and Ice Arena, for the formation of runners and start line.

**Route:** Start at 9:15am, runners travel west down Park Ave., continue out onto outer Congress Street, take a right onto Stevens Ave., take a right onto Brighton Ave., continue onto Deering Ave., then take a right into Fitzpatrick Stadium Entrance Gate and finish inside Hadlock Stadium Field at 3rd base.

Park Ave. - both sides of the street need to be closed to traffic from the Expo / Weymouth Street to St. John Street (from 8:50am - 9:20am) for the start of the race.

Park Ave. - the west-bound lanes will be closed to traffic (in front of the ice arena) from 7:30 - 9:30am. The other side of the street (which is 2 lanes) will become a 2-way section so traffic will still flow on that part of the street (up until 8:50am, when road is shut down completely and traffic detoured).

Race organizers will work with METRO to ensure impacts to transit services is kept to a minimum, however, METRO will need to take detours.
Police officers assist at some of the race intersections (and provide a lead and follow car), and Sea Dogs Staff (and city staff) assist at the Park Ave. street closure for the start of the race; volunteers (American Cancer Society volunteers) are stationed on outer Congress Street, Stevens Ave. side streets, and Brighton Ave. side streets. State Police also assist at the 295 Ramps (Congress Street).

Runners congregate on Park Avenue (sidewalks and both lanes of the street), in front of Expo and Ice Arena for the start of races. Race starts at 9:15am.

This area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of race organizers, for the purpose of conducting the Portland Sea Dogs Mother’s Day 5K Race, subject to the direction and control of the City Manager.

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

- Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right-of-ways during said event;

- Portland Sea Dogs shall indemnify the City and hold it harmless from and against all claims arising out of activities during said event, and shall take out and maintain public liability insurance coverage in the amount of at least $400,000 combined single limit for personal or bodily injury, death, or property for said purposes;

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

- Race organizers shall have sole authority over participating vendors at the event and may charge a fee to vendors for the opportunity to vend at the race; and

- Race organizer is responsible for paying associated city costs (such as Police assistance, PCO assistance, Medcu assistance, Public Works assistance, PAFD assistance, Business Licensing Fees and PAFD Permit fees / "No Parking" sign fees).

(continued)
During the **Portland Sea Dogs Mother's Day 5K Race, Sunday, May 13, 2018**, streets listed below will be closed to vehicular traffic:

- Park Ave. (from the Expo / Weymouth Street to St. John Street), 8:50am - 9:20am for the start of the race. The west-bound lanes of Park Ave. (in front of Portland Ice Arena), 7:30 - 9:30am.

- Also, Congress Street (west bound lanes) from Park Ave. to Stevens Ave., 9am - 9:30am; Stevens Ave. (north bound lane) from Congress St. to Brighton Ave., 9:15am - 9:45am; Brighton Ave. (both lanes) from Stevens Ave. to Falmouth St., 9:15am - 10am; and Deering Ave. (both lanes) from Falmouth St. to Park Ave., 9:15am - 10:15am.

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

<table>
<thead>
<tr>
<th>TODAY'S DATE</th>
<th>January 2, 2018</th>
<th>ORGANIZATION NAME</th>
<th>Portland Sea Dogs</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORGANIZATION ADDRESS</td>
<td>271 Park Avenue</td>
<td>CITY</td>
<td>Portland</td>
</tr>
<tr>
<td>STATE</td>
<td>ME</td>
<td>ZIP</td>
<td>04102</td>
</tr>
<tr>
<td>CONTACT NAME(S)</td>
<td>Geoff lacuesta</td>
<td>TITLE</td>
<td>EVP/GM</td>
</tr>
<tr>
<td>HOME #</td>
<td>WORK</td>
<td>874-9300</td>
<td>CELL</td>
</tr>
<tr>
<td>EMAIL</td>
<td><a href="mailto:geoff@seadogs.com">geoff@seadogs.com</a></td>
<td>EMAIL</td>
<td></td>
</tr>
<tr>
<td>PARK AREA OR PUBLIC SPACE REQUESTED</td>
<td>Portland Streets (Park Ave: Race Start) Hadlock Field for Finish</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EVENT DAY &amp; DATE(S)</td>
<td>SUN May 13, 2018</td>
<td>RAIN DAY &amp; DATE(S)</td>
<td>NA (50% added fee)</td>
</tr>
<tr>
<td>EVENT START TIME</td>
<td>7:00 AM</td>
<td>EVENT END TIME</td>
<td>11:15 AM</td>
</tr>
<tr>
<td>(i.e. set-up start time)</td>
<td>(i.e. when event cleanup is complete)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACTUAL START &amp; END TIME OF EVENT</td>
<td>9:15 AM</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**EVENT NAME**: Sea Dogs Mother’s Day 5K
**EXPECTED ATTENDANCE**: 2,500

**DESCRIPTION OF EVENT**: Please be specific regarding area of public space/park and describe Event in detail. If submitting a request for a Road Race (other than a race around Back Cove and using Back Cove Pathway for the route) or a Street Closure (parade, march, rally, etc.), please include a detailed MAP of the COURSE or EVENT AREA (as this will need to be approved by City Departments).

Fundraising Race (benefits the American Cancer Society).

The 5K race begins at 9:15am in front of the Portland Ice Arena. Slugger and his mom will lead the race. A children’s fun run will start at 8:30am – it will stay on Fitzpatrick Stadium and Sea Dogs Field grounds.

The route of the race is: starting on Park Ave. in front of Expo and Ice Arena - runners travel west down Park Ave., continuing out onto outer Congress Street, take a right onto Stevens Ave., take a right onto Brighton Ave., continue onto Deering Ave., then take a right into Fitzpatrick Stadium Entrance Gate and finish inside Hadlock Stadium on center field.

The organizer has requested that Park Ave. – from the Expo / Weymouth Street to St. John Street, be barricaded to traffic from 8:50am – 9:20am for the start of the race. A police officer is required at Weymouth and also at St. John Street. Sea Dogs security personnel will need to be stationed as well on Park Ave. – at the side streets leading onto Park Ave. (Forrest and Valley Street — Gillman Street). In addition, we will close two lanes in front of the ice arena between 7:30 AM and 9:30 AM to set-up the start mat. We will have a police officer monitor this and use the two lanes on the other side to allow traffic to continue to move through the area.

The organizer has also requested that the right lane of Park Ave. be coned off to traffic (similar to what they do during the Sea Dogs games) from 8:00am – 9:20am. This will be where runners line up.

They need assistance from the Police Dept. for a police lead (and follow car) and at major intersections.

<table>
<thead>
<tr>
<th>IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?</th>
<th>FEE</th>
<th>PLEDGES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Please check:</strong></td>
<td>X</td>
<td><strong>FEE</strong></td>
</tr>
<tr>
<td>IF YES FOR FEES, HOW MUCH?</td>
<td>FEE</td>
<td>$20.00</td>
</tr>
<tr>
<td></td>
<td>STUDENT FEE</td>
<td>$</td>
</tr>
</tbody>
</table>

**WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?** Fitzpatrick Parking lot, area side streets
PLEASE CHECK OFF AND ANSWER:
PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

<table>
<thead>
<tr>
<th>Question</th>
<th>X-YES</th>
<th>X-NO</th>
<th>X-NOT SURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>* Are you setting up a canopy(s)? (canopy is 10x10 size) How many?</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>* Do you wish to set up a tent(s)? A canopy or tent larger than 10x10 needs to be approved</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>* Will you be setting up tables and/or chairs? How many tables: chairs:</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List: Timing Start Line</td>
<td></td>
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</tr>
<tr>
<td>* Will there be refreshments at the event? Do you wish to sell food? NO (If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office.) List food and drink / Food Trucks, etc.: water</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* Are you setting up a PA (sound) system? Yes Are you planning on having Amplified Music? Band? DJ? Boom Box?</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>* Will you event require electricity? Electricity is available at some of the parks &amp; squares FROM SEADOGS</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>* Are you planning on bringing a Grill for a Barbecue?</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>* Will the event require reserved parking spaces / parking meters? How many? &quot;No Parking&quot; signs may be purchased at PAFD Office, 212 Canco Rd.</td>
<td></td>
<td></td>
<td>?</td>
</tr>
<tr>
<td>* Will your event need safety vests, signs, barricades and/or cones? Please list what you would like to borrow: We have them. A few orange vests and cones may usually be borrowed from PAFD Office. Barricades and signs are borrowed from Public Works, Customer Service.</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>* Will your event require street closures? Please be specific under &quot;Description of Event.&quot; Events that involve street closures require authorization from multiple city departments. Will your event affect METRO BUS ROUTES? (If service is affected, organizer needs to work directly with METRO for endorsement / feedback). Please check with Glenn Fenton, METRO: 517-3029 (<a href="mailto:gfenton@qmetropolitan.com">gfenton@qmetropolitan.com</a>) to discuss.</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>* Will your event require Police assistance? An event such as a road race, march or parade in the street, would typically require police assistance.</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>* Will your event require Fire/EMS assistance? (For a large walk/race, it is recommended.)</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>* Will your event require porta-restroom(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a $25 fee is assessed for events where attendance is 150 or more.)</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**INSURANCE CERTIFICATE INFORMATION**

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

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

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

ELECTRICITY

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

PORTA-RESTROOMS / BATHROOM FACILITIES

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

TRASH

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

MARKING OF GROUNDS

Event Organizers MUST NOT use Spray Paint or Spray Chalk when marking city property. Children’s Art Chalk can be used with permission from PAFD Office.

ADA COMPLIANCE

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

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

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

SMOKE-FREE ZONES

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

NOTIFICATION

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

REVOCABLE PERMIT

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

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES TYPE INITIALS GI DATE 1/2/18

ASSUMPTION OF RISK & LIABILITY

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

I have read the Assumption of Risk & Liability Agreement TYPE INITIALS GI DATE 1/2/18

FEE SCHEDULE - UPDATED JULY 1, 2015

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

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

CREDIT CARD INFORMATION

Visa or MasterCard Number Exp Date (Mon/Yr)

CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED
PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"

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

<table>
<thead>
<tr>
<th>TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION</th>
<th>(Please make all security deposit checks out separately)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit Fee for use of area: $50 - $200 per hour (i.e. a 3 hour event at $50 totals $150) includes use of elect.</td>
<td>Vest/Cone Deposit: $15 per/item</td>
</tr>
<tr>
<td>If your event is rained out / cancelled, the bulk of the fee is returned (however $50 is non-refundable)</td>
<td>Barricade Deposit: $25 per/item</td>
</tr>
<tr>
<td>Number of Hours of Use: approx. 2 hours</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Admin/Staff Fee (support for events): $30/hour</td>
<td>Public Space / Park Security Deposit: $100 - $1000</td>
</tr>
<tr>
<td>$ TBD</td>
<td>$100 due</td>
</tr>
<tr>
<td>Key Deposit: $50 per key</td>
<td>Other (Porta-Restroom User Fee: $25, etc.)</td>
</tr>
<tr>
<td>$ TBD</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Impact/Street Closure Fee (variable based on impact): $100-$500</td>
<td>NP Signs: $1 / $15 each</td>
</tr>
<tr>
<td>$100 due</td>
<td>Cone Rental: $2 each</td>
</tr>
<tr>
<td></td>
<td>Barricade Rental: $5 each</td>
</tr>
<tr>
<td></td>
<td>Bike Rack: $10 each</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FOR OFFICE USE ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE REC'D APPLICATION</td>
</tr>
<tr>
<td>DATE REC'D INSURANCE</td>
</tr>
<tr>
<td>PERMIT FEE AMT REC'D</td>
</tr>
<tr>
<td>SECURITY DEPOSIT</td>
</tr>
<tr>
<td>PAYMENT TYPE</td>
</tr>
<tr>
<td>VISA</td>
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<tr>
<td>MC</td>
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<tr>
<td>CK #</td>
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<tr>
<td>CASH AMT</td>
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</tbody>
</table>
ORDER DECLARING JUNE 21 TO JUNE 23, 2018
THE 2018 GREEK HERITAGE FOOD FESTIVAL

ORDERED, that June 21, 2018 through June 23, 2018, from 11:30 a.m. to 9:30 p.m., is hereby declared the 2018 Greek Heritage Food Festival, sponsored by Holy Trinity Greek Orthodox Church; and

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

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

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

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

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

2. The Holy Trinity Greek Orthodox Church is authorized to locate tent stakes on the right-hand side of Pleasant Street during the period of the Festival, provided that the Holy Trinity Greek Orthodox Church shall be solely responsible
for filling in the stake holes at the close of the Festival, said work to be done to the satisfaction of the City; said tent may be erected on June 19, and will be taken down no later than June 25

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

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

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

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

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

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

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.
TO: Jon Jennings, City Manager  
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management  
DATE: January 19, 2018  
RE: Council Agenda Item – 2018 Greek Heritage Food Festival

I am requesting that the following order be placed on the next City Council agenda (Mon. Feb. 5):  

Order declaring June 21, 22 & 23, 2018, as the 2018 Greek Heritage Food Festival - to be held on Holy Trinity Greek Orthodox Church grounds and a portion of Pleasant Street and Sidewalk.

The Holy Trinity Greek Orthodox Church has held the Greek Heritage Food Festival for the past 36 years (this is the 37th annual). The majority of events, entertainment and vending of food takes place on church grounds (alcohol service area does stretch out onto the Pleasant Street sidewalk (under large tent). This tent extends over the sidewalk, and about 5 - 7 feet onto Pleasant Street. Therefore, organizers are requesting permission to use a portion of the street beside church property, and be approved for alcohol service out on the sidewalk area. No street closure would be required. The tent will go up on June 19 or 20 and will be taken down on June 24 or 25, so the church would like use of the street (parking lane) during these dates. The hours of the Greek Heritage Food Festival are 11:30 a.m. – 9:30 p.m., June 21 – 23, 2018.

The Order should include the following items:

The 2018 Greek Heritage Food Festival be authorized for June 21, 22 & 23, 2018, to be held on church grounds and on a portion of Pleasant Street sidewalk and street, in front of the church.

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

Alcohol sales and consumption (21+) is approved for a secured area on Church grounds, extending onto Pleasant Street sidewalk and parking lane area. Area will be overseen by church staff and security. Temporary Liquor license issued by Business Licensing Office under “incorporated civic organization.”

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

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

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

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

- Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right-of-ways during said event except for age 21+ area approved by City Council (Pleasant Street Parking Lane and Sidewalk Area directly beside the church);

- The Holy Trinity Greek Orthodox Church shall indemnify the city and hold it harmless from and against all claims arising out of activities during said festival, and shall take out and maintain public liability insurance coverage in the amount of at least $400,000 per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the Greek Heritage Food Festival;

- The Holy Trinity Greek Orthodox Church shall be responsible for filling in the tent stake holes at the close of the festival and said work shall be completed to the satisfaction of the City;

- Any and all amplified music/public announcements shall be maintained at a reasonable level (under 92dBs) and be configured by the event organizer to focus volume away from residential housing and neighboring businesses, limiting any sound impacts in the area;

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

- Festival organizer is responsible for paying associated city costs (such as

(continued)
Police assistance, Public Works assistance, Business Licensing fees and Public Assembly Facilities Division Permit fees / "No Parking" sign fees).

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

Document prepared by Ted Musgrave, Event Coordinator
Public Assembly Facilities Division
For uses of city property, there are typically:
1. fees charged for use of the area
2. a security deposit required
3. insurance required
(There may be fees due and applications required from other City Departments)

<table>
<thead>
<tr>
<th>TODAY’S DATE</th>
<th>ORGANIZATION NAME</th>
<th>ORGANIZATION ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-18-2018</td>
<td>HOLY TRINITY GREEK ORTHODOX CHURCH</td>
<td>133 PLEASANT ST</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTACT NAME(S)</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>GREGORY TSELIKIS</td>
<td>FESTIVAL CHAIRMAN &amp; MEG HANDLIN</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PARK AREA OR PUBLIC SPACE REQUESTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pleasant St (sidewalk area and parking lane in front of Church parking lot)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EVENT DAY &amp; DATE(S)</th>
<th>EVENT START TIME (i.e. set-up start time)</th>
<th>EVENT END TIME (i.e. when event cleanup is complete)</th>
</tr>
</thead>
<tbody>
<tr>
<td>THU 6-21, FR 5-22, SAT 6-23/2018</td>
<td>11:30 am TENT GOES UP TUESDAY NITE 6-19</td>
<td>9:30 pm Tent removed by Monday</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ACTUAL START &amp; END TIME OF EVENT</th>
</tr>
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<tbody>
<tr>
<td>11:30 am – 9:30 pm</td>
</tr>
</tbody>
</table>

**DESCRIPTION OF EVENT:**
Please be specific regarding area of public space/park and describe Event in detail. If submitting a request for a Road Race (other than a race around Back Cove and using Back Cove Pathway for the route) or a Street Closure (parade, march, rally, etc.), please include a detailed MAP of the COURSE or EVENT AREA (as this will need to be approved by City Departments).

Our 37TH annual Greek Heritage Festival is scheduled for Thursday, Friday and Saturday, June 21-23, 2018, and is a fundraiser for the church. As we did last year and previous years, we would like permission to reserve and close the sidewalk and parking lane section of Pleasant Street directly in front of the Church parking lot during our Greek Heritage Festival. Traffic will still flow on both lanes of Pleasant Street during these days.

We are planning to set up a large tent in our parking lot (TUES NITE June 19). The front tent stakes will extend 5 to 7 feet into Pleasant Street. For safety, we place cones or barricades around the tent stakes. We would assume responsibility for the cones or barricades around the tent stakes and in filling the stake holes upon removal of the tent. The tent and barricades would be identical to what the city gave us permission to do the last many years. The reserved section of Pleasant Street PARKING LANE will need to be posted “No Parking.”

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

<table>
<thead>
<tr>
<th>IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?</th>
<th>NONE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>IS YES FOR FEES, HOW MUCH?</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEE</td>
</tr>
<tr>
<td>STUDENT</td>
</tr>
<tr>
<td>$</td>
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</tbody>
</table>

**WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?** All parking is on the street and at nearby lots as available

**PLEASE CHECK OFF AND ANSWER:**

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

<p>| X-YES | X-NO | X-NOT SURE |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are you setting up a <strong>canopy</strong>? (canopy is 10x10 size) How many?</td>
<td></td>
</tr>
<tr>
<td>Canopies in large areas (Monument Square, Deering Oaks, Payson Park,</td>
<td></td>
</tr>
<tr>
<td>Lincoln Park, Preble Street Grass Area), do not need PAFD’s review.</td>
<td></td>
</tr>
<tr>
<td>For smaller parks and squares (such as Congress Square, Tommy’s Park,</td>
<td></td>
</tr>
<tr>
<td>Post Office Park) review and permission is needed from PAFD Office.</td>
<td></td>
</tr>
<tr>
<td>Do you wish to set up a <strong>tent</strong>? A canopy or tent larger than 10x10</td>
<td></td>
</tr>
<tr>
<td>needs to be approved by PAFD Office and a Tent Permit issued from</td>
<td></td>
</tr>
<tr>
<td>Building Inspections. Please call Inspections – 874-8703 – (</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:buildinginspections@portlandmaine.gov">buildinginspections@portlandmaine.gov</a>) for information on their</td>
<td></td>
</tr>
<tr>
<td>application process. PLEASE give them at least a 2-week notice. PAFD</td>
<td></td>
</tr>
<tr>
<td>will contact Inspections once the tent location is approved so that</td>
<td></td>
</tr>
<tr>
<td>the Tent Permit Application may go forward.</td>
<td></td>
</tr>
<tr>
<td>State size(s):</td>
<td></td>
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<tr>
<td>Exact Location(s) of Tent Placement Requested:</td>
<td></td>
</tr>
<tr>
<td>In order to drive tent stakes into the ground, DIG SAFE must be</td>
<td></td>
</tr>
<tr>
<td>contacted: 888-344-7233.</td>
<td></td>
</tr>
<tr>
<td>Will you be setting up <strong>tables and/or chairs</strong>? How many tables: 60</td>
<td></td>
</tr>
<tr>
<td>chairs: 300</td>
<td></td>
</tr>
<tr>
<td>Are other items or equipment being placed on City property? (i.e.</td>
<td></td>
</tr>
<tr>
<td>Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please</td>
<td></td>
</tr>
<tr>
<td>List:</td>
<td></td>
</tr>
<tr>
<td>Will there be <strong>refreshments</strong> at the event?</td>
<td></td>
</tr>
<tr>
<td>Do you wish to sell <strong>food</strong>? (If so, you will need approval from</td>
<td></td>
</tr>
<tr>
<td>PAFD and possibly a Temporary Food Service License from Business</td>
<td></td>
</tr>
<tr>
<td>Licensing Office)</td>
<td></td>
</tr>
<tr>
<td>List food and drink / Food Trucks, etc.:</td>
<td></td>
</tr>
<tr>
<td>PLEASE NOTE: A Temporary Food Service License is NOT needed when:</td>
<td></td>
</tr>
<tr>
<td>1. Food Vendors have a current City of Portland Food License</td>
<td></td>
</tr>
<tr>
<td>2. Just pre-packaged refreshments, or food &amp; drink items are purchased</td>
<td></td>
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<tr>
<td>or donated from a licensed establishment</td>
<td></td>
</tr>
<tr>
<td>3. Bottled water / water is served</td>
<td></td>
</tr>
<tr>
<td>PLEASE give the BL Office at least a 2-week notice (874-8557). A TFSL</td>
<td></td>
</tr>
<tr>
<td>is needed when food vendors are not licensed, or when food is being</td>
<td></td>
</tr>
<tr>
<td>prepared and cooked at the event.</td>
<td></td>
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<tr>
<td>Will you be setting up a <strong>PA (sound)</strong> system?</td>
<td></td>
</tr>
<tr>
<td>Are you planning on having <strong>Amplified Music</strong>? YES Band? BAND DJ?</td>
<td></td>
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<tr>
<td>Boom Box?</td>
<td></td>
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<tr>
<td>If so, your event may require a concert license. PAFD will advise</td>
<td></td>
</tr>
<tr>
<td>upon review of your application. Amplified speech (i.e. Press</td>
<td></td>
</tr>
<tr>
<td>Conference) does not require the license, however, a Sound Security</td>
<td></td>
</tr>
<tr>
<td>Deposit may be required. There are time restrictions for amplfied</td>
<td></td>
</tr>
<tr>
<td>music/speech in Downtown Parks &amp; Squares: limited to 11:45am – 1:15pm</td>
<td></td>
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<tr>
<td>and 1 hour between 5pm - 8pm.</td>
<td></td>
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<tr>
<td>Will your event require <strong>electricity</strong>? HAVE OUR OWN POWER Electricity</td>
<td></td>
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<tr>
<td>is available at some of the parks &amp; squares (Deering Oaks Park,</td>
<td></td>
</tr>
<tr>
<td>Monument Square, Congress Square, Tommy’s Park, Post Office Park,</td>
<td></td>
</tr>
<tr>
<td>Payson Park, Preble Street Grass Area, Eastern Prom, Lincoln Park).</td>
<td></td>
</tr>
<tr>
<td>Elec. at these areas is turned on and needs to be turned on.</td>
<td></td>
</tr>
<tr>
<td>Are you planning on bringing a <strong>Grill for a Barbecue</strong>? GRILL IS ON</td>
<td></td>
</tr>
<tr>
<td>OUR LOT Only Gas Grills are allowed in the parks (NO CHARCOAL). Grilling</td>
<td></td>
</tr>
<tr>
<td>is subject to weather conditions and possibly Fire Dept. review.</td>
<td></td>
</tr>
<tr>
<td>Will the event require reserved parking spaces / parking meters?</td>
<td></td>
</tr>
<tr>
<td>How many? 5 &quot;No Parking&quot; signs may be purchased at PAFD Office, 212</td>
<td></td>
</tr>
<tr>
<td>Canon Rd.</td>
<td></td>
</tr>
<tr>
<td>Will your event need <strong>safety vests, signs, barricades and/or cones</strong>?</td>
<td></td>
</tr>
<tr>
<td>Please list what you would like to borrow/rent: WE PROVIDE OUR OWN</td>
<td></td>
</tr>
<tr>
<td>CONES A few orange vests and cones may usually be borrowed/rented</td>
<td></td>
</tr>
<tr>
<td>from PAFD Office. Barricades and signs are borrowed/rented from Public</td>
<td></td>
</tr>
<tr>
<td>Works, Customer Service.</td>
<td></td>
</tr>
<tr>
<td>Will your event require <strong>street closures</strong>? (Please be specific</td>
<td></td>
</tr>
<tr>
<td>under &quot;Description of Event&quot;)</td>
<td></td>
</tr>
<tr>
<td>Will your event affect METRO BUS ROUTES? (If service is affected,</td>
<td></td>
</tr>
<tr>
<td>organizer needs to work directly with METRO for endorsement /</td>
<td></td>
</tr>
<tr>
<td>feedback). Please check with Glenn Fenton, METRO: 517-3029 (</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:gfenton@metrobuses.com">gfenton@metrobuses.com</a>) to discuss.</td>
<td></td>
</tr>
<tr>
<td>Will your event require <strong>Police assistance</strong>? An event such as a</td>
<td></td>
</tr>
<tr>
<td>road race, march or parade in the street, would typically require</td>
<td></td>
</tr>
<tr>
<td>police assistance. OVERNIGHT MIDNIGHT TO 8 AM</td>
<td></td>
</tr>
<tr>
<td>Will your event require <strong>Fire/EMS assistance</strong>? (For a large walk/</td>
<td></td>
</tr>
<tr>
<td>race, it is recommended.)</td>
<td></td>
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</tbody>
</table>
### PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

#### ELECTRICITY

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

#### BARBECUES - GAS GRILLS ONLY

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

#### PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where food is being served. Some of Portland’s parks already have portable restrooms from Associate Septic on site (*Preble Street Grass Area at the Preble Street Parking Lot – across from Hannafords, *Entrance to Dyer's Flat – beside Payson Park, *Deering Oaks Park – Playground + Ravine, *East End Beach). Winter & Early Spring: Just EEB. If over 150 people are expected to attend the event, a $25 user fee is required (paid to PAFD). If extra units are rented by organizer, then no additional user fee is assessed. Restrooms are cleaned M, W, & F. If you would like to guarantee that they are cleaned just prior to your event, then you need to call the porta-restroom company (Associated Septic / Royal Flush, 207-799-1986, M-F) to request and pay for a cleaning. If renting units, organizer has the option of renting from Associated Septic / Royal Flush, or from other local companies.

#### TRASH

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

#### MARKING OF GROUNDS

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

#### ADA COMPLIANCE

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

#### PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

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

---

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<tr>
<th>Will your event require <strong>porta-restroom</strong> rental(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a $25 fee is assessed for events where attendance is 150 or more.) Porta-restrooms may be rented from any of the local companies. Units currently on site are through Associated.</th>
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<td>X <strong>WE RENT OURSELVES</strong></td>
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<tr>
<th>Do you wish to have a <strong>banner over the street</strong> to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400 x0.</th>
</tr>
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**INSURANCE CERTIFICATE INFORMATION**

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

- If you answered YES, you shall procure and maintain occurrence-based Commercial General Liability and Product Liability Insurance, when required, in an amount not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement, for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit and the insurance coverage shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. You shall also be responsible for any and all deductibles and/or self-insured retentions.
- Both the Certificate of Insurance **and Additional Insured Endorsement** shall be sent to tym@portlandmaine.gov and must state that the policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).
SMOKE-FREE ZONES

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

NOTIFICATION

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

REVOCABLE PERMIT

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

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES

Type Initials

GAT

DATE 1-18-2018

ASSUMPTION OF RISK & LIABILITY

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

I have read the Assumption of Risk & Liability Agreement

Type Initials

GAT

DATE 1-18-2018

FEE SCHEDULE – UPDATED JULY 1, 2015

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

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

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

CREDIT CARD INFORMATION

Please make out security deposit checks separate from permit fees.

PLEASE RETURN FORM (WORD DOC) AT LEAST 30 DAYS IN ADVANCE TO:
Public Assembly Facilities Div. ~ 212 Canco Rd. ~ Portland ~ ME ~ 04103 email referred: tvm@portlandmaine.gov

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION

(Please make all security deposit checks separate out)

Permit Fee for use of area: $50 - $200 per hour (i.e. a 3 hour event at $50 totals $150) includes use of elec.
If your event is rained out / cancelled, the bulk of the fee is returned (however $50 is non-refundable)
Number of Hours of Use: Approx.
Admin/Staff Fee (support for events): $30/hour
Key Deposit: $50 per key
Impact/Street Closure Fee (variable based on impact): $100–$500

Vest/Cone Rental: $15 per item
Barricade Deposit: $25 per item
Public Space / Park Security Deposit: $100 – $1000
Sound Security Deposit: $100 – $1000
NP Signs: $1 / $15 each
Cone Rental: $2 each
Barricade Rental: $5 each
Bike Rack: $10 each

PLEASE BE SURE AND INITIAL, DATE AND/OR ANSWER ANY HIGH-LIGHTED YELLOW BOXES.

FOR OFFICE USE ONLY

DATE REC'D APPLICATION 1-18-2018
DATE REC'D INSURANCE
PERMIT FEE AMT REC'D $ SECURITY DEPOSIT $ PAYMENT TYPE
VISA $ MC $ CK# $ CK AMOUNT $ CASH AMT $
ORDER DECLARING JUNE 23, 2018
THE ALLAGASH STREET FAIR FESTIVAL

ORDERED, that June 23, 2018 is hereby declared to be the Allagash Street Fair Festival, sponsored by Allagash Brewing Company; and

BE IT FURTHER ORDERED, that in the Allagash Street Fair Festival area shall be Industrial Way from Riverside Street for approximately 1,000 feet to the Office Max Parking Lot at 125 Industrial Way and Allagash Brewing Company property and adjacent business properties, and that Festival area will be reserved for festival attendees, musicians, performers and event staff; and

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

Industrial Way from Riverside to the Office Max Parking Lot at 125 Industrial Way; 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 Allagash Street Fair Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that admission to the Allagash Street Fair Festival inside the Festival Area shall be charged by the Allagash Brewing Company; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Allagash Brewing Company 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. Allagash Brewing Company shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of $400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. Allagash Brewing Company shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. Alcoholic beverages may be sold on the street or public property during the Festival within the fenced-off Festival area and on private property, with sales restricted to people 21-years-old and older and with the festival area staffed by private security and Allagash Brewing Company staff, subject to meeting all liquor licensing requirements;

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

4. Allagash Brewing Company shall have sole authority over which vendors may participate in the Festival and may charge a fee to vendors for the opportunity to vend at the Allagash Street Fair Festival;

5. In addition, the Department of Permitting and Inspections, Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival to those vendors the Organizer has agreed shall participate; and

6. City Departments including the Police Department will provide services at the Allagash Street Fair Festival, and Allagash Brewing Company will reimburse City Departments for the costs; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.
TO: Jon Jennings, City Manager  
FROM: Sally DeLuca, Director of Parks, Recreation & Facilities Management  
DATE: January 18, 2018  
RE: Council Agenda Item – Allagash Street Fair

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I am requesting that the following order be placed on the next City Council agenda (Mon. Feb. 5):  
Order declaring Saturday, June 23, 2018, as the Allagash Street Fair Festival

Allagash Brewing Co. has asked to host their 4th annual neighborhood block party/festival to be held Saturday, June 23, 2018, from 1pm-6pm. The festival makes use of the street (Industrial Way) as well as the adjacent businesses grounds. This event is identical to the one held in 2016 and 2017. This is a ticketed event ($20 adults/children under 12 free); expected attendance is 2,500 people. The event includes entertainment such as live music from several local bands. Eleven breweries will be on site (stations set up on private property), along with food trucks and restaurant vendors.

A fenced perimeter will be set up around the festival grounds (which, similar to last year, has expanded to include the street itself as well as the area businesses). Organizer’s staff (and private security staff) will ensure that only 21+ age wrist banded attendees will be able to purchase and consume alcohol. Organizer is obtaining the necessary “beer tasting” license from the state/city for serving beer, as well as other licenses from the city for food vendors (as needed), large tents, stages and other aspects for the event.

Industrial Way (at Riverside Street) would be closed to traffic for about 1000 feet, to the Office Max parking lot at 125 Industrial Way. Businesses in the closed section of street have endorsed the event for the past 3 years - with the exception of Maine Bay Canvas (organizers will keep the Maine Bay Canvas entrance/exit open for delivery trucks – as they did in 2016 and 2017). The Brock Group will also still have access to their driveway/parking lot to conduct their normal business. Traffic management will consist of event staff-monitored barricades positioned at the intersection of Industrial Way and Riverside Street, as well as across the street at 125 Industrial Way, and security staff monitoring the fenced areas at Industrial Way businesses.

(continued)
Unified Parking will provide a shuttle service for attendees of the festival, and the Bicycle Coalition of Maine will assist with bicycle parking. Organizers will use the Portland Color building as the turnaround for the shuttle drop-off and pick-up (as they did last year).

At least four Police Officers are required to be on site. Organizers will cover the cost of city staff.

In order for the Allagash Street Fair to be held, a portion of Industrial Way needs to be barricaded to vehicle traffic and the entire area fenced off (21+ age participants will be able to walk in the festival area with open beer containers). The Festival Zone is Industrial Way (from Riverside Street to 125 Industrial Way), as well as the businesses properties abutting Industrial Way.

The Festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of Allagash Brewing Company for the purpose of conducting the Festival, subject to the direction and control of the City Manager.

Vehicles in violation of the “no parking” signs in the Festival Zones shall be towed (at owner’s expense).

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

- Allagash Brewing Company shall indemnify the city and hold it harmless from and against all claims arising out of activities during said events, and shall take out and maintain public liability insurance coverage in the amount of at least $400,000 per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the Allagash Street Fair and its activities,

- Alcohol will only be permitted in the service area and on Industrial Way (Festival Zone), during said Festival (the alcohol area includes the street),
City Council approves the service of alcohol in the designated "beer gardens" which are on private properties (grass area and parking lot areas of Allagash and participating Industrial Way businesses), pending a license from the State is issued to the festival organizer,

Conditions for use of grounds and requirements for food service, vending sales, tents, stages, and other items specified in a permit issued from PAFD Office, shall be adhered to,

Business Licensing Office will charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival,

Police Officers will be hired by organizers (Allagash Brewing Company), and

Allagash Brewing Company shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the Allagash Street Fair Festival.

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

<table>
<thead>
<tr>
<th>TODAY'S DATE</th>
<th>10.25.17</th>
<th>ORGANIZATION NAME</th>
<th>Allagash Brewing</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORGANIZATION ADDRESS</td>
<td>50 Industrial Way</td>
<td>CITY</td>
<td>Portland</td>
</tr>
<tr>
<td>CONTACT NAME(S)</td>
<td>Charli McGrew</td>
<td>TITLE: Event Coordinator</td>
<td></td>
</tr>
<tr>
<td>HOME #</td>
<td>WORK 207-878-5385</td>
<td>CELL</td>
<td></td>
</tr>
<tr>
<td>EMAIL</td>
<td><a href="mailto:cmc@allagash.com">cmc@allagash.com</a></td>
<td>EMAIL</td>
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PARK AREA OR PUBLIC SPACE REQUESTED: Industrial Way, Portland (both lanes of the street)

EVENT DAY & DATE(S): June 23rd 2018 SAT

EVENT NAME: 4th Annual Allagash Street Fair

EXPECTED ATTENDANCE: 2,500

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

This year we would like to host a street fair (closing down Industrial Way from Riverside intersection to 125 Industrial Way – Maine Bay Canvas entrance) with neighborhood breweries, local food vendors, crafts and music. It will be very similar to last year. Eleven Breweries will participate along with Allagash. Many canopies will be set up in the street. Stage with music will be set up in Allagash parking lot and other parking lots. A large tent will be set up on private property. 20 porta-toilets will be rented by organizer. A $20 fee will be charged to enter the grounds.

The Maine Bay Canvas driveway will be left open (barricades placed across Industrial Way just after the MBC driveway – so MBC Trucks and employees can access their driveway). The Brock Group will also need access to their driveway.

The area for participants carrying beer around is the same for last year: we would like to “snow fence” the entire perimeter of the event so that guests are free to roam the event with a beer rather than being in barricaded beer gardens. This would mean open containers (cups of beer) are carried on the city street. We would use wrist bands to distinguish under aged guests and would have ample private security and local PD patrolling the area.

A MEETING with City Staff and organizers was held on 3-3-16 to discuss logistics of the 2016 event (including needs for PD/EMS support... EMS will be on standby). The 2018 event is identical to 2016 (and 2017 was identical to 2016). POLICE: 3 officers + supervisor will be hired by organizers. A number of Allagash Security Staff will handle/monitor/oversee the security beer fence perimeter areas. Licenses will be secured by organizer from the State for liquor service areas.

Organizer is providing a shuttle service. One of the pickup areas is a school parking lot (Lyseth School Lot).

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT? Please check: ___x_____. FEE _________PLEDGES

IF YES FOR FEES, HOW MUCH? FEE $20.00

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN? We will hope to use the Lyseth/Lyman Moore school again for this.
PLEASE CHECK OFF AND ANSWER:
PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

<table>
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<tr>
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<th>X-YES</th>
<th>X-NO</th>
<th>X-NOT SURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>* Are you setting up a canopy(s)? (canopy is 10x10 size) How many: 20</td>
<td></td>
<td>X</td>
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<tr>
<td>* Do you wish to set up a tent(s)? (A canopy or tent larger than 10x10 needs to be approved by PAFD Office and a Tent Permit issued from Building Inspections; please call Inspections - 874-8703 – (<a href="mailto:buildinginspections@portlandmaine.gov">buildinginspections@portlandmaine.gov</a>) for information on their application process / PLEASE give them at least a 2-week notice). PAFD will contact Inspections once the tent location is approved so that the Tent Permit Application may go forward. State size(s): 20x30 Exact Location(s) of Tent Placement Requested: Private Property In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233.</td>
<td>X</td>
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<tr>
<td>* Will you be setting up tables and/or chairs? How many tables: 30 chairs: 100</td>
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<td>X</td>
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<tr>
<td>* Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List:</td>
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<tr>
<td>* Will there be refreshments at the event? Do you wish to sell food?</td>
<td>X</td>
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<td>(If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office) List food and drink / Food Trucks, etc.:</td>
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<tr>
<td>* Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)?</td>
<td>X</td>
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<tr>
<td>If so, you will need approval from PAFD and you will need to apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557) – 2 week notice.</td>
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<tr>
<td>List items you wish to sell: t-shirts</td>
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<tr>
<td>* Are you setting up a PA (sound) system?</td>
<td>X</td>
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<tr>
<td>If so, you may require a concert license from BL Office (874-8557).</td>
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<td>* Are you planning on bringing a Grill for a Barbecue? Only Gas Grills are allowed in the parks (NO CHARCOAL). Grilling is subject to weather conditions and possibly Fire Dept. review.</td>
<td>X</td>
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<td>* Will the event require electricity? Electricity is available at some of the parks &amp; squares</td>
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<td>* Are you planning on reserved parking spaces / parking meters? How many?</td>
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<td>&quot;No Parking&quot; signs may be purchased at PAFD Office, 212 Canco Rd.</td>
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<td>* Will your event need safety vests, signs, barricades and/or cones? Please list what you would like to borrow: A few orange vests and cones may usually be borrowed from PAFD Office. Barricades and signs are borrowed from Public Works, Customer Service.</td>
<td>X</td>
<td></td>
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<td>* Will your event require street closures? (Please be specific under &quot;Description of Event&quot;) Will your event affect METRO BUS ROUTES? NO (If service is affected, organizer needs to work directly with METRO for endorsement / feedback). Please check with Glenn Fenton, METRO: 517-3029 (<a href="mailto:gfenton@qpmetrobus.com">gfenton@qpmetrobus.com</a>) to discuss.</td>
<td>X</td>
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<td>* Will your event require Police assistance? An event such as a road race, march or parade in the street, would typically require police assistance.</td>
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<td>* Will your event require Fire/EMS assistance? (For a large walk/race, it is recommended.)</td>
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* Both the Certificate of Insurance and Additional Insured Endorsement shall be sent to tvm@portlandmaine.gov and must state that the policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).

**PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES**

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

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

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

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

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

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

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES TYPE INITIALS CM DATE 10/25/17

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

I have read the Assumption of Risk & Liability Agreement TYPE INITIALS CM DATE 10/25/17
**FEE SCHEDULE - UPDATED JULY 1, 2015**

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

<table>
<thead>
<tr>
<th>Feature</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple Event (no registration fee)</td>
<td>$50/hour</td>
</tr>
<tr>
<td>Event with registration or pledges &amp; attendance 25 - 300</td>
<td>$100/hr</td>
</tr>
<tr>
<td>Event with registration or pledges &amp; attendance 301+</td>
<td>$200/hr</td>
</tr>
<tr>
<td>Public Space/Park Security Deposit/Sound Security Deposit</td>
<td>$100 - $1000</td>
</tr>
<tr>
<td>Impact/Street Closure Fee (variable based on impact)</td>
<td>$0-$500</td>
</tr>
<tr>
<td>Admin/Staff Fee (support for events)</td>
<td>$30/hour</td>
</tr>
<tr>
<td>Porta Restroom User Fee (if attendance is 150+)</td>
<td>$25</td>
</tr>
</tbody>
</table>

**CREDIT CARD INFORMATION**

Visa or MasterCard Number | Exp Date (Mon/Yr)
--- | ---

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

**PLEASE MAKE CHECKS PAYABLE TO “CITY OF PORTLAND”**

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

**TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION**

(please make all security deposit checks out separately)

| Permit Fee for use of area: $50 - $200 per hour | $1600 + $750 DUE |
| Number of Hours of Use: Approx. 8 hours (11am - 7pm) | $750 for use of school parking lot |
| Admin/Staff Fee (support for events): | $30/hour |
| Key Deposit: | $50 per key |
| Impact/Street Closure Fee (variable based on impact): | $100-$500 |
| Vest/Cone Deposit: | $15 per item |
| Barricade Deposit: | $25 per item |
| Single Concert (Amplified Sound) License Fee ($36 per event - if applicable) | $750 for use of school parking lot |
| Public Space / Park Security Deposit: | $100 - $1000 due |
| NP Signs: | $1 / $15 each |
| Cone Rental: | $2 each |
| Barricade Rental: | $5 each |
| Bike Rack: | $10 each |

**FOR OFFICE USE ONLY**

<table>
<thead>
<tr>
<th>DATE REC'D</th>
<th>PAYMENT TYPE</th>
<th>NEED</th>
<th>DUE</th>
<th>AMT REC'D</th>
<th>$ NEED</th>
<th>SECURITY DEPOSIT</th>
<th>$ NEED</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPLICATION</td>
<td>VISA $</td>
<td>MC $</td>
<td>CK #</td>
<td>CK AMOUNT $</td>
<td>CASH AMT $</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’ APPROVAL OF:

Maine Lobster Shack LLC DBA Maine Lobster Shack. Application for a Class I FSE with Outdoor Dining on Private Property at 425 Fore Street.
Letter of Intent

Date: December 4, 2017

Maine Lobster Shack, LLC
425 Fore St.
Portland, Me 04101

TO: City of Portland
Honorable Mayor and Members of the City Council

Maine Lobster Shack is respectively applying for a business license to operate a Seafood Restaurant (Maine Lobster Shack) at 425 Fore St. The proposed restaurant will be located on the same block where Five Guys Burgers and Gelato Fiasco are located - in the old space of Helene M – a woman's apparel retail store. The restaurant will be family oriented with hours of operations between 11am ~ 10:30 PM. It will have sitting inside and outside, the outside dinning will be limited to 5-6 tables in the front of the store -- located on a private patio space. The current outside patio is approximately 20’ long and 17’ wide. The outside dinning will be closed during the winter months.

Thank you for your consideration.
Respectfully,

Michael Michalski – Owner
Maine Lobster Shack, LLC
# Application for Food Service Establishment with Alcoholic Beverages License

## Business Information

<table>
<thead>
<tr>
<th>Business Name (dba):</th>
<th>Phone:</th>
<th>2078350700</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAINE LOBSTER SHACK LLC</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Location Address:</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>425 FOREST AVE 500 PORTLAND ME</td>
<td>04101</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If new, what was formerly at this location:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Helene M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address:</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.O. Box 841 YARMOUTH ME</td>
<td>04096</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Phone:</th>
<th>2074507755</th>
</tr>
</thead>
<tbody>
<tr>
<td>MICHAEL MICHALSKI</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Manager of Establishment:</th>
<th>Date of Birth:</th>
<th>Phone:</th>
<th>2074507755</th>
</tr>
</thead>
<tbody>
<tr>
<td>MICHAEL MICHALSKI</td>
<td>4-19-1960</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Owner of Premises (Landlord):</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAST BROWN</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address of Premises Owner:</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 COMMERCIAL ST, PORTLAND ME</td>
<td>04101</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Name of Owner(s)</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAINE LOBSTER SHACK LLC</td>
<td>P.O. Box 841 YARMOUTH ME</td>
<td>04096</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Phone:</th>
<th>2074507755</th>
</tr>
</thead>
<tbody>
<tr>
<td>MICHAEL MICHALSKI</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Principal Officers</th>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>MICHAEL MICHALSKI</td>
<td>Owner/Member</td>
<td>4-19-1960</td>
<td>YARMOUTH, ME 04096</td>
</tr>
</tbody>
</table>
About Your Establishment

Class of Liquor License: [ ] III [ ] IV [ ] Class I

Type of food served: [ ] Seafood

Please circle all that will be served: [ ] Beer [ ] Wine [ ] Liquor

Projected percentage of sales: [ ] Generated from Food: 80% [ ] Generated from Alcohol: 20%

Hours & days of operation: 11:00 AM ~ 10:30 PM

QUESTIONS

Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?

If No, please explain:

Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?

If yes, give the distance:

Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required)

Will you permit dancing on the premises?

Will you permit dancing after 1:00 a.m.?

Will you have outside dining? (If yes, an Outdoor Dining Application is required)

If yes, will the outside dining be on [ ] PUBLIC [ ] PRIVATE property (circle one).

Will you have any amusement devices (pinball, video games, juke box)?

If yes, please list: # of pinball machines: # of amusements: # of pool tables:

What is your targeted opening date? [ ] Yes [ ] No 3/15/2018

Does the issuance of this license directly or indirectly benefit any City employee(s)?

If Yes, list name(s) of employee(s) and department(s):

Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?

If Yes, please list business name(s) and location(s):

Is any principal officer under the age of 21?

Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?

If Yes, please explain:

I, Michael Michaelski, do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 553 (2) (G).

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

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

Signature __________________________ Title: ___________ Manager ___________ Date ___________


REVISED 3/18/15
Outdoor Dining Permit on Private Property
Supplemental Application
License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License
Valid April 1-November 15

☑ Outdoor Dining on Private Property $125.00 ☐ Legal Advertisement Deposit $100.00

<table>
<thead>
<tr>
<th>Business Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td><strong>MAINE LOBSTER SHACK</strong></td>
</tr>
<tr>
<td>Phone:</td>
<td>207-883-0700</td>
</tr>
<tr>
<td>Location Address:</td>
<td>425 Fore St., Portland, ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04101</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>P.O. Box 841, Yarmouth, ME 04096</td>
</tr>
<tr>
<td>Zip:</td>
<td></td>
</tr>
<tr>
<td>Contact Person:</td>
<td><strong>MICHAEL MICHALSKI</strong></td>
</tr>
<tr>
<td>Phone:</td>
<td>207-450-7755</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:MICHAEL@MAINELOBSTERSHACK.COM">MICHAEL@MAINELOBSTERSHACK.COM</a></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td><strong>MICHAEL MICHALSKI</strong></td>
</tr>
<tr>
<td>Date of Birth:</td>
<td>4-19-60</td>
</tr>
<tr>
<td>Phone:</td>
<td>207-507-55</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>60 Commercial St., Portland, ME 04101</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Owner Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Name</td>
<td><strong>MAINE LOBSTER SHACK, LLC</strong></td>
</tr>
<tr>
<td>Corporate Mailing Address</td>
<td>P.O. Box 841, Yarmouth, ME 04096</td>
</tr>
<tr>
<td>Zip:</td>
<td></td>
</tr>
<tr>
<td>Contact Person:</td>
<td><strong>MICHAEL MICHALSKI</strong></td>
</tr>
<tr>
<td>Phone:</td>
<td>207-450-7755</td>
</tr>
<tr>
<td>Principal Officers</td>
<td>Title</td>
</tr>
<tr>
<td>Michael Michalski</td>
<td>Owner</td>
</tr>
</tbody>
</table>
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th>I, II, IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>SEA Food</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td>Booze, Food, Liquor</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>11:00 AM - 10:30 PM</td>
</tr>
<tr>
<td>Number of Tables</td>
<td>5</td>
</tr>
<tr>
<td>Number of Chairs</td>
<td>16</td>
</tr>
</tbody>
</table>

Design and Construction

- If you are building a structure or adding impervious surface for the outdoor dining area please contact the Permitting and Inspections Department for permitting requirements at permitting@portlandmaine.gov or 874-8703.

Maintenance and Operations

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- No food shall be prepared in the designated outdoor dining area.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.

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

Signature: __________________________ Title: __________________________ Date: __12/05/17____________

For Administrative Use Only

<table>
<thead>
<tr>
<th>Amount:</th>
<th>Date Paid:</th>
<th>CC CA CK</th>
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<tbody>
<tr>
<td>Request Date</td>
<td>Approval</td>
<td>Notes:</td>
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<tr>
<td>FD:</td>
<td>Health:</td>
<td>PD:</td>
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<table>
<thead>
<tr>
<th>Amount:</th>
<th>Date Paid:</th>
<th>CC CA CK</th>
</tr>
</thead>
</table>
NEW application: ☑ Yes ☐ No

INDICATE TYPE OF PRIVILEGE: ☑ MALT ☑ VINOUS ☑ SPIRITOUS

INDICATE TYPE OF LICENSE:

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

PRESENT LICENSE EXPIRES

ALL QUESTIONS MUST BE ANSWERED IN FULL

Corporation Name: MAINE LOBSTER SHACK, LLC

APPLICANT(S) - (Solo Proprietor)

Physical Location:
425 FORE ST., ME 04101

City/Town: PORTLAND
State: ME
Zip Code: 04101

Mailing Address

Address
425 FORE ST., #500

City/Town: PORTLAND
State: ME
Zip Code: 04101

Telephone Number: 207-835-0700

Fax Number: 207-835-0700

Federal I.D. #: 82-2106818

Email Address: michael@mainelobstershack.com

Business Name (D/B/A): MAINE LOBSTER SHACK

Business Telephone Number: 207-835-0700

Fax Number: 207-835-0700

Seller Certificate #: 1186790

or Sales Tax #: 027-835-0700

If business is NEW or under new ownership, indicate starting date: 7/21/2017

Requested inspection date: 12/30/2017
Business hours: 8am - 10:00pm

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

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

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

If YES, complete Supplementary Questionnaire

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

7. If manager is to be employed, give name: MICHAEL M. SVI

8. Business hours: __________

9. Business records are located at: 425 FORE ST., #500, PORTLAND, ME 04101

10. Are applicants(s) citizens of the United States? YES ☑ NO ☐
11. Is/are applicant(s) residents of the State of Maine?  YES √ NO □

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

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>MICHAEL MICHALSKI</td>
<td>4-19-1960</td>
<td>POLAND</td>
</tr>
</tbody>
</table>

Residence address on all of the above for previous 5 years (Limit answer to city & state)

80 Bear Gulch Dr., Fortuna Valley, CA 94028

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

Name: ___________________________ Date of Conviction: ___________________________
Offense: ___________________________ Location: ___________________________
Disposition: ___________________________

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued? YES □ No ☑ If Yes, give name: ___________________________

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

16. Does/do applicant(s) own the premises? Yes □ No ☑ If No give name and address of owner: ___________________________

17. Describe in detail the premises to be licensed; (On Premise Diagram Required) ___________________________

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services? YES □ NO ☑ Applied for: ___________________________

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

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

IF YES, give details:

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

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

Dated at: ___________________________ on ___________________________ 2017

Please sign in blue ink

Signature of Applicant or Corporate Officer(s) ___________________________

Print Name ___________________________

Signature of Applicant or Corporate Officer(s) ___________________________

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

Corporate Information Required for Business Entities Who Are Licensees  

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

1. Exact legal name: **MAINE LOBSTER SHACK, LLC**

2. Doing Business As, if any: 

3. Date of filing with Secretary of State: **7/21/2017** State in which you are formed: **MAINE**

4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: 

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS (5 YEARS)</th>
<th>Date of Birth</th>
<th>TITLE</th>
<th>Ownership %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Michaels</td>
<td>24 Waters Edge Dr, Yarmouth, ME 04096</td>
<td>4/19/1960</td>
<td>Owner/Manager</td>
<td>100%</td>
</tr>
<tr>
<td>Michael Michaels</td>
<td>80 Bear Gulch Dr, Bandon Valley, CA 94088</td>
<td>4/19/60</td>
<td>Owner/Manager</td>
<td>100%</td>
</tr>
</tbody>
</table>

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

6. If Co-Op # of members: [ ] (list primary officers in the above boxes)
7. Is any principal person involved with the entity a law enforcement official?
   Yes ☐ No ☑
   If Yes, Name: ________________________ Agency: ________________________

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?
   Yes ☐ No ☑

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed).
   Name: ________________________________
   Date of Conviction: _________________
   Offense: ________________________________
   Location of Conviction: ________________________________
   Disposition: ________________________________

Signature: ________________________________
Signature of Duly Authorized Person

[Signature]

Date: 12/05/2017

[Print Name of Duly Authorized Person]

Submit Completed Forms To:

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

Outside Dining Area
CHOWDERS
- NEW ENGLAND CLAM CHOWDER – cup - 5.75; mug - 7.00
- RHODE ISLAND RED CHOWDER – cup - 5.75; mug - 7.00
- LOBSTER BISQUE – cup - 8.75; mug - 10.75
- ADD SOURDOUGH BREAD BOWL – 3.00

SEAFOOD SHACKITIZERS
- OYSTERS ON THE ¼ SHELL – each – 3.00; ½ dozen – 18.00; dozen – 29.00
- POT OF STEAMED MUSSELS – 19.00 steamed in white wine & shack garlic butter
- POT OF STEAMED COUNTNECK CLAMS – 19.00 steamed in white wine & shack garlic butter
- POT OF STEAMED STEAMERS – 28.00 - steamed in white wine & shack garlic butter
- FRIED WHOLE BELLY CLAMS – 25.00; FRIED CLAM STRIPS – 12.00
- FRIED SCALLOPS – 13.00; FRIED OYSTERS – 15.00; FRIED CALAMARI – 11.00
- FRIED SHRIMP – 13.00; FRIED COCONUT SHRIMP – 14.00; POPCORN SHRIMP – 9.00
  All the fried items are available as a basket with fries and slaw or a plate with choice of sides for additional charge.
  Sides: Steamed veggies, Mac & Cheese or Onion Rings.

ROLLS AND SANDWICHES
- MAINE LOBSTER ROLL (Lobster mixed with Hellman’s mayo, green onions, salt & pepper) – MKT PRICE
- NAKED LOBSTER ROLL (Lobster meat on a roll served with sides of mayo & butter) – MKT PRICE
- DOUBLE PLAY LOBSTER ROLL (Two lobster rolls of your choice in one basket) – MKT PRICE
- CRAB ROLL – 20.00
- FRIED OYSTER ROLL – 16.00
- FRIED CLAM ROLL – 25.00
- FRIED HADDOCK SANDWICH – 15.75
- FRIED HALIBUT BURGER – 10.75
- GRILLED CHICKEN SANDWICH – 11.00
- OLD FASHION NATURAL CASING HOT DOG – 6.00
- BBQ PULLED PORK SANDWICH – 11.00
  All served with fries and a pick of slaw.

HOT PLATES
- STEAMED LOBSTER (pound and a quarter) – one for MKT PRICE; two for MKT PRICE
- STEAMED LOBSTER (two pounds) – one for MKT PRICE; two for MKT PRICE
  Served with coleslaw, CHOOSE corn on the cob OR BAKE PATATO – Maine grown.

www.mainelobstershack.com
• FISH & CHIPS Served with fries and coleslaw — 15.75
• GRILLED or BLACKENED SALMON — 18.75
• RITZ CRACKER CRUSTED HADDOCK — 15.75
• PAN SEARED SCALLOPS — 23.00
  Served with coleslaw and one of the following: fries, mac & 5 cheese, or beer battered onion rings. Sautéed vegetables add $3.00

SALAD PLATES

• THE LOUIE SALAD — 8.00; romaine-hearts, cherry tomato, hardboiled egg, cucumber & house made Louise dressing
  WITH LOBSTER — MKT PRICE; CRAB — 23.75; SALMON — 21.75; SHRIMP — 19.75
• THE CAESAR SALAD — 8.00; romaine-hearts, shack-made croutons, parmesan cheese & house made Caesar dressing
  WITH LOBSTER — MKT PRICE; CRAB — 23.75; SALMON — 21.75; SHRIMP — 19.75

SHACK MacPLATES

• BAKED MACARONI and 5 CHEESE — 6.00
  WITH LOBSTER — MKT PRICE; PULLED PORK — 14.75; VEGETABLES — 9.75

DESSERT

BLUEBERRY PIE — 6.50 ADD SCOOP VANILA ICECREAM - $2.00
KEY LIME PIE — 5.00
APPLE COBBLER OR APPLE PIE — 6.00
VANILA ICECREAM — $7.00
BROWNIE SUNDAY — 7.00

COLD DRINKS

MAINE ROOT SODA BOTTLES — 3.00
BOTTLED SODA'S AND WATERS'S — 3.00
FINE CRAFT BEERS ON TAP — SM — 6.00; LG — 9.00

LIST OF CURRENT CRAFT BEERS ON THE CHALK BOARD
CRAP BEERS IN A TIN CAN — 4.00
NICE BEERS IN A BOTTLE — ASK YOUR SERVER
WINE'S BY THE GLASS — 9.00

WINE — SEE THE LIST
BEER — SEE THE LIST
HARD LIQUOR— SEE THE LIST

COFFEE

NASTLE COFFEE

www.mainelobstershack.com
Re: Maine Lobster Shack

Kevin Cashman <kevindc@portlandmaine.gov>  
Tue, Jan 9, 2018 at 2:10 PM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>
Cc: Benjamin Pearson <bnp@portlandmaine.gov>, Chris Pirone <cpp@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, James Sweatt <js@portlandmaine.gov>, John Brennan <brennanj@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Rachel Smith <rms@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Vernon Malloch <vwm@portlandmaine.gov>

PD has no objections.

Kevin C.

On Tue, Jan 9, 2018 at 12:01 Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

Please see the attached application for Maine Lobster Shack, 425 Fore Street for Outdoor Dining on Private Property.

The originally applied on 5/17 for a Class III & IV. They are now applying for a Class I with the Outdoor dining. They have not opened yet, so it is still pending in UI. Please note they originally applied with the name Old Port Lobster Shack and are now Maine Lobster Shack. Same ownership.

This will go before council on 2/5.

Owner is Maine Lobster Shack LLC
Michael Michalski
207-450-7755
michael@mainelobsterskack.com

The information had already been added to UI for approvals. Thanks Jessica

Jessica Blais Hanscombe
Licensing and Registration Coordinator
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

Sent from Gmail Mobile
January 17, 2018

Maine Lobster Shack LLC
PO Box 841
Yarmouth ME 04096

Re: Maine Lobster Shack LLC DNA Maine Lobster Shack. Application for a Class I FSE with Outdoor Dining on Private Property at 425 Fore Street.

Dear Michael Michalski

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday February 5, 2018 at 5:30 p.m., for the review of an application for a Class I FSE with Outdoor Dining on Private Property at 425 Fore Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

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

Sincerely,

Jessica Hanscombe
Licensing and Registration Coordinator
Legal Advertisement

Notice of Public Hearing
City of Portland

A Public Hearing will be held on February 5th at 5:30 P.M., in City Council Chambers, 389 Congress St., Maine Lobster Shack LLC DBA Maine Lobster Shack. Application for a Class I FSE with Outdoor Dining on Private Property at 425 Fore Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
ORDER
GRANTING MUNICIPAL OFFICERS' APPROVAL OF:

Rising Tide Brewing Company LLC DBA Rising Tide Brewing Company LLC. Application for a Class III & IV FSE with Entertainment without Dance limited to 16 hours per week and Outdoor Dining on Private Property at 103 Fox Street.
Dear Mayor Strimling and Members of the City Council:

As Rising Tide Brewing Company continues to grow, one request we have heard over and over again is for us to offer a gluten-free alcoholic beverage option for those who cannot or prefer not to consume gluten. We do not have the ability to manufacture a gluten-free product at this time. As a result, we would like to add an additional Chapter 43 state liquor license to our space that would allow us to serve Maine-made wine and cider, purchased from licensed distributors in the usual manner. A newly clarified state law permits such chapter 43 licenses to be held in the same physical space where we exercise the tasting room to-go sale privileges under our brewery license, without needing to build a wall between the to-go sales and the on-premise sales. We believe this addition of gluten-free beverages is an appropriate “accessory use” for our brewery under the IL-b zone rules.

Accordingly, we are submitting for your approval an application for a malt and vinous license privilege from the State, as well as the accompanying city licenses required to serve the required, limited menu of sandwiches and snacks, to accompany this license. We also hold a city tasting room license, an outdoor dining permit, and an entertainment license that would continue to be maintained in place.

Please do not hesitate to contact me at 207-650-0678 if you require any additional information.

Best regards,

Heather Sanborn
Co-Owner/Dir. of Business Ops.
**Application for Food Service Establishment with Alcoholic Beverages License**

<table>
<thead>
<tr>
<th>Business Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>Rising Tide Brewing Company LLC</td>
</tr>
<tr>
<td>Location Address:</td>
<td>101-103 Fox Street, Portland, ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04101</td>
</tr>
<tr>
<td>Phone:</td>
<td>207-650-0678</td>
</tr>
<tr>
<td>If new, what was formerly at this location:</td>
<td>Maine Craft Distilling was at 101 Fox Street</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>103 Fox Street, Portland, ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04101</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Heather Sanborn</td>
</tr>
<tr>
<td>Phone:</td>
<td>207-650-0678</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:heather@risingtidebrewing.com">heather@risingtidebrewing.com</a></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Heather Sanborn</td>
</tr>
<tr>
<td>Date of Birth:</td>
<td>07/22/1976</td>
</tr>
<tr>
<td>Phone:</td>
<td>207-650-0678</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>Fox Street Realty LLC</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>322 Fore Street, 3rd Fl., Portland, ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04101</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Name of Owner(s)</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heather Sanborn</td>
<td>07/22/1976</td>
<td>82 Frost Hill Road, Portland, ME 04103</td>
</tr>
<tr>
<td>Nathan Sanborn</td>
<td>11/15/1974</td>
<td>82 Frost Hill Road, Portland, ME 04103</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Zip:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rising Tide Brewing Company LLC</td>
<td>103 Fox Street, Portland, ME</td>
<td>04101</td>
<td>207-650-0678</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Heather Sanborn</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title:</td>
<td>member</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of Birth:</td>
<td>07/22/1976</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residence Address:</td>
<td>82 Frost Hill Road, Portland, ME 04103</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nathan Sanborn</td>
<td>member</td>
<td>11/15/1974</td>
<td>82 Frost Hill Road, Portland, ME 04103</td>
</tr>
</tbody>
</table>
### About Your Establishment

<table>
<thead>
<tr>
<th>Class of Liquor License:</th>
<th>Brewery Tasting Room plus Class III wine license <strong>Class IV</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>Sandwiches prepared by another licensed establishment and heated on-site; pub snacks.</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td>Beer (Wine) liquor</td>
</tr>
<tr>
<td>Projected percentage of sales:</td>
<td>Generated from Food: 10% Generated from Alcohol: 90%</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>Monday through Saturday 12pm to 7pm; Sundays 12pm to 5pm.</td>
</tr>
</tbody>
</table>

### QUESTIONS

<table>
<thead>
<tr>
<th>Question</th>
<th>Y/N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?</td>
<td>Y/N</td>
</tr>
<tr>
<td>Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?</td>
<td>Y/N</td>
</tr>
<tr>
<td>Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing &amp; Entertainment is required.)</td>
<td>Y/N</td>
</tr>
<tr>
<td>Will you permit dancing on the premises? <strong>Existing Entertainment License in place</strong></td>
<td>Y/N</td>
</tr>
<tr>
<td>Will you permit dancing after 1:00 a.m.?</td>
<td>Y/N</td>
</tr>
<tr>
<td>Will you have outside dining? (If yes, an Outdoor Dining Application is required) <strong>Existing Outdoor Dining License in Place</strong></td>
<td>Y/N</td>
</tr>
<tr>
<td>Will you have any amusement devices (pinball, video games, juke box)?</td>
<td>Y/N</td>
</tr>
<tr>
<td>What is your targeted opening date? <strong>February 1 for addition of wine</strong></td>
<td></td>
</tr>
<tr>
<td>Does the issuance of this license directly or indirectly benefit any City employee(s)?</td>
<td>Y/N</td>
</tr>
<tr>
<td>Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?</td>
<td>Y/N</td>
</tr>
<tr>
<td>Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?</td>
<td>Y/N</td>
</tr>
</tbody>
</table>

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

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license. It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

**Signature** [Signature] **Title** Member  **Date** 12/5/17

---

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

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**REVISED 3/18/15**
Outdoor Dining Permit on Private Property
Supplemental Application

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

- Outdoor Dining on Private Property $125.00
- Legal Advertisement Deposit $100.00

<table>
<thead>
<tr>
<th>Business Information</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>207-650-0678</td>
</tr>
<tr>
<td>Location Address:</td>
<td>103/101 Fox Street Portland 04101</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>103 Fox Street Portland 04101</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Heather Sanborn</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:heather@risingtidebrewing.com">heather@risingtidebrewing.com</a></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Heather Sanborn</td>
</tr>
<tr>
<td>Date of Birth:</td>
<td>7/22/76</td>
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<tr>
<td>Owner of Premises (Landlord):</td>
<td>Fox Street Realty LLC</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>322 Fore St. Portland ME 04101</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Contact Person:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rising Tide Brewing Co LLC</td>
<td>103 Fox Street Portland 04101</td>
<td>Heather Sanborn</td>
<td>207-650-0678</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Principal Officers</th>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heather Sanborn</td>
<td>Member</td>
<td>7/22/76</td>
<td>82 Forest Hill Rd Portland ME 04103</td>
</tr>
<tr>
<td>Nathan Sanborn</td>
<td></td>
<td>11/15/74</td>
<td></td>
</tr>
</tbody>
</table>
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th>Class II: IX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>Sandwiches, olives, snacks</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td>Beer, Wine, Liquor</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>Monday-Saturday 12-7 pm; Sun 12-5pm</td>
</tr>
<tr>
<td>Number of Tables:</td>
<td>10</td>
</tr>
<tr>
<td>Number of Chairs:</td>
<td>50</td>
</tr>
</tbody>
</table>

Design and Construction

- If you are building a structure or adding impervious surface for the outdoor dining area please contact the Permitting and Inspections Department for permitting requirements at permitting@portlandmaine.gov or 874-8703.

Maintenance and Operations

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- No food shall be prepared in the designated outdoor dining area.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.

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

Signature: [Signature]  
Title: [Title]  
Number: [Number]  
Date: 6/26/17

For Administrative Use Only

<table>
<thead>
<tr>
<th>Amount:</th>
<th>Date Paid:</th>
<th>FD:</th>
<th>Request Date / Approval</th>
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</thead>
<tbody>
<tr>
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<th>BI:</th>
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<tbody>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Treasury:</th>
<th>Zoning:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes: [Notes]
NEW application:  ■ Yes  □ No

PRESENT LICENSE EXPIRES

INDICATE TYPE OF PRIVILEGE:  ■ MALT  ■ VIINOUS  □ SPIRITUOUS  plus existing Tasting Room Privileges for to-go sales

INDICATE TYPE OF LICENSE:
■ RESTAURANT  (Class I,II,III,IV)  □ RESTAURANT/LOUNGE  (Class XI)  □ CLASS A LOUNGE  (Class X)
□ HOTEL  (Class I,II,III,IV)  □ HOTEL, FOOD OPTIONAL  (Class I-A)  □ BED & BREAKFAST  (Class V)
□ CLUB w/o Catering  (Class V)  □ CLUB with CATERING  (Class I)  □ GOLF COURSE  (Class I,II,III,IV)
□ TAVERN  (Class IV)  □ QUALIFIED CATERING  □ OTHER:

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

Corporation Name:  Rising Tide Brewing Company LLC
Business Name (D/B/A):

APPLICANT(S) -(Sole Proprietor)  DOB:  Physical Location:

101/103 Fox Street  Portland Maine 04101

DOB:  City/Town  State  Zip Code
Physical Location:  Portland Maine 04101

Address  Mailing Address
103 Fox Street  103 Fox Street

City/Town  State  Zip Code  City/Town  State  Zip Code
Portland Maine 04101

Telephone Number  Fax Number  Business Telephone Number  Fax Number
207-650-0678  207-650-0678

Federal I.D. #  Seller Certificate #:  1146157
27-2149109  or Sales Tax #:

Email Address:  heather@risingtidebrewing.com  Website:  www.risingtidebrewing.com

If business is NEW or under new ownership, indicate starting date:  new addition of wine to license

Requested inspection date:  Before February 1, 2018  Business hours:  12-7pm M-Sat, 12-Spm Sun

1. If premise is a Hotel or Bed & Breakfast, indicate number of rooms available for transient guests: 

2. State amount of gross income from period of last license: ROOMS $  FOOD $  LIQUOR $

3. Is applicant a corporation, limited liability company or limited partnership?  ■ YES  □ NO  □
If yes, please complete the Corporate Information required for Business Entities who are licensees.

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

B-33  Rising Tide Brewing Company  (Use an additional sheet(s) if necessary.)

License #  Name of Business
103 Fox Street  Portland, ME 04101

Physical Location  City / Town

On Premise Rev. 10-2017
5. Do you permit dancing or entertainment on the licensed premises? **YES □ NO □**

6. If manager is to be employed, give name: **Heather Sanborn**

7. Business records are located at: **103 Fox Street, Portland, ME 04101**

8. Is/are applicants(s) citizens of the United States? **YES □ NO □**

9. Is/are applicant(s) residents of the State of Maine? **YES □ NO □**

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

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heather Sanborn</td>
<td>7/22/1976</td>
<td>Bangor, ME</td>
</tr>
<tr>
<td>Nathan Sanborn</td>
<td>11/15/1974</td>
<td>Portland, ME</td>
</tr>
</tbody>
</table>

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Nathan & Heather Sanborn, Portland, ME

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

<table>
<thead>
<tr>
<th>Name:</th>
<th>Date of Conviction:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offense:</th>
<th>Location:</th>
<th>Disposition:</th>
<th>(use additional sheet(s) if necessary)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued? **YES □ NO □**

If YES, give name: ____________________________

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

14. Does/do applicant(s) own the premises? **YES □ NO □**

If NO give name and address of owner: **Fox Street Realty**

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

| tasting room and expanded tasting room area |

16. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services? **YES □ NO □**

Applied for: ____________________________

17. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? **3000+ feet**

Which of the above is nearest? **East End Community School**

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

If YES, give details: **Bangor Savings Bank loans, secured by the SBA.**
The Division of Liquor Licensing & Enforcement is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

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

Dated at: Portland, Maine on December 5, 2017

Print Name
Heather Sanborn

FEE SCHEDULE

FILING FEE: (must be included on all applications) ................................................................. $ 10.00

Class I Spirituous, Vinous and Malt ......................................................................................... $ 900.00
CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.

Class IA Spirituous, Vinous and Malt, Optional Food (Hotels Only) ................................ $1,100.00
CLASS IA: Hotels only that do not serve three meals a day.

Class II Spirituous Only ........................................................................................................... $ 550.00
CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.

Class III Vinous Only ................................................................................................................ $ 220.00
CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.

Class IV Malt Liquor Only ....................................................................................................... $ 220.00
CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.

Class V Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts) .......... $ 495.00
CLASS V: Clubs without catering privileges.

Class X Spirituous, Vinous and Malt – Class A Lounge ......................................................... $2,200.00
CLASS X: Class A Lounge

Class XI Spirituous, Vinous and Malt – Restaurant Lounge .................................................. $1,500.00
CLASS XI: Restaurant/Lounge; and OTB

UNORGANIZED TERRITORIES $10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.
Questions 1 to 4 must match information on file with the Maine Secretary of State's office. If you have questions regarding this information, please call the Secretary of State’s office at (207) 624-7752.

Please clearly complete this form in its entirety.

1. Exact legal name: **Rising Tide Brewing Company LLC**

2. Doing Business As, if any: **Rising Tide Brewing Company**

3. Date of filing with Secretary of State: **03/04/2010** State in which you are formed: **Maine**

4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: [blank]

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attach additional sheets as needed)

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS (5 YEARS)</th>
<th>Date of Birth</th>
<th>TITLE</th>
<th>Ownership %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heather Sanborn</td>
<td>82 Frost Hill Road, Portland, ME 04103</td>
<td>07/22/1976 member</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Nathan Sanborn</td>
<td>82 Frost Hill Road, Portland, ME 04103</td>
<td>11/15/1974 member</td>
<td>50</td>
<td></td>
</tr>
</tbody>
</table>

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

6. If Co-Op # of members: ___________________ (list primary officers in the above boxes)
7. Is any principal person involved with the entity a law enforcement official?
   Yes ☐ No ☐ If Yes, Name: ___________________________ Agency: ___________________________

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?
   Yes ☐ No ☐

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed)
   Name: __________________________________________
   Date of Conviction: __________________________
   Offense: __________________________________________
   Location of Conviction: __________________________
   Disposition: __________________________________________

Signature: __________________________

Heather Sanborn
Print Name of Duly Authorized Person

Submit Completed Forms to:

Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, Me 04333-6008 (Regular address)
10 Water Street, Hallowell, ME 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov
On-premises diagram
Maine Made Pub Snacks

No table service - Please order at the bar - tax included in price

Warm House Olives
A selection of gently warmed olives seasoned with fresh rosemary and lemon. $5.00

Sandwich of the Day
by Sisters Gourmet Deli located in Portland, ME
A rotating selection of daily sandwiches prepared by Sisters Gourmet Deli. Ask at the bar for today’s sandwich! $10.00

Ordinary Chips
by Vintage Maine Kitchen located in Freeport, ME
Ingredients include potatoes, high oleic sunflower oil, and Maine sea salt. $3.50

Maine Maple Chips
by Vintage Maine Kitchen located in Freeport, ME
Ingredients include potatoes, high oleic sunflower oil, Maine maple syrup, and Maine sea salt. $3.50

Sea Salt & Sea Veggie Popcorn
by Little Lads Popcorn located in Corinth, ME
Ingredients include non-GMO popcorn, non-GMO soybean oil, toasted sesame oil, organic Maine sea vegetables, spices, and sea salt. $3.50

Spicy Pub Mix
by Portland Fruit and Nut Company located in Portland, ME
A “medium spicy” mix of cajun sesame sticks, corn sticks, smoked almonds, oriental rice crackers, and wasabi peas. $6.00

Tortilla Chips and Salsa
12 oz bag of Mexican Tortilla Chips by Montecito Roadhouse located in Westbrook, ME
Your choice of 16 oz container of salsa from Plucked Fresh Salsa in Portland, ME. Ask at the bar for current selection. $12.00

$1.00 from each snack sold will be donated to Full Plates Full Potential. Thank you for your help feeding kids in Maine. Visit www.fullplates.org for more info. Cheers!
Re: Rising Tide

Kevin Cashman <kevindc@portlandmaine.gov>  
On Tue, Jan 16, 2018 at 10:30 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

Rising Tide is applying for a FSE Class III & Class IV for 101-103 Fox Street. This is an upgrade from the Brewery License. They also have Outdoor Dining on Private Property and Entertainment without Dance

This will go before Council on 2/5/2018.

Owner is Rising Tide Brewing Company LLC

Contact is Heather Sanborn
207-650-0878
heather@risingtidebrewing.com

Please e-mail me approvals. Thanks Jessica

Jessica Blais Hanscombe
Licensing and Registration Coordinator
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

Lt. Kevin Cashman
Portland Police Department
Patrol Division
109 Middle St
Portland, Maine 04101
(O) 207-756-8234
kevindc@portlandmaine.gov.
Hours - Saturday thru Tuesday (4pm-2am)

PD has no objections.

Kevin C.
January 16, 2018

Rising Tide Brewing Company LLC
103 Fox Street
Portland ME 04101

Re: Rising Tide Brewing Company LLC DBA Rising Tide Brewing Company LLC.
Application for a Class III & IV FSE with Entertainment without Dance limited to
16 hours per week and Outdoor Dining on Private Property at 103 Fox Street.

Dear Heather Sanborn

This letter shall serve as a reminder of the public hearing before the Portland City
Council on Monday February 5, 2018 at 5:30 p.m., for the review of an application for
a Class III & IV FSE with Entertainment without Dance limited to 16 hours per week and
Outdoor Dining on Private Property at 103 Fox Street. The meeting will take place in
Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME
04101.

You or a representative of the business must be present at this meeting in the event that
the city council has questions regarding the license application. If there is no
representation and questions arise, the item may be postponed.

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

Sincerely,

Jessica Hanscombe
Licensing and Registration Coordinator

389 Congress Street, Portland, Maine 04101-3509 Ph (207)874-8557 Fx (207)874-8612 TTY 874-8936
Legal Advertisement

Notice of Public Hearing
City of Portland

A Public Hearing will be held on February 5th at 5:30 P.M., in City Council Chambers, 389 Congress St., Rising Tide Brewing Company LLC DBA Rising Tide Brewing Company LLC. Application for a Class III & IV FSE with Entertainment without Dance limited to 16 hours per week and Outdoor Dining on Private Property at 103 Fox Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
MEMORANDUM

To: Members of the Portland City Council
From: Ethan K. Strimling, Mayor
Date: January 17, 2018
Re: Mayor’s Recommendations to the Dr. Martin Luther King Recognition Task Force

This memo serves to communicate to the Council my recommendations for appointees to the Dr. Martin Luther King Recognition Task Force.

I recommend the following appointees:

- Blanca Santiago
- Dawud Ummah
- Regina Phillips
- Marita McKenzie
- Daniel Minter
- Danielle Conway
- Councilor Pious Ali, Chair
MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Michael J. Sauschuck, Police Chief

DATE: January 5, 2018

DISTRIBUTION: Jon Jennings, Mayor Strimling, Danielle West-Chuhta, Sonia Bean, Nancy English, Julie Sullivan, Anita LaChance

SUBJECT: City Ordinance 17-113

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading next available Final Action

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

PRESENTATION:

I. SUMMARY OF ISSUE: On November 5, 2013, Portland voters supported the passage of a City ordinance which allows the possession of up to 2.5 ounces of marijuana by adults age 21 and older. Section 17-113 went into effect on December 6, 2013. The ordinance allows for the possession of marijuana in a public place but it prohibits the use of marijuana in public and the furnishing of or trafficking in the drug. Section 17-116 requires the Mayor to "report to the City Council annually ... as to the implementation and enforcement" of the ordinance.

II. REASON FOR SUBMISSION Section 17-116 requires the Mayor to "report to the City Council annually ... as to the implementation and enforcement" of the ordinance

III. INTENDED RESULT

IV. COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS: See attached report

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Prepared by:

Catherine Hooper, Executive Assistant

Date: January 5, 2018
CITY OF PORTLAND
Memorandum

TO: Mayor Ethan K. Strimling
Jon Jennings, City Manager

FR: Michael J. Sauschuck, Chief of Police

RE: City Marijuana Ordinance, Article VIII

Portland City Ordinance, Article VIII, Recreational Use of Marijuana by Adults 21 years of age or older, became effective on December 6, 2013. Section 17-113 of the ordinance allows the recreational use of marijuana and possession of up to 2.5 ounces of marijuana by adults age 21 and older. The ordinance also allows for the possession of marijuana in a public place. Section 17-114 prohibits the use of marijuana in public and the furnishing of or trafficking in the drug and allows landlords and property owners to restrict the smoking of marijuana on their property by posting “no smoking signs.” Section 17-116 of the ordinance requires the Mayor to “report to the City Council annually ... as to the implementation and enforcement” of the ordinance.

The Marijuana Legalization Act, located in Title 7 M.R.S. §§ 2441-2454, allows any person 21 years of age or older to:

• use, possess, or transport up to 2½ ounces of prepared marijuana and marijuana accessories (i.e., drug paraphernalia).
• transfer or furnish to another person who is 21 years of age or older, without payment of any kind, up to 2½ ounces of marijuana and up to 6 immature marijuana plants or seedlings.
• possess, grow, cultivate, process or transport up to 6 flowering marijuana plants, 12 immature plants and an unlimited number of seedlings, and possess all the marijuana produced by these plants at the person’s residence.
• consume marijuana in a non-public place, including a private residence.

There is no definition for "non-public place" included in the law. The prohibitions and limitations on smoking tobacco products in specified areas also apply to smoking marijuana. A person who smokes marijuana in a public place commits a civil violation for which a fine of not more than $100 may be adjudged. (Sec. 2542).

Retail sales of marijuana are not legal in Maine until the Legislature sets up a regulatory system; including licensing and taxation of sales. The Portland City Council enacted its own moratorium on retail sales, cultivation facilities and social clubs in November, 2016.

From January 1, 2017 to December 31, 2017, the police department issued eight (8) citations for the civil possession of marijuana. Three (3) summons were issued to adults age 18-20 and five (5) summons were issued to juveniles under 18.

The department also tracked the gender and ethnicity of the individuals receiving marijuana citations. In 2017, of the eight (8) citations issued, six (6) were issued to white males, one was issued to a black male and one was issued to an Asian male. No citations were issued to females.
The City ordinance and the changes to Maine law had no effect on a person’s possession of marijuana in all eight (8) of the 2017 cases. In five (5) of the cases, the possession of marijuana was by a student on school property, a troubling outcome. Only one case involved a traffic stop (for a red light violation), a great improvement over previous years.

Based on my review of the marijuana citations issued in 2017, I am satisfied that Portland’s officers continue to be mindful of the ordinance and the changes in Maine law; while still taking appropriate enforcement action when it is warranted.

### 2016 Statistics

<table>
<thead>
<tr>
<th>Calls for Service</th>
<th>82,807</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrests</td>
<td>3,235</td>
</tr>
<tr>
<td>Motor Vehicle Stops</td>
<td>9,615</td>
</tr>
<tr>
<td>Citations</td>
<td>4,120</td>
</tr>
</tbody>
</table>

### Marijuana Possession Citations

<table>
<thead>
<tr>
<th>Year</th>
<th>Total #</th>
<th>No Impact</th>
<th>Other Crime</th>
<th>Traffic Stop</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>8</td>
<td>8</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2016</td>
<td>17</td>
<td>3</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>2015</td>
<td>23</td>
<td>8</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>2014</td>
<td>44</td>
<td>14</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>2013</td>
<td>31</td>
<td>18</td>
<td>15</td>
<td>8</td>
</tr>
</tbody>
</table>

RESOLUTION OPPOSING OIL AND GAS OFFSHORE DRILLING
OFF THE COAST OF MAINE

WHEREAS, the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program excluded the Atlantic coast of the United States to protect the coastline from the danger of oil spills; and

WHEREAS, that protection remains vital to ensure the environmental and economic health of coastal communities; and

WHEREAS, by Presidential Executive Order 1395, The President of the United States directed the Secretary of the Interior to consider revising the schedule of proposed oil and gas lease sales in the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program; and

WHEREAS, in response, the Draft Proposed Program issued by the Secretary of the Interior for the 2019-2022 Outer Continental Shelf Oil and Gas Leasing Program makes more than 98 percent of the Outer Continental Shelf of the United States available for oil and gas drilling, including the North Atlantic area off the coast of Maine for leasing in 2021 and 2023; and

WHEREAS, offshore drilling may require significant onshore infrastructure, such as pipelines or refineries, which would harm the character of Portland’s coastline and could exacerbate wetlands loss and storm surges and sea level rise; and

WHEREAS, offshore oil and gas drilling and exploration places coastal communities at economic and ecological risk from oil spills and the pollution brought by routine drilling operations and onshore industrialization; and

WHEREAS, opening the Atlantic Ocean to offshore oil and gas drilling and exploration, includes the use of seismic airguns, which fire intense blasts of compressed air that rank just behind military explosives as the loudest source of noise in the ocean, every 10-12 seconds, 24 hours a day, for months on end, and could injure the ocean life including whales that have been inhabiting the offshore waters of Maine for millennia; and,
WHEREAS, seismic airgun blasting to explore for oil and gas deposits has been proven to disrupt and displace sea creatures and mammals that rely on sound to find food, migrate, and mate, and can impair the health of many fish and shellfish species, including those of commercial importance like squid, lobster, and scallops; and

WHEREAS, seismic noise testing has been shown to reduce commercial fish catches by up to 70 percent; and

WHEREAS, the City Council of Portland, Maine, is committed to sustaining and improving its natural environment, to protecting its beautiful coastline from pollution and working to ameliorate climate change by promoting energy efficiency; and

WHEREAS, Portland residents and tourists alike visit the waterfront and the Casco Bay islands to see the clean, blue water of Casco Bay and take ferries, schooners, and other water craft to enjoy the beauty of the coastal waters; and

WHEREAS, Portland’s commercial fishery is of crucial importance to its vitality and economy and;

WHEREAS, more than one hundred and forty local Atlantic coast town and city governments have passed resolutions opposing offshore drilling, to protect their coastlines, their fisheries, and their tourism and recreational economies,

WHEREAS, on January 8, 2018, the Bureau of Ocean Energy Management began accepting comments on this Draft Proposed Program;

NOW, THEREFORE, BE IT RESOLVED, that the Portland City Council and Mayor oppose any plan or legislation that would open the coast of Maine to offshore drilling for gas and oil; and

BE IT FURTHER RESOLVED, that the Portland City Council and Mayor request that the offshore areas of the City of Portland, Maine be excluded from the 2019-2024 Outer Continental Shelf Draft Proposed Oil and Gas Leasing Program; and

BE IT FURTHER RESOLVED, that this resolution be sent to Donald Trump, President of the United States, to the Department of the Interior Secretary Ryan Zinke, to the National Oil and Gas Leasing Program Development and Coordination Branch Chief Kelly Hammerele, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each Member of the Maine Congressional Delegation, to the Attorney General of Maine, the local United States Attorney’s Office, and the Governor of Maine.
MEMORANDUM
City Council Agenda Item

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

FROM: Mayor Ethan Strimling

DATE: January 18, 2018

SUBJECT: Resolution Opposing Oil and Gas Offshore Drilling Off the Coast of Maine

SPONSOR: Mayor Ethan K. Strimling
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading _____________ Final Action 2/5/2018 _____________

Can action be taken at a later date: X Yes ___ No (If no why not?)
But the comment period at the United States Department of the Interior ends on March 9, 2018; the matter should not be delayed later than the second meeting in February.

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

I. ONE SENTENCE SUMMARY

The proposed resolution would put the Portland City Council on record as opposing offshore gas and oil drilling off the coast of Maine.

II. AGENDA DESCRIPTION

While under the previous president’s administration offshore drilling for gas and oil was not allowed off the East Coast, the federal government under President Donald Trump is considering a new program that would allow that. More than one hundred and forty other coastal town and city governments have voted to oppose offshore drilling or gas and oil exploration on the Outer Continental Shelf near their localities. On Maine’s own coastline, the subject of artists and the year-round destination of international and local visitors, the importance of keeping the ocean pristine is undeniable. At the same time, the risk of pollution and harm to aquatic life from offshore drilling are well known.

By this resolve, the Portland City Council would be put on record as opposing offshore gas and oil drilling off the coast of Maine. The Resolve would be submitted to the Bureau of Ocean Energy Management in the Department of the Interior, which is accepting comment in the process of considering changes to the leasing program for oil and gas drilling off the coast of the United States.
III. BACKGROUND

The Deepwater Horizon oil spill in the Gulf of Mexico, which began April 20, 2010, and other disasters from offshore gas and oil drilling have made coastal cities wary of the industry. A United States Federal Court ruled that BP, owner of the Deepwater Horizon oil well rig, was primarily responsible for the oil spill because of “gross negligence and reckless conduct.” Its destruction in an uncontainable fire created the worst oil spill in the history of the Gulf of Mexico. Studies of the damage done to sea creatures by seismic blasting, used to explore the ocean floor prior to drilling, bolster another argument against the practice.

IV. INTENDED RESULT AND COUNCIL GOAL ADDRESSED

This resolve affirms the City Council’s high standards for sustaining the natural environment.

V. FINANCIAL IMPACT

There is no financial impact.

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

From the Federal Register, Vol. 83, No. 5/Monday, January 8, 2017 /Notices:

...On April 28, 2017, Presidential Executive Order 13795: Implementing an America First Offshore Energy Strategy (E.O. 13795), directed the Secretary of the Interior (Secretary) to give full consideration to revising the schedule of proposed oil and gas lease sales adopted in the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program, which was approved on January 17, 2017. The Secretary issued Secretarial Order 3350 on May 1, 2017, which further directed BOEM to develop a new National Outer Continental Shelf Oil and Gas Leasing Program.

...The Draft Program itself is here: https://www.boem.gov/NP-Draft-Proposed-Program-2019-2024/.

VII. RECOMMENDATION

Corporation Counsel has approved the Resolve as to form.

VIII. LIST ATTACHMENTS

Resolve Opposing Oil and Gas Offshore Drilling Off the Coast of Maine

List of municipalities in opposition, from oceana.org

Prepared by: Nancy English
Date: January 18, 2018
Bean/agendasquestmemo/rev 11/2015
Order 127A-17/18
Motion to postpone appointments to the Greater Portland Transit District in Order 127A-17/18 to January 17, 2018: 9-0 on 1/3/2017

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER AUTHORIZING APPOINTMENTS TO THE GREATER PORTLAND TRANSIT DISTRICT FOR 2018

ORDERED, that the following individuals be appointed to the Greater Portland Transit District for the calendar year 2018:

Mayor Ethan Strimling
Councilor Belinda Ray
Councilor Pious Ali
Jetport Director Paul Bradbury
Finance Director Brendan O’Connell
AMENDMENT TO ZONING MAP
RE: 233 ANDERSON STREET AND VICINITY

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning property at 233 Anderson Street and vicinity from Low Impact Industrial Zone (IIb) to Neighborhood Business Zone (B1b), as shown below.
MEMORANDUM

City Council Agenda Item

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

FROM: Jeff Levine, Director, Planning and Urban Development

DATE: December 18, 2017

SUBJECT: Zoning Map Amendment Ilb to Blb
233 Anderson Street and vicinity

SPONSOR: Elizabeth Boeppele, Chair, Portland Planning Board
Planning Board 12.6.2017 - unanimous recommendation
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: January 3, 2017 Final Action: January 17, 2017

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

PRESENTATION: (List the presenter(s), type and length of presentation)
Elizabeth Boeppele, Chair, Planning Board and Stuart O'Brien, City Planning Director

I. ONE SENTENCE SUMMARY
The Planning Board recommends a map amendment, from the Low Impact Industrial Zone (Ilb) to the Neighborhood Business Zone (B1b), for a small, sloped site at the north end of Anderson Street that is difficult to develop for the Ilb uses, and which would facilitate a mixed use project including residential uses.

II. AGENDA DESCRIPTION
On December 6, 2017, the Planning Board met and unanimously voted 5-0 (Stanley absent; Morrissette recused) to forward this item to the City Council with a recommendation for passage.

The proposed map amendment was requested for a parcel at 233 Anderson Street by the applicant 2 Walnut, LLC. to change the zoning from Low Impact Industrial (I-Lb) to Neighborhood Business (B1b). The current zoning for the applicant's vacant lot is split between the two zones and the applicant is seeking to have the entire parcel under the B-1b designation in order to develop a mixed-use development that would potentially include multi-family housing.

The Board recommended expanding the map amendment to include a portion of land owned by the State of Maine to avoid leaving a sliver of Ilb immediately north of the applicant's parcel.

III. BACKGROUND
The site proposed to be rezoned sits at the end of a block on the east side of Anderson Street that is zoned both Ilb and B1b. A number of the sites in the abutting B1b zone are, or are approved to be, residential. The Ilb industrial area to the west is changing in nature to include more "craft" industry. The site is small and steeply sloped and not suitable for many of the Ilb uses, and the B1b zone would facilitate development as it allows for multi-family residential on the upper floors and also for live/work spaces.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED
The rezoning of this site is likely to encourage the development of this hard-to-develop site to include housing to meet local needs.
V. FINANCIAL IMPACT
The zone change is expected to facilitate development of this small site, which has the potential to generate revenue for the city.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION
The amendment would allow an area of under 10,000 sq ft to be rezoned to B1b zone. This zone expands the scope for residential development that is not allowed in the ILb zone, but also allows retail and restaurants. The Planning Board reviewed the potential adverse impacts of the map amendment in terms of noise and traffic and concluded that these would not be noticeably different compared to the potential impacts of uses allowed in the ILb zone.

The Board also considered the implication of the loss of this small ILb site since it was part of the East Bayside area that has historically served as an economic and employment area for the surrounding neighborhoods. It was noted that zoning for this area was currently being studied as part of a GPCOG planning study, and that the Board found this particular site to be more appropriate to be zoned for B1b.

It was concluded that the rezoning of this small parcel does not necessarily set a precedent or set a specific zoning direction for the larger area, because it is a steeply sloped and small parcel at the end of the ILb zone along that side of Anderson Street, and abuts the State land associated with I-295 and the substantial residential development recently approved at 218 Washington Avenue.

VII. RECOMMENDATION
On December 6, 2017, the Planning Board met and unanimously voted 5-0 (Stanley absent; Morrissette recused) that:

On the basis of plans and materials submitted by the applicant, the City of Portland Zoning Code, Portland’s Comprehensive Plan, public comment, the information provided in public hearing on December 6, 2017 for the project #2017-170 (233 Anderson Street), and/or other findings as follows:

i. The Planning Board finds that the proposed rezoning to the Neighborhood Business (B1b) zone for the property located at 233 Anderson Street is consistent with the Comprehensive Plan for the City of Portland; and

ii. Therefore, the Planning Board recommends to the City Council approval of the zoning map amendment for 233 Anderson Street from Low Impact Industrial (ILb) zone to Neighborhood Business (B1b) Zone for the area outlined in black below:

VIII. LIST ATTACHMENTS
1. Order
2. Planning Board Report to City Council

Prepared by: Jean Fraser, Planning Division Date: 12.15.2017
I. INTRODUCTION

On December 6, 2017 the Planning Board voted unanimously (5-0, Stanley absent; Morrissette recused) to recommend to the City Council the adoption of a zoning map amendment requested by 2 Walnut, LLC to change the zoning in the vicinity of 233 Anderson Street from Low Impact Industrial (ILb) to Neighborhood Business (B1b). The current zoning for the applicant’s vacant lot at 233 Anderson Street is split between these two zones and the applicant is seeking to have the entire parcel under the B1b designation in order to develop a mixed-use development (potentially including multi-family housing).

The Board supported the requested map amendment and also recommended that the map amendment be expanded to include a parcel to the north of 233 Anderson Street, as it was State owned property and was a logical addition that would avoid it remaining a sliver of ILb surrounded by B1b (the yellow dotted area in the plan below illustrates the area proposed to be rezoned to B1b).

The applicants have a Purchase and Sale Agreement for this parcel outlined in red (Attachment B).

The submitted narrative (Attachment C) indicates that the objective of the rezoning is to allow for the development of a mixed use development including commercial uses on the lowest floor and 12 residential units above, as the ILb zone does not allow residential uses. The rezoning to the B1b zone would allow this development but would also allow a wide range of uses not allowed in the ILb zone such as retail, restaurants, general business and professional offices. The applicant’s narrative analyzes the site and zoning and concludes that the size and topography of the site would limit industrial uses and it is more suitable for a mixed use development that includes residential.
II. PLANNING BOARD RECOMMENDATION AND DISCUSSION

A. RECOMMENDATION

On December 6, 2017, the Planning Board met and unanimously voted 5-0 (Stanley absent; Morrissette recused) that:

On the basis of plans and materials submitted by the applicant, the City of Portland Zoning Code, Portland’s Comprehensive Plan, public comment, the information provided in public hearing on December 6, 2017 for the project #2017-170 (233 Anderson Street), and/or other findings as follows:

i. The Planning Board finds that the proposed rezoning to the Neighborhood Business (B1b) zone for the a property located at 233 Anderson Street is consistent with the Comprehensive Plan for the City of Portland; and

ii. Therefore, the Planning Board recommends to the City Council approval of the zoning map amendment for 233 Anderson Street from Low Impact Industrial (ILb) zone to Neighborhood Business (B1b) Zone for the area outlined in black below:

![Map Amendment](image)

B. DISCUSSION

The Planning Board considered the advantages and disadvantages of the proposed map amendment as compared with the alternative of amending the entire parcel to ILb and discussed the allowed uses and potential impacts of these two zones. The Board generally supported the B1b option as it better integrated with the wider area, and is likely to facilitate development that includes housing on a constrained parcel located where housing would be appropriate and the B1b zone would not appear to present any potential adverse impacts.

The Board also considered whether any other abutting ILb parcels should also be included in the map amendment to B1b and determined that the site to the north should be included in the map amendment to B1b, as otherwise it would leave that parcel as a small remnant of ILb within the B1b zone area at that end of Anderson Street. The larger area was advertised for the Planning Board hearing. The Board considered that the outcome of the ongoing GPCOG planning study for this part of Bayside would inform any further decision regarding rezoning in this area.

III. EXISTING CONDITIONS

The parcel has frontage along Anderson Street of 114 feet and averages 100 feet in depth. The site is vacant and vegetated, with a steep uphill slope. A section of the property line abuts the property known as 218 Washington (subject of recent approval for 45 condo units).

The rear and north property lines abut the vacant/vegetated MDOT land associated with I295 that is mostly zoned B1b, with a part immediately abutting 233 Anderson also in the ILb zone.

Industrial development abuts the parcel to the south and the west.
IV. PROPOSED MAP AMENDMENT

Current Zoning: Approximately 2/3 ILb and 1/3 B1b
Proposed Zoning: Entire parcel at 233 Anderson Street to B1b; plus the ILb part of State owned land to north also to B1b
Current Uses: Vacant
Proposed Uses: As allowed in B1b; narrative and renderings suggest mixed use including residential
Parcel Area: Approx. 10,000 SF for 233 Anderson Street; approx. 2,600 SF for State owned land to north

V. ZONING CONTEXT

The parcels proposed to be rezoned sit within a block along the east side of Anderson Street that is zoned both ILb and B1b. A number of the sites in the B1b section are, or are approved to be, residential. The ILb industrial area to the west is changing in nature to include more “craft” industry.

Dimensions

The dimensional requirements that would impact the maximum height allowed for any development are similar as between the two zones. The submitted Narrative (Attachment C) includes a Figure 2 that illustrates a possible mixed use development based on the maximum “development envelope” if a new B1b building were built to the maximum dimensions allowed.

The applicant has indicated that they intend to move forward with a mixed use development with a smaller footprint, and Figure 3 of the Narrative compares it to the “maximum envelope” in Figure 2.

This submitted information is helpful to understand the potential implications if the parcel is rezoned to B1b, but it should be noted:

- A map amendment to the B1b zone would not imply any approval to a specific development and the applicant is not required to move forward with the indicative development outlined in the Narrative; and
- The heights of any future building on the site would need to meet the 45 ft height requirement based on the height of any proposed building as from the average grade of the proposed building (calculated from grades at the corners of the building). If there is a variation in the contours of the site, the allowed height for a building along Anderson Street could be at a different absolute height than one further up the slope.

Uses

The purpose statements for both zones are included in Table 1 below. The ILb aims to provide for low impact industrial and similar but neighborhood-friendly uses, while the B1b zone is more focused on the integration of small scale commercial uses with residential.

<table>
<thead>
<tr>
<th></th>
<th>ILb</th>
<th>B-1b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose Statements</td>
<td>The low impact industrial zone is intended to provide areas in which low impact industrial uses and limited other uses serving employees and residents of the surrounding neighborhood will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the I-M or I-H industrial zones, or will stand alone as a smaller scale industrial district.</td>
<td>To provide appropriate opportunities for the establishment of small-scale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).</td>
</tr>
<tr>
<td></td>
<td>The ILb zone is located adjacent to residential neighborhoods, business uses and other industrial uses where the low intensity nature of the uses, as well as their strict performance standards, will ensure compatibility of the uses with other adjacent industrial and nonindustrial uses.</td>
<td>Suitable locations for this zone may include street intersections, arterial streets, and sites with existing traditional neighborhood retail and service uses.</td>
</tr>
</tbody>
</table>
Performance standards for uses in the I-L zone are designed to maintain compatibility between low impact industrial uses and neighboring nonindustrial and industrial uses. Performance standards include full enclosure of uses and requirements for buffers and screening from adjacent properties.

The Table 2 below compares the permitted uses for the two zones.

The existing ILb zone emphasizes, in addition for employment-creating industrial uses, a wide range of uses that are largely small scale (with some exceptions such as indoor amusement and recreation centers, plant and tree nurseries, marinas and lumber yards). It also includes uses that support the surrounding neighborhood such as day care facilities, makers markets, artists studios, and neighborhood centers. This zone does not allow residential or retail uses.

The proposed B-1b zoning designation allows a range of residential uses on the upper floors (including bed and breakfast and hostels), and permits on the ground floor only—restaurants, day care facilities, neighborhood centers and a wide range of commercial and institutional uses, including retail establishments, offices, personal services, business services, places of assembly, clinics, municipal uses, and schools.

Both zones allow day care facilities, neighborhood centers, and studios for artists, photographers and craftspeople, with the Bib also allowing combined live/work spaces.

Table 2: Summary of Comparison ILb and B1b Zones re permitted uses

<table>
<thead>
<tr>
<th>USE</th>
<th>ILb</th>
<th>B1b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low impact industrial uses, including, but not limited to, bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, musical instruments, precision instruments, watchmakers, toys and sporting goods, wood products, jewelry, assembly of electrical components, tool and die shops and the packaging of food.</td>
<td>✅</td>
<td></td>
</tr>
<tr>
<td>○ Indoor amusement and recreation centers.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Plant and tree nurseries, including associated recycling activities.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Lumber yards.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Commercial kitchens or other food preparation, provided that the food is not prepared for service on the premises.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Repair services, including all types of automotive repair.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>Building contractors and outside storage of related construction equipment, provided that there shall be no outside storage of materials and supplies.</td>
<td>✅</td>
<td>✅ (ground floor only)</td>
</tr>
<tr>
<td>Day care facilities</td>
<td>✅</td>
<td>✅ (ground floor only)</td>
</tr>
<tr>
<td>○ Dairies.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Dog training services, including but not limited to obedience, guide, and service training, but not including boarding or kennel services.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Intermodal transportation facilities.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Marinas.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Distribution centers, warehouses and wholesale businesses under ten thousand (10,000) square feet in total building area, with no outside storage permitted.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>○ Back office uses.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>Utility substations</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>Accessory Uses</td>
<td>✅</td>
<td>✅ (ground floor only)</td>
</tr>
<tr>
<td>Specific accessory uses such as makers markets &amp; temp events</td>
<td>✅</td>
<td></td>
</tr>
<tr>
<td>Registered medical marijuana cultivation facilities.</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>Neighborhood centers.</td>
<td>✅</td>
<td>✅ (ground floor only)</td>
</tr>
<tr>
<td>Places of religious assembly, limited to facilities of 10,000 sf or less.</td>
<td>✅</td>
<td>✅ (ground floor only)</td>
</tr>
<tr>
<td>Wind energy systems</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>Street vendors</td>
<td></td>
<td>✅</td>
</tr>
<tr>
<td>Studios for artists, photographers and craftspeople</td>
<td>✅</td>
<td>✅ (ground floor only)</td>
</tr>
</tbody>
</table>
Residential (as per abutting zone, plus multi family of commercial on ground floor and combined live/work spaces)  
Professional, business and general offices  
Personal Services  
Retail establishments (limited hours)  
Beverage Dealers (sub to conds)  
Restaurants (sub to conds)  
Municipal offices  
Elem, middle & secondary schools, nursery & kindergarten  
Clinics  
Lodging house  
Bed and Breakfast  
Hostels (sub to conds)

VI. POLICY ANALYSIS OF PROPOSED MAP AMENDMENT

The applicant has indicated that the B1b zone is more appropriate for the entirety of this parcel as it facilitates development for the following reasons (see Narrative in Attachment C):

- **Topography**: Steep slopes within the small parcel inhibit ILb uses and would support residential by offering views.
- **Pavement setback**: 15 ft is required in the ILb zone and not in the B1b zone, thus the B1b zone would make development more viable and accessible.
- **Relatively small size of the parcel limits ILb uses.**
- **Uses**: Allows live/work spaces whereas the ILb zone only allows artist studios, and allows residential whereas the ILb zone does not allow residential.
- **Comprehensive Plan**: B1b allows development in line with the stated objectives of the Comprehensive Plan eg mixed use with residential on the upper floors.

The size of the site and its slope present similar constraints for development under both zones, and most of the dimensional requirements are the same. The key question is whether any of the uses allowed by the B1b zone would have any particular adverse impacts in that location.

The uses that the B1b zone would allow that are not currently allowed, such as retail/restaurants, could increase the level of public access and activity on the site, with potential issues of noise and traffic generation.

- **Noise**: The B1b zone includes conditions on retail and restaurants that limits the business hours to between 6am and 11 pm and also limits the hours for service deliveries. The zone also includes a 55dBA limit on sound at all times.
- **Traffic generation**: Typically the consideration of a map amendment involves the assessment of the traffic generation of the most intensive uses in the zone being suggested. The City's consultant Traffic Engineer requested such an assessment in his preliminary comments and the applicant has submitted a Traffic Study (Attachment F).

The Study has been reviewed by the City’s Consultant Traffic Engineer and he has confirmed (Attachment I):

...in response to the City’s request, the applicant has conducted a trip generation analysis comparing traffic estimates under the current zone versus the proposed Map Amendment zone designation. Based upon the applicant's development assumptions, the build-out of the currently zoned property would generate 88 AM peak hour trips and 80 PM peak hour trips. Under the Map Amendment zone change, the property would generate 98 AM peak hour trips and 93 PM peak hour trips. In my professional opinion, this level of increased traffic volume (10 AM peak hour trips and 13 PM peak hour trips) would not be noticeable from a traffic mobility or safety impact perspective.

There have been discussions in the past regarding zoning proposals in the East Bayside area, and previously there was support to retain the ILb in the general area, which has served as an economic and employment area for the surrounding neighborhoods. Currently, a planning study of East Bayside is underway by GPCOG that is funded through a Brownfields Grant, which will include future land use recommendations for this area.

The proposal to rezone the single parcel from ILb to B1b raises questions as to whether it would be appropriate to
rezone any of the other nearby ILb parcels to B1b and whether the loss of industrial zoned land is an issue in this area. The Board suggested that the ILb parcels to the east of Anderson Street may be appropriate for rezoning to B1b given the topography, size of the parcels and the recent residential development in this part of the City (see Zoning Context Map above).

The staff finds the rezoning of this small parcel does not set a precedent because it is a steeply sloped and small parcel at the end of the ILb zone along that side of Anderson Street, and abuts the State land associated with I-295 and the substantial residential development recently approved at 218 Washington Avenue. The proposed map amendment does not necessarily set a precedent or set a specific zoning direction for the larger area, which is subject to the further evaluation in the GPCOG study and through the City’s on-going work to implement the recently adopted Comprehensive Plan.

VII. COMPREHENSIVE PLAN
The Comprehensive Plan includes policies that support both of the options for a map amendment, though the B1b zone at this location more directly addresses the Plan 2030 goals to increase the supply of housing, including housing that allows people to live and work in Portland.

VIII. PUBLIC COMMENT
The applicant held a Neighborhood Meeting on November 13, 2017 which was not attended by any neighbors; the documentation is included in Attachment E. At the time this report was prepared the Planning Division had not received any public comment.

The City Council readings have been advertised in accordance with the ordinance requirements.

IX. PLANNING BOARD RECOMMENDATION
On the basis of plans and materials submitted by the applicant, the City of Portland Zoning Code, Portland's Comprehensive Plan, public comment, the information provided in public hearing on December 6, 2017 for the project #2017-170 (233 Anderson Street), and/or other findings as follows:

i. The Planning Board finds that the proposed rezoning to the Neighborhood Business (B1b) zone for the a property located at 233 Anderson Street is consistent with the Comprehensive Plan for the City of Portland; and

ii. Therefore, the Planning Board recommends to the City Council approval of the zoning map amendment for 233 Anderson Street from Low Impact Industrial (ILb) zone to Neighborhood Business (B1b) Zone for the area outlined in black below:

X. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS
1. Traffic Engineer final review (Tom Errico)

PUBLIC COMMENT (none received to date)
APPLICANT'S SUBMITTALS
A. Application
B. Right, Title and Interest (P&S Agreement)
C. Narrative and analysis (updated since Workshop)
D. Cover letter for Hearing
E. Neighborhood Meeting Certification
F. Traffic Study

PLANS
P1 Boundary Survey
P2 Renderings of potential mixed use development (4 sheets)
Jean - in response to the City’s request, the applicant has conducted a trip generation analysis comparing traffic estimates under the current zone versus the proposed Map Amendment zone designation. Based upon the applicant’s development assumptions, the build-out of the currently zoned property would generate 88 AM peak hour trips and 80 PM peak hour trips. Under the Map Amendment zone change, the property would generate 98 AM peak hour trips and 93 PM peak hour trips. In my professional opinion, this level of increased traffic volume (10 AM peak hour trips and 13 PM peak hour trips) would not be noticeable from a traffic mobility or safety impact perspective.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
TYLIN INTERNATIONAL
12 Northbrook Drive
Falmouth, ME 04105
+1.207.781.4721 main
+1.207.347.4354 direct
+1.207.400.0719 mobile
+1.207.781.4753 fax
thomas.errico@tylin.com
Visit us online at www.tylin.com
Twitter | Facebook | LinkedIn | Google+

“One Vision, One Company”
Portland’s Planning and Urban Development Department coordinates the review of requests for zoning map amendments, zoning text amendments and contract or conditional re-zoning. The Division also coordinates site plan, subdivision and other applications under the City’s Land Use Code. Attached is the application form for a Zoning Map, Text Amendment or Contract/Conditional Rezonings.

Portland’s development review process and requirements are outlined in the Land Use Code (Chapter 14), Design Manual and Technical Manual.

Planning Division
Fourth Floor, City Hall
389 Congress Street
(207) 874-8719
planning@portlandmaine.gov

Office Hours
Monday thru Friday
8:00 a.m. – 4:30 p.m.
I. Project Information (Please enter n/a on those fields that are not applicable)

<table>
<thead>
<tr>
<th>Project Name:</th>
<th>233 Anderson Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Development Address:</td>
<td>233 Anderson Street Portland ME 04101</td>
</tr>
<tr>
<td>Project Description:</td>
<td>16 unit mixed use building</td>
</tr>
<tr>
<td>Chart/Block/Lot:</td>
<td>01-A-013</td>
</tr>
<tr>
<td>Right, Title or Interest (Please identify the status of the applicant's right, title, or interest in the subject property—for example a deed, option or contract to purchase or lease the subject property)</td>
<td>Purchaser</td>
</tr>
<tr>
<td>Existing Use (Describe the existing use of the subject property)</td>
<td>raw land</td>
</tr>
<tr>
<td>Current Zoning Designation:</td>
<td>B1b and I1b</td>
</tr>
<tr>
<td>Proposed Use of the Property (Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property)</td>
<td>16 unit mixed use building</td>
</tr>
</tbody>
</table>

Vicinity Map (Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use)

Site Plan (On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape, and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan – to scale – by the applicant. (Scale to suit, range from 1' = 10' to 1' = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood)

II. Contact Information (Please enter n/a on those fields that are not applicable)

APPLICANT

| Name: | Glenn Morse |
|business Name: | 2Walnut LLC |
| Address: | 218 Washington Rd |
| City/State: | Portland ME |
| Zip Code: | 04101 |
| Work #: | 207.590.3877 |
| Home #: | |
| Cell #: | 207.590.3877 |
| Fax #: | |
| E-mail: | gmorse444@gmail.com |
### OWNER

<table>
<thead>
<tr>
<th>Name:</th>
<th>Pine State Elevator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>230 Anderson Street</td>
</tr>
<tr>
<td>City/State:</td>
<td>Portland ME</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>04101</td>
</tr>
<tr>
<td>Work #:</td>
<td></td>
</tr>
<tr>
<td>Home #:</td>
<td></td>
</tr>
<tr>
<td>Cell #:</td>
<td></td>
</tr>
<tr>
<td>Fax #:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:travis@pinestateelevator.com">travis@pinestateelevator.com</a></td>
</tr>
</tbody>
</table>

### AGENT/REPRESENTATIVE

<table>
<thead>
<tr>
<th>Name:</th>
<th>Areta Snow</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>218 Washington Ave</td>
</tr>
<tr>
<td>City/State:</td>
<td>Portland ME</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>04101</td>
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<td>Work #:</td>
<td>1234</td>
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<tr>
<td>Home #:</td>
<td></td>
</tr>
<tr>
<td>Cell #:</td>
<td>603.235.1257</td>
</tr>
<tr>
<td>Fax #:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:gmorse444@gmail.com">gmorse444@gmail.com</a></td>
</tr>
</tbody>
</table>

### BILLING (to whom invoices will be forwarded to)

<table>
<thead>
<tr>
<th>Name:</th>
<th>2 Walnut LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>218 Washington Ave</td>
</tr>
<tr>
<td>City/State:</td>
<td>Portland ME</td>
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<tr>
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<td>603.235.1257</td>
</tr>
<tr>
<td>Fax #:</td>
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</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:gmorse444@gmail.com">gmorse444@gmail.com</a></td>
</tr>
</tbody>
</table>

### ENGINEER

<table>
<thead>
<tr>
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</table>
**SURVEYOR**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Sebago Technics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>75 John Roberts Rd Suite 1A</td>
</tr>
<tr>
<td>City/State:</td>
<td>South Portland ME</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>04106</td>
</tr>
<tr>
<td>Work #:</td>
<td>207.200.2100</td>
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<td>Home #:</td>
<td></td>
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<td>Cell #:</td>
<td></td>
</tr>
<tr>
<td>Fax #:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:sfrank@sebagotechnics.com">sfrank@sebagotechnics.com</a></td>
</tr>
</tbody>
</table>

**ARCHITECT**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Carol Morrisette</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>21 Chestnut #506</td>
</tr>
<tr>
<td>City/State:</td>
<td>Portland ME</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>04101</td>
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<tr>
<td>Work #:</td>
<td>207.699.4184</td>
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<td>Home #:</td>
<td></td>
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<td>Cell #:</td>
<td>207.6717965</td>
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<td>Fax #:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:carol@resdesstudio.com">carol@resdesstudio.com</a></td>
</tr>
</tbody>
</table>

**ATTORNEY**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Tom Jewell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>577 Congress St</td>
</tr>
<tr>
<td>City/State:</td>
<td>Portland ME</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>04101</td>
</tr>
<tr>
<td>Work #:</td>
<td>207.774.6665</td>
</tr>
<tr>
<td>Home #:</td>
<td></td>
</tr>
<tr>
<td>Cell #:</td>
<td></td>
</tr>
<tr>
<td>Fax #:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:tjewell@jewellandbulger.com">tjewell@jewellandbulger.com</a></td>
</tr>
</tbody>
</table>

**DESIGNATED PERSON(S) FOR UPLOADING INTO e-PLAN**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Areta Snow</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-mail:</td>
<td><a href="mailto:gmorse444@gmail.com">gmorse444@gmail.com</a></td>
</tr>
</tbody>
</table>

| Name:     | |
|-----------| |
| E-mail:   | |

| Name:     | |
|-----------| |
| E-mail:   | |
### III. APPLICATION FEES (check applicable review)

<table>
<thead>
<tr>
<th>Check</th>
<th>Zoning Map Amendment</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>from (ILb) zone to (B1b) zone</td>
<td></td>
</tr>
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<table>
<thead>
<tr>
<th></th>
<th>Zoning Text Amendment</th>
<th>$3,000.30</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>to Section 14-()-</td>
<td></td>
</tr>
</tbody>
</table>

(For a zoning text amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example).

<table>
<thead>
<tr>
<th></th>
<th>Combination Zoning Text Amendment and Zoning Map Amendment</th>
<th>$4,000.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Conditional or Contract Zone</th>
<th>$5,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurance related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Section 14-60-62.)</td>
<td></td>
</tr>
</tbody>
</table>

### IV. FEES ASSESSED AND INVOICED SEPARATELY

- Notices to abutters (receipt of application, workshop and public hearing meetings) ($0.75 each)
- Legal Ad in the Newspaper (% of total ad)
- Planning Review ($52.00 hour)
- Legal Review ($75.00 hour)
- Third Party Review (all outside reviews or analysis, eg. Traffic/Peer Engineer, are the responsibility of the applicant and will be assessed and billed separately)
VI. APPLICANT SIGNATURE

By digitally signing the attached document(s), you are signifying your understanding this is a legal document and your electronic signature is considered a legal signature per Maine state law.

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

This application is for a Map Amendment, Text Amendment, Conditional or Contract Rezoning review. It is not a permit to begin construction. An approved site plan, a Performance Guarantee, Inspection Fee, Building Permit, and associated fees will be required prior to construction. Other Federal, State or local permits may be required prior to construction, which are the responsibility of the applicant to obtain.

<table>
<thead>
<tr>
<th>Signature of Applicant:</th>
<th>Glenn Morse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>8/2/17</td>
</tr>
</tbody>
</table>
PURCHASE AND SALE AGREEMENT
[218-220 Washington Ave, Portland, Maine]

This Agreement made between GLENN A. MORSE, a resident of Portland, Maine and 2 Walnut LLC, a Maine limited liability company, of Portland, Maine (collectively "the Buyer"), and Pine State Elevator Co. of 230 Anderson Street, Portland, Maine ("the Seller").

Seller hereby agrees to sell and the Buyer hereby agrees to purchase the Property hereinafter specified in accordance with and subject to the following terms and conditions:

1. The Property. The property to be sold consists of:

   A. Real Property. The parcels of property known as 233 Anderson Street, Portland, Maine collectively containing approximately 11,326 square feet of land, being the same Real Property described as Map and lot 10-A-40 recorded in the Cumberland County Accessors Office (collectively "the Property").

2. Price and Payment Terms. The Purchase Price for the Property is $[ ], payable in cash or certified check on or before June 1, 2018.

3. Closing. The Closing shall occur on the mutually agreed upon closing date, time and place to be determined after Buyer has obtained all applicable land use, zoning and construction permits, approvals for a residential condominium project containing a minimum of 16 dwelling units and has fully completed and constructed said condominium project in its entirety, and the expiration of any applicable appeal periods, but not earlier than May 15, 2018 and not later than June 1, 2018.

   Provided however that if Buyer is continuing to pursue such approvals with due diligence, Buyer agrees to pursue such approvals with such diligence. Provided however that if Buyer is continuing to pursue such approvals with due diligence and if such approvals have not been obtained and become final prior to Closing, with the time for closing shall be extended for an additional six (6) months as may be required to obtain them with due diligence and continuity of effort. In the event that the contract is extended beyond one year, the Price shall be adjusted accordingly.
set forth in Section 2 herein shall increase to
Buyer agrees to deliver a deposit in the
amount of [redacted] deposit, to be applied to purchase price prior to closing, of which will
become nonrefundable and will be paid over to Seller at [redacted] monthly in three equal
installments payable on the first of each month. It is agreed that time is of the essence of
this Agreement.

The place of closing shall be at a mutually agreeable location. Buyer shall have the
right to extend the Closing for an additional 5 business days by written notice to Seller at
least 5 business days prior to the Closing.

4.3 Conveyance. The Real Property is to be conveyed to the Buyer (or the nominee designated by the Buyer upon written notice to the Seller given at least 15 days
before the Closing Time) at the Closing Time by a good and sufficient Quit Claim with
Covenant deed of the Seller conveying a good and clear record and marketable title to the
same, free from all liens and encumbrances except as expressly identified above and if
requested by Buyer utilizing a legal description provided at Buyer’s expense, however that
Buyer may elect to accept such title as Seller can deliver at Buyer’s Purchaser’s option.

At the Closing, and in addition to any other documents referred to in this Agreement
to be delivered to Buyer, Seller shall execute, acknowledge as necessary and deliver the
following documents and such other documents as Buyer’s attorneys may reasonably require
to complete the transaction contemplated herein:

(i) Transfer Documents. The deed and a Maine Real Estate Transfer
Tax Declaration of Value;

(ii) Title Affidavits. Such customary certificates, affidavits or indemnity
agreements may be typically required to obtain a title insurance policy;

(iii) Non-foreign Person Affidavit. If applicable, such affidavits and certificates
as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and
withhold any portion of the purchase price pursuant to §1445 of the Internal
Revenue Code;

(iv) Maine Resident Affidavit. If applicable, such affidavits and certificates as
Buyer shall deem necessary to relieve Buyer of any obligation to deduct and
withhold any portion of the purchase price pursuant to 36 M.R.S.A. §5250-A;

(v) Underground Oil Storage Tank Certification. A written notice certifying
either (i) that there is no underground oil storage facility located on the Real
Property to the best of Seller’s knowledge, or (ii) pursuant to 38 M.R.S.A. §367(6),
if there is such a facility on the Real Property, that the facility exists and shall
disclose its registration number or numbers, the exact location of the facility,
whether or not it has been abandoned in place, and that the facility is subject to
regulation by the Maine Board of Environmental Protection; and

(vi) Authority/Other Documents. Such other documents as are customarily
delivered by Sellers to Buyers of real property in the State of Maine, including
without limitation evidence of good standing and limited liability company
authority, together with a legal opinion of Seller's counsel satisfactory to Buyer
regarding the limited liability company's existence, good standing and authority to
perform all transactions contemplated by this Agreement.

5.4. Title. Within one hundred twenty (120) days of the Effective Date of this
Agreement, Buyer shall notify Seller of any then existing defects in title with respect to the
Real Property would reveal that would make Seller unable to deliver title to or convey the
Real Property as specified herein and of any matter that an inspection and survey would
reveal (the "Defects") that would make Seller unable to convey the Real Property as
specified herein. Any then existing Defects outstanding at the expiration of such time period
which are not specified in such notice shall be waived, excepting for title defects and such
matters subsequently arising after such date. Seller shall be obligated to proceed in good
faith to cure any objected to such Defects, provided that Seller shall not be obligated
to relocate any structures or utilities. If an objected Defect specified in such notice is not cured
within sixty (60) days, then Buyer may elect, by written notice to Seller, to either (i) to
accept a conveyance of Real Property subject to such Defects, without deduction and, in
such case, Seller may elect to convey the Real Property without warranties as to such
Defects, or (ii) to terminate this Agreement, the obligations of all parties hereunder shall
cease, and neither party shall have any claim against the other by reason of this Agreement.
Notwithstanding the foregoing Seller shall be obligated to obtain a discharge of any
outstanding mortgage and to pay any outstanding real estate taxes until the Closing, but
Buyer shall not convey, encumber, grant any easements or otherwise impair title pending
closing.

If at Closing Seller shall be unable to give title or to make conveyance, or to deliver
possession of the Real Property, all as herein stipulated, except as to Defects not objected to
or waived as set forth in the initial paragraph of this Section, then Seller shall use
commercially reasonable efforts to remove any such Defects in good faith with due
diligence, or to deliver possession as provided herein, or to make the Real Property conform
to the terms and conditions hereof, as the case may be, for a period of up to 60 days, or such
longer period as shall be agreed to by Seller and Buyer. If at the expiration of such extended
time Seller shall have failed to remove any defects in title, deliver possession, or make the
Real Property conform, as the case may be, all as herein agreed, except as to defects and
matters not objected to or waived as set forth in the initial paragraph of this Section, then, at
Buyer's option, the cost to cure such defects will be deducted from sale price prior to
closing, or Buyer may elect to have deposit returned and all other obligations of the parties
hereeto cease and this Agreement shall be void without recourse of the parties hereeto.

To enable Seller to make conveyance as herein provided, Seller may use the
purchase money or any portion thereof, other than any required tax withholding, at
Closing to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the deed or binding payoff letters are obtained and the amounts specified are paid at closing.

6.5 Conditions. Buyer's obligations hereunder are conditioned upon compliance with the following:

(i) Any inspection of the Property reasonably satisfactory to Buyer within 30 days.

(ii) Written commitment by Lender to extend mortgage financing to Buyer with conditions reasonably satisfactory to Buyer in the amount needed to finance Buyer's acquisition and construction of a residential condominium on the Real Property containing not less than 16 units. Buyer agrees to pursue such financing in good faith with due diligence.

(iii) Receipt of final land use, zoning and construction approvals for a residential condominium project containing a minimum of 16 condominium dwelling units in a six story building with parking underneath (the "Approvals").

Buyer shall have the right, at its option, to terminate this Agreement, by written notice to Seller no later than 30 days prior to or before Closing, if any of the foregoing conditions are not reasonably satisfied.

11. Seller's Warranties and Representations. Except as otherwise set forth in this Agreement, Seller makes no representations or warranties either expressed or implied as to the condition of the premises, including, without limitation, compliance with any laws, rules or regulations pertaining to building codes, zoning, environmental or hazardous waste. Buyer takes the premises AS IS, WHERE IS, WITH ALL FAULTS and without recourse. Seller has made no verbal representations concerning the condition of the premises and if any such statements have been made either before or after the date of this contract they are not intended to be relied upon by Buyer. No agent of Seller is authorized to make any representations concerning the condition of the premises. Buyer, or his agents, have made, or will make, a physical examination of the premises and personal property and agree to accept same in the conditions they are in as of that time.

Provided however that notwithstanding the foregoing, Seller warrants and represents as of the date of execution by Seller of this Agreement and as of each date through and including the Closing that:

(a) There are no material litigation, liens, judgments, violations, or proceedings pending or to the best of Seller's knowledge threatened against or relating to the Real Property;

(b) There is no pending, or to the best of Seller's knowledge, threatened material action or proceeding (including, but not limited to, any condemnation or eminent
domain action or proceeding) before any court, governmental agency or arbitrator
relating to or arising out of the ownership of the Real Property or any portion thereof, or which may adversely affect Seller's ability to perform this Agreement;

(c) No work has been performed or is in progress at, and no materials have been furnished to, the Real Property or any portion thereof which may give rise to mechanic's, materialmen's or other liens against the Real Property or any portion thereof which have not been paid or will not be paid by Seller when due post Closing, excluding work initiated or authorized by Buyer or required to be performed by Buyer under this Agreement; and

(5) Pine State Elevator Co. is a Maine company duly organized and existing under the laws of the State of Maine, with full capacity, power and authority to enter into this Agreement and to fully perform the transactions contemplated hereby; and

(e) During its ownership of the Real Property, Seller has not deposited any hazardous or toxic wastes, substances, matters or materials, including but not limited to any material defined as hazardous or toxic from time to time by applicable state, local and federal law, either on the Real Property or any adjacent property in violation of law nor is Seller aware of any claims by any governmental agencies that it has done so.

In the event that material changes occur as to any warranties and representations set forth in this Agreement of which Seller has knowledge, Seller will promptly disclose same to Buyer within three (3) business days.

13. Condominium Project. Buyer agrees to construct and legally establish a residential condominium project on the Real Estate in accordance with the provisions of the Maine Condominium Act and applicable secondary mortgage market documentation requirements (the "Condominium") as established by Buyer.

14.12. Closing Warranties. All obligations of the Buyer under this Agreement are (without limitation) conditioned upon Seller's warranties and representations hereunder being materially true, accurate and complete at Closing, with the same force and effect as though such representations and warranties had been made on and as of the Closing. Each such warranty and representation shall survive the closing for the benefit of Buyer.

14.13. Brokers. Seller and Buyer each represent and warrant to the other that no brokers, agents or consultants have been employed with respect to this transaction by either of them and Seller and Buyer agree to indemnify and hold the other harmless from any claim by any broker or agent claiming compensation in respect of this transaction, alleging an agreement with Seller or Buyer, as the case may be.

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

(b) Any notice relating in any way to this Agreement (except the extension notice referred to in Section 6(b) shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, (ii) overnight delivery by a nationally recognized courier, or (iii) hand delivery obtaining a receipt therefor, addressed as follows:

To Buyer: 2 Walnut LLC
218 Washington Avenue
Apartment #3
Portland, ME 04101

with a copy to: Buyers Attorney

To Seller: Pine Street Elevator
230 Anderson Street
Portland, ME

with a copy to: Sellers Attorney

and such notice shall be deemed delivered three days after when so posted by certified mail, the next business day in the case of notice by overnight courier and the business day when delivered in the case of notice by hand delivery. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

(c) All headings in this Agreement are for convenience of reference only and are of no independent legal significance.

(d) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(e) Any and all prior and contemporaneous discussions, undertakings, agreements (including without limitation any prior Agreements previously executed by the parties hereto) and understandings of the parties are superseded by and merged in this Agreement, which alone fully and completely expresses their entire agreement.
(f) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument. This Agreement may be transmitted between the parties by facsimile machine and signatures appearing on fixed or emailed instruments shall be treated as original signatures. Each a fixed or emailed Agreement containing either original or fixed or emailed signatures of all parties, and multiple counterparts of the same Agreement each containing separate original or fixed or emailed signatures of the parties, shall be binding on them.

(g) If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(h) It is expressly understood and agreed that time is of the essence in respect of this Agreement.

(i) This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

(j) At the request of Buyer, Seller agrees to execute a short form memorandum of purchase and sale in a form in accordance with Maine practice or to execute a junior mortgage to Buyer securing Seller's performance of this Agreement suitable for recording in the Cumberland County Registry of Deeds and in addition, as or prior thereto a transfer title to the personaly owned Real Estate into 2-Walnut Street, LLC, which real estate shall remain the only activity conducted by 2-Walnut Street, LLC.

(k) Buyer agrees to promptly forward to seller, for sellers information, any documentation, permits, geotechnical reports or architectural plans (anything pertinent to the property), when received.

The effective date of this Agreement is when the Agreement has been signed by the Buyer and Seller as evidenced by their signature and notice of such acceptance has been communicated to the parties.

Effective Date: May_____, 2017.

Buyer: date of Seller's acceptance: May_____, 2017
GLENN A. MORSE (Member)
2 Walnug, L.L.C.

president 5/25/17
Seller: FINE STATE ELEVATOR, CO.

date of Buyer's acceptance: May __, 2017

By its: ____________________________

[Signature]

Seller's Principal (as to personal guaranty)

UP 5/15/17
TO WHOM IT MAY CONCERN:

PROJECT NAME: 443 Congress Housing Renovation

PROJECT ADDRESS ("Premises"): 443 Congress Street, Portland, ME 04101

OWNER: JJR 443 Congress, LLC

CONSTRUCTION MANAGER: Northland Management Corp

SUBCONTRACTOR/SUPPLIER: Morse Builders Inc.

LENDER: Saco and Biddeford Savings Institution

The undersigned, in consideration of the sum of $33,820.00, receipt of which is hereby acknowledged, does hereby WAIVE and RELEASE any and all lien, right of lien or claim of whatsoever kind or character under all pertinent statutes or common law of the State of Maine on said described building(s) and Premises, on account of all labor, services and/or material or both, furnished for or incorporated into said building(s) and premises by the undersigned up to and including August 31, 2017, except for retainage (if any) due and not included in the above amount.

Further, the undersigned hereby COVENANTS and REPRESENTS that all of the subcontractors, suppliers, and laborers engaged by the undersigned have been or will be paid in full, for all work done and/or all materials furnished to said Premises through the date shown herein. The undersigned hereby AGREES to INDEMNIFY, DEFEND and HOLD HARMLESS the owner and lender from any and all claims by any party whatsoever based on work done and/or material furnished in connection with the construction by the undersigned and/or its subcontractors or suppliers through the date shown herein.

DATED: 9/22/2017

Sworn and subscribed before me this 22nd day of September, 2017.

Name of Company: More Builders Inc.

By: [Signature]

Its: [President]

Title

CERTIFICATE OF FINAL PAYMENT (upon final payment):

The undersigned certifies that all work to be performed by the undersigned on the Premises has been completed, and that there is no more work or materials to be supplied to the Premises under terms of agreement for work. The payment received herewith constitutes payment in full for all work done and materials supplied to the Premises, and this lien waiver covers all work and materials contracted for by the undersigned.

Name of Company: 

By: [Signature]

Its: [President]

Title

Is the business incorporated?  □ Yes  □ No

Tax ID# or SS#: __________________________
FINAL WAIVER OF LIEN
(UNCONDITIONAL)

TO WHOM IT MAY CONCERN:

PROJECT NAME: Robert W. Baird & Co., Inc. “Fit-Up”

PROJECT ADDRESS: 129 Middle Street #200, Portland, ME 04101

OWNER: Robert W. Baird & Co., Inc.

GENERAL CONTRACTOR: Portland Builders, Inc.

The undersigned, in consideration of the sum of Six Thousand Four Hundred Dollars and 00/100 ($6,400.00), receipt of which is hereby acknowledged, does hereby WAIVE and RELEASE any and all lien, right of lien or claim of whatsoever kind or character on said described building(s) and premises, on account of all labor, services and/or material or both, furnished for or incorporated into said building(s) and premises by the undersigned up to and including August 31, 2017.

Further, the undersigned hereby COVENANTS and REPRESENTS that all of the subcontractors, suppliers, mechanics, and laborers engaged by the undersigned have been paid in full, or shall be paid from the proceeds of this payment for all work done and/or all materials furnished to said property through the date shown herein. The undersigned hereby AGREES to INDEMNIFY and HOLD HARMLESS the owner and all from any and all claims by any party whatsoever based on work done and/or material furnished in connection with the construction by the undersigned and his subcontractors or suppliers through the date shown herein.

DATED Sept. 21, 2017

WITNESS: Aleta Snow

SIGNED: 

Morse Builders, Inc.
The vacant parcel at 233 Anderson is currently located in both the IL-b and B1-b zones. We are requesting a **Zone Map Amendment** in order to bring our entire site into the B1-b Zone. In keeping with the Planning Board's thoughtful approach of evaluating surrounding parcels when considering any zone change, we have graphically included the adjacent, City-owned parcel located to the northwest of 233 Andersen Street in our proposal. By including the adjacent parcel, a cleaner, more regular IL-b and B1-b delineation is achieved.

233 Anderson Street is noted in the graphic below with an orange pin. The orange outline represents the 233 Anderson Street parcel, CBL #10-A-40. The lot is located near the corner of Anderson and Plowman Streets, just south of the foot of the Southbound I-295 off-ramp at Exit 8, and "below" Washington Avenue.
This area of East Bayside is at the confluence of the IL-b, B1-b, and B5 zones, adjacent to the ROS. While the entire area of Bayside is slated for a thorough zoning review, the proposed delineation of zone boundaries appear to be consistent with the intent of the Comprehensive Plan and the future growth of the East Bayside neighborhood.

The line of demarkation between the two zones on the parcel (IL-b and B1-b) runs parallel to Washington Avenue, with the IL-b zone extending along Anderson Avenue for only an additional 81' (4 over City-owned property) before transitioning to the adjacent B5 zone. The B5 zone is within 125' of the parcel, which allows mixed commercial use, including multi-family residential. The B1-b zone allows mixed commercial use, including multi-family residential. A chart of allowed uses is included on the following pages.

The hatched light blue area is the proposed zone map change for the parcel at 233 Anderson Street and the adjacent City-owned parcel. Of course, we are only proposing the map amendment for the parcel of which we have "right, title, or interest", but felt it prudent to illustrate the potential area that the Planning Board is likely to consider, particularly because it is City-owned land.
233 Anderson Street has a relatively imposing slope over the entire length of the parcel that significantly limits the ability of the site to be developed as currently zoned, particularly with a grade difference in excess of 35' in the downhill, IL-b zone. The elevation at the property line along Anderson Street is approximately 16' and steadily climbs up to 58' at the rear property line. For reference, a 45' building height is shown for scale in the graphic of a typical section through the site, below.

Not only is the slope of the site challenging to develop, but the small size of the parcel contributes to its complexity. Generally, the dimensional standards of the IL-b and B1-b zones vary little between the two zones, with the important exception being the pavement setback from the lot boundaries. As shown in the chart, the pavement setback required in the IL-b zone would push the required light industrial site circulation deeper into the site, and deeper into the hill if developed under the existing zoning. The portion of the site currently zoned IL-b averages roughly 60' deep; a 15' pavement setback from the lot boundary restricts vehicular circulation dramatically, while limiting the one- or possibly two-story building footprint even further. These dimensional restrictions severely restrict the development intent of the IL-b zone on this site.

<table>
<thead>
<tr>
<th>Applicable Dimensional Standards</th>
<th>B1-b</th>
<th>IL-b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Impervious Surface Ratio</td>
<td>90%</td>
<td>100%</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td>45'</td>
<td>45'</td>
</tr>
<tr>
<td>Minimum Side Yard</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Front Yard</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Maximum Front Yard</td>
<td>10'</td>
<td>n/a</td>
</tr>
<tr>
<td>Pavement Setback</td>
<td>n/a</td>
<td>15'</td>
</tr>
<tr>
<td>Minimum Lot Area per Dwelling Unit</td>
<td>435 sf</td>
<td>n/a</td>
</tr>
</tbody>
</table>
The specific purpose of the IL-b Zone, as stated in the Ordinance is "to provide areas in which low impact industrial uses and limited other uses serving employees and residents of the surrounding neighborhood will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the I-M or I-H Industrial zones, or will stand alone as a smaller scale industrial district". Although we concur that the purpose of IL-b zone is laudable, its application on this specific site is incongruous with its intent, particularly as it relates to the dimensional requirements as stated in Section 14-234.

While the feasibility to develop the site would be greater as a single B1-b zone due to its wider variety of allowable uses, the potential building massing would be similar. The existing zoning allows for similar buildable envelopes, irrespective of use (with the pavement setback requirement, excluded).

Illustrated in Figure 1, the buildable envelope of each zone is shown with its own 45' high buildable envelope, as if each zone were to be developed with zone-specific uses, dictating the location of the building and uses within the site. For example, a Lumber Yard could only be developed on the downhill side, within the IL-b zone; a Research & Development facility could only be developed uphill, within the B1-b zone.
Should a map amendment be granted, the entire site could be developed for a use allowed in the B1-b zone. Volumetrically, the building enveloped is identical to the development of the entire site for a use allowed in both zones. See figure 2.

Although the map amendment would allow full development of the site as shown in Figure 2, it is highly unlikely to happen, simply due to the constraints of the slope and dimensions of the parcel. With the granting of this map amendment, we hope to return to the Board early this winter with a project similar to the mixed-use massing model shown below, in Figure 3.
The proposed map amendment from IL-b to B1-b for the lower portion of the site along Anderson Street has little impact on the likely allowable uses of the site, with the obvious exception of residential use—which is already allowed on the rear portion of the site. The chart to the right compares allowable uses between the IL-b and the B1-b, with restrictions or conditions noted with an asterisk and specifically prohibited uses in the IL-b Zone noted in red.

<table>
<thead>
<tr>
<th>Permitted Uses</th>
<th>IL-b</th>
<th>B1-b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multifamily housing</td>
<td>✔</td>
<td>☐</td>
</tr>
<tr>
<td>Live/Work spaces</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>General business &amp; professional offices*</td>
<td>✔</td>
<td>☐</td>
</tr>
<tr>
<td>Personal Services (per 14-47)</td>
<td>✔</td>
<td>☐</td>
</tr>
<tr>
<td>Offices of building tradesmen</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>General retail establishments*</td>
<td>☐</td>
<td>✔</td>
</tr>
<tr>
<td>Beverage dealers*</td>
<td>✔</td>
<td>☐</td>
</tr>
<tr>
<td>Artists’ Studios</td>
<td>☐</td>
<td>✔</td>
</tr>
<tr>
<td>Restaurants on ground floor*</td>
<td>☐</td>
<td>✔</td>
</tr>
<tr>
<td>Accessory uses</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Bakeries, breweries, distilleries, commercial kitchens w/ minor retail</td>
<td>☐</td>
<td>✔</td>
</tr>
<tr>
<td>Research and development</td>
<td>☐</td>
<td>✔</td>
</tr>
</tbody>
</table>

Uses prohibited in IL-b are noted in red.

* with restrictions or conditions

MOST PROBABLE USES
Due to Site Constraints, Slope, & Location

Given the size and slope of the site at 233 Anderson Street, many of the permitted uses in the IL-b Zone would not be feasible. Above is the same chart of uses, simplified to illustrate the most likely uses for the parcel, with the proposed map amendment.
In closing, the proposed map amendment from a split B1-b/IL-b to a single, B1-b site allows the property to be appropriately developed in concert with the stated objectives of the newly adopted Comprehensive Plan. Our goal is to provide a commercial use in the base of the building with 12 to 18 residential units, above. The exact use and size of commercial space is yet to be determined, as is the precise number of live/work units and apartments in the above residential use. The overarching goal is to provide generously sized two-bedroom units, live/work units, and on-site parking, all within the confines of the B1-b Zone dimensional standards and a powerful design worthy of this newly enlivened neighborhood. We firmly believe that the proposed map amendment is in keeping with Portland’s Comprehensive Plan and takes great steps in moving us toward the livable City we envision for 2030.

The following are some highlights relating to Portland’s Plan:

This proposal is reasonable and equitable because the map change does not try to maximize the build ability of the site by requesting the nearby B-5 Zone—it simply brings a physically challenging site completely under one zone and maintains and supports the fabric of the existing East Bayside Neighborhood.

The proposed building, when reviewed during Site Plan Review, will demonstrate our commitment to planning for sea level rise and smart growth. Zone changes of this type are sustainable and logical, enabling our City to grow wisely, properly developing vacant land that has environmental challenges.

While the site is not in an Historic District, it does have a significant visual presence at the base of Munjoy Hill. We hope to present an interesting architectural design during Site Plan Review that becomes a dynamic part of the lively neighborhood, with nearby access to the Portland Trails System.

Views of Back Cove will be shared by the proposed residential units, as well as the commercial space(s) at the base of the building. Along with long water and mountain views will come views of the developing Bayside Area. The vibrancy of the area will be visible from the security of well-appointed apartments, at over 1,000 square feet per unit, providing much-needed larger-format housing on the peninsula.

The livability and walkability of the area cannot be overstated. An engaged community of active residents and commercial users provides a secure neighborhood unparalleled in its activity and safety.

Authentic materials will be used in the building, with particular consideration given to the expression of the materials throughout the facades.

With nearly direct access to I-295, steps from Metro and Breez, and the upcoming bike shares, this site is inextricably connected to the City of Portland and specifically, to the East Bayside Neighborhood.

Community Engagement - On August 22, 2017, we met with the East Bayside Neighborhood Association to ask what the neighborhood would like to see developed, and held our neighborhood meeting on November 14, 2017, at Bayside East. Again, we look forward to discussing this you, further.
November 13, 2017

233 Anderson Street:
Neighborhood Meeting Certification

I, 2 Walnut LLC hereby certify that a neighborhood meeting was held on November 13th, 2017 at the Bayside East Building at 7:00pm.

I also certify that on October 31, 2017 invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 1000ft of the proposed development.
2. Residents on the “interested Parties List”
3. A digital notice was provided to the Planning Division and the assigned planner to be forwarded to those on the interested client list who receive e-mail notices.

Signed,
______Glenn Morse______ Date_11/15/17_____

Contact info: gmorse444@gmail.com (603) 235.1257, (207) 590.3877
October 31, 2017

Dear Neighbor,

Please join us for a neighborhood meeting to discuss our plans for a map amendment located at 233 Anderson Street.

We will be holding a neighborhood meeting at the Bayside East building on Monday November 13th at 7:00pm in the downstairs meeting room. The address is 47 Smith Street, Portland.

The city code requires that property owners within 1000 feet of the proposed map amendment and residents on the “interested parties” list, be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and the minutes will be taken. Both the sign-in sheet and the minutes will be submitted to the Planning Board.

If you have any questions, please call us at 603.235.1257

We look forward to seeing everyone.

Thank you

2 Walnut LLC
218 Washington Ave
Portland Maine 04101

207.590.3877
2 Walnut LLC.
218 Washington Avenue
Portland ME 04101

November 13, 2017

233 Anderson Street:
Neighborhood Meeting Minutes

No Attendees

Signed: ___________________________  Date: ___________________________

Contact info: gmosse444@gmail.com  (603) 235.1257, (207) 590.3877
2 Walnut LLC
218 Washington Avenue
Portland ME 04101

November 13, 2017

233 Anderson St:
Neighborhood Meeting

SIGN IN SHEET

1. _No Neighborhood Attendee’s
2. ___Glenn Morse_____
3. ______________________
4. ______________________
5. ______________________
6. ______________________
7. ______________________
8. ______________________
9. ______________________
10. ______________________

Contact info: gmorse444@gmail.com  (603) 235.1257, (207) 590.3877
November 21, 2017

Barbara Barhydt & Jean Frasier
Development Review Manager
Planning and Urban Development Department
389 Congress Street, 4th Floor
Portland, Maine 04101

Dear Barbara and Jean,

On behalf of 2 Walnut LLC, we are pleased to submit the attached package as an application for a zoning map amendment for 233 Anderson Street in East Bayside.

The Planning Board Workshop held on October 6, 2017 proved to be very informative for us. Per Tom Erica’s request to engage a traffic engineer, we have brought Bill Bray of Traffic Solutions onto our team to develop a trip generation comparison of the most intensive uses on the site given the existing and the proposed zoning. Bill’s study has been uploaded to e-Plan, but in summary, the proposed zone map amendment results in a net increase of only 10 AM Peak Hour Trips and 13 PM Peak hour trips. As requested, this comparison was generated for the most intense uses for a full build-out of the site, not our specific proposed mixed use of residential, live/work, and commercial space on a portion of the site.

A neighborhood meeting was properly advertised and held on November 14, 2017 in Bayside East of 47 Smith Street. Unfortunately, no one from the neighborhood was in attendance. Given our previous meeting with the neighborhood on August 22, 2017 and the expressed public support during the Planning Board Workshop discussing this map amendment, we are hopeful to maintain the full support of the neighborhood.

In an effort to streamline the review efforts of the Planning Board and City Staff, there are no substantive changes to our previously submitted documents but we have added conceptual sketches and diagrams to illustrate the potential build-out of the site, both with and without the requested map amendment.

We look forward to meeting with you again, for the public hearing.

Sincerely,

T. Scott Teas, AIA
TECHNICAL MEMORANDUM

TO: Carol Morissette, Residential Design Studio
FROM: William Bray, P.E., Traffic Solutions
DATE: November 4, 2017
SUBJECT: 233 Anderson Street Property – “Build-out” Traffic Estimates

It is my understanding the 233 Anderson Street property is currently zoned, more or less, equally within the B1-b and IL-b zones. Your office is currently preparing a City Zoning Map Amendment Application that re-zones the parcel exclusively to the B1-b zone. In support of the application, the City has requested comparative traffic generation estimates for both the current and proposed property zones. The City further instructed the trip generation estimates should be based upon the most intensive use for each property zone.

The chart prepared by your office describing the most probable uses of the parcel under each zoning regulation was very carefully reviewed with the following permitted uses selected for the analysis:

- IL-b Zone: Research and Development Space
- B1-b Zone: General Office Space and 2,000 sf of restaurant space on the ground floor

Your October 31, 2017 memorandum (attached for reference) defines four possible development options for the property. Each option establishes maximum development of the parcel based upon the City’s zoning regulations, lot size, and the developability of the property. Each of the four development options are described as follows:

- **Option A** — Full Build-Out of Existing IL-b Zone Only — 41,700 sf Research & Development Building
- **Option B** — Full Build-Out of Existing B1-b Zone Only — 17,760 sf General Office and 2,000 sf Restaurant
- **Option C** — Full Build-Out of Existing Mixed Zone — 41,700 sf Research & Development Building and 9,790 sf General Office Space with 2,000 sf restaurant
- **Option D** — Full Build-Out of Proposed B1-b Zone — 49,000 sf General Office and 2,000 sf restaurant

Traffic Solutions prepared peak hour trip generation estimates for each of the four optional development schemes based upon trip rates presented in the ninth edition of the Institute of Transportation Engineers “TRIP GENERATION” publication. The following land-use codes and trips rates were used:

- **Land-Use Code #710 General Office Space**
  - 1.56 trips/1,000 sf building area
  - 1.49 trips/1,000 sf building area

- **Land-Use Code #760 Research and Development Space**
  - 1.22 trips/1,000 sf building area
  - 1.07 trips/1,000 sf building area

- **Land-Use Code #932 High-Turnover (Sit-Down) Restaurant**
  - 10.81 trips/1,000 sf building area
  - 9.85 trips/1,000 sf building area
Table 1 summarizes the trip generation analysis conducted for each of the four development options:

### Table 1
**Trip Generation Summary**
*Development Schemes (233 Anderson Street Property)*

<table>
<thead>
<tr>
<th>Development Option Description</th>
<th>Total Building Area</th>
<th>Projected Land-Use</th>
<th>AM Peak Hour Trips</th>
<th>PM Peak Hour Trips</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option #1 Full Build-Out IL-b zone ONLY</td>
<td>41,700 sf</td>
<td>Research and Development Space</td>
<td>51 trips</td>
<td>45 trips</td>
</tr>
<tr>
<td>Option #2 Full Build-Out B1-b Zone ONLY</td>
<td>19,650 sf</td>
<td>17,560 sf General Office 2,000 sf restaurant</td>
<td>50 trips</td>
<td>46 trips</td>
</tr>
<tr>
<td>Option #3 Full Build-Out Mixed Zones</td>
<td>IL-b 41,370 sf B1-b 11,790 sf</td>
<td>Research and Development Space; 2,000 sf restaurant; 9,790 sf General Office Space</td>
<td>88 trips</td>
<td>80 trips</td>
</tr>
<tr>
<td>Option #4 Full Build-Out Proposed B1-b Zone</td>
<td>51,000 sf</td>
<td>2,600 sf restaurant; 49,000 sf General Office Space</td>
<td>98 trips</td>
<td>93 trips</td>
</tr>
</tbody>
</table>

The 233 Anderson Street parcel is currently regulated by two separate building zones; Zone #IL-b and B1-b, which more or less subdivides the property. Development Option #1, which only develops the existing IL-b portion of the site and Development Option #2 limits development on the current B1-b portion of the site, are expected to generate nearly the same level of peak hour traffic (approximately 50 peak hour trips). Option #3, which proposes full build-out of the existing mixed zone, generates a slightly greater volume of peak hour traffic at 88 trips in the AM peak hour and 80 trips in the evening peak hour. Option #4, which represents full build-out of the property under the proposed B1-b zone, is expected to generate a similar volume of peak hour trips when compared to Option #3 (98 trips in the morning peak hour and 93 trips in the PM peak hour).
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.
(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:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum Height</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Minimum Side Yard Setback</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Stepbacks</strong></td>
<td>Stepback requirements in the underlying zoning shall not apply to side yards.</td>
</tr>
<tr>
<td><strong>Minimum Side Yard Setback on a side street</strong></td>
<td>5'; or the depth of the immediately abutting street-facing yard (see Diagram 14-140.5.b.), whichever is less.</td>
</tr>
<tr>
<td><strong>Minimum Rear Yard Setback</strong></td>
<td>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'.</td>
</tr>
</tbody>
</table>
(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:

<table>
<thead>
<tr>
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<th>Specification</th>
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</thead>
<tbody>
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</tr>
</tbody>
</table>

[Diagram showing minimum side yard on a side street]
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.
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,
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:
<table>
<thead>
<tr>
<th>Buildings in the R6 All</th>
<th>Totals</th>
<th>Demolitions</th>
<th>Percentage of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3,215</td>
<td>17</td>
<td>0.53%</td>
</tr>
<tr>
<td>Buildings in the R6 Munjoy Hill Only</td>
<td>1,149</td>
<td>13</td>
<td>1.13%</td>
</tr>
</tbody>
</table>

- 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, 2018. 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.
<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>IPOD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Height Maximum</strong></td>
<td>45'</td>
<td>35'; 45' for developments of 3 units or more on a lot over 2000 sf.</td>
</tr>
<tr>
<td><strong>Side Yard Setback Minimum</strong></td>
<td>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.</td>
<td>Buildings of height up to 35'. As per the underlying zoning</td>
</tr>
<tr>
<td><strong>Structure Stepbacks</strong></td>
<td>Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 ft from the rear property line when such property line abuts a residential zone. Does not apply to side yards on side streets.</td>
<td>Stepback requirements in the underlying zoning shall not apply to side yards.</td>
</tr>
<tr>
<td><strong>Side Yard Setback on a Side Street Minimum</strong></td>
<td>None</td>
<td>5'; or the depth of the immediately abutting street-facing yard, whichever is greater.</td>
</tr>
<tr>
<td><strong>Rear Yard Setback Minimum</strong></td>
<td>10 feet, except that accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.</td>
<td>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'.</td>
</tr>
</tbody>
</table>

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, as 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
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 foregoing, 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.
Exhibit A: Area of R-6 Zone on Munjoy Hill
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.
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 having 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/paramedic, 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 seventeen (17) 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 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. Professional 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 rehire 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 rehire 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(e) 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.

(i) 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 90 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.
(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 thereof, 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:

(c) 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 (e)(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 test 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), 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 (e)(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 thirty (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.
(e) 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 prehospital 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 under-representation 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.

(e) 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.

(f) 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.

(g) 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.
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 cannot 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.
WHEREAS, the Dr. Martin Luther King Recognition Task Force was established by Order 173-16/17 on March 20, 2017; and

WHEREAS, the deadline for the presentation of the task force recommendation to the City Council, after review by a council sub-committee, was extended by Order 266-16/17 on June 5, 2017; and

WHEREAS, Order 173-16/17 ended the task force on December 31, 2017, but it requires more time to provide a recommendation;

THEREFORE, BE IT ORDERED, that the Dr. Martin Luther King Recognition Task Force is hereby re-established to consider how the life and legacy of the Civil Rights Leader Dr. Martin Luther King may be best acknowledged and recognized by the City of Portland; and

BE IT FURTHER ORDERED, the re-established Dr. Martin Luther King Recognition Task Force shall present a recommendation to the Portland City Council, after review by the Sustainability and Transportation Committee, by May 31, 2018.
MEMORANDUM  
City Council Agenda Item

TO: Mayor and City Council  
FROM: Troy Moon, Sustainability Coordinator  
DATE: 1/9/2018  

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order Re-establishing the Martin Luther King Recognition Task Force

SPONSOR: Ethan Strimling, Mayor

COUNCIL MEETING DATE ACTION IS REQUESTED:  
1st reading_________ Final Action X  

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

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

SUMMARY OF ISSUE (Agenda Description)

On March 27, 2017 the City Council created the Dr. Martin Luther King Recognition Task Force (Order 173-16/17) to consider how the life and legacy of Dr. Martin Luther King may be best acknowledged and recognized in the form of renaming a street, park or similarly situated public space. The order included a sunset date of December 31, 2017. The Task Force requires additional time to complete their work and requests that the City Council re-establish the Task Force and require a report to the Sustainability and Transportation Committee by May 31, 2018.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The order re-establishes the Dr. Martin Luther King Recognition Task Force so they can complete their work and make a recommendation to the Sustainability and Transportation Committee.

III. INTENDED RESULT

Adopting the order will permit Martin Luther King Recognition Task Force to continue their work in order reach a recommendation to recognize Dr. King.

IV. COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS
VII. RECOMMENDATION

Staff recommends approval of the extension.

VIII. LIST ATTACHMENTS

Prepared by: Troy Moon

Date: 1/9/2018
ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND AND MAINE DEPARTMENT OF TRANSPORTATION RE: PAVING ALLEN AVENUE FROM SUMMIT STREET TO WASHINGTON AVENUE AND AUBURN STREET

ORDERED, that the Agreement between the City of Portland and the Maine Department of Transportation for pavement preservation on Allen Avenue from Summit Street to Washington Avenue and Auburn Street, with the MDOT identification number of 022450.00, is hereby approved in substantially the form attached hereto; and

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

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

From: Michael Farmer, Senior Engineer, Department of Public Works

Date: January 17, 2018

Subject: Maine Department of Transportation Municipal/State Agreement Proposed Improvements to Allen Avenue - Washington Avenue to Summit Street, WIN 022450.00

Sponsor: Jon P. Jennings, City Manager

Council Meeting Date Action is Requested:
1st reading: 2/5/2018 Final Action: 2/21/2018

Can action be taken at a later date: ___ Yes ___ X No (If no why not?) Prompt action is required on this agreement to avoid delays in scheduling and bidding this project.

Presentation: (List the presenter(s), type and length of presentation)
Not Applicable

I. ONE SENTENCE SUMMARY
The City Council is being asked to approve the attached two-party agreement, which would allow MaineDOT and City staff to construct the Allen Avenue paving project in 2018.

II. AGENDA DESCRIPTION
Approving and signing this agreement would confirm the City’s intent to construct this project, pay 25% of the total project cost for paving Allen Avenue, and pay 100% of the cost to pave Washington Avenue between Allen Avenue and Auburn Street (330 ft.) and Auburn Street between Washington Ave. and Chapman Street (410 ft.).

The estimated total project cost to pave Allen Avenue is $425,000. The City’s 25% share would be $106,250. The estimated additional cost to pave Washington Avenue and Auburn Street is $170,000, which would be paid entirely by the City.

The total estimated City share of the project cost is $276,250.

III. BACKGROUND
The Allen Avenue paving project was originally developed through the PACTS Collector Pavement Preservation program. The original project limits extended on Allen Avenue from Washington Avenue to Summit Street. City staff asked MaineDOT to add a short section of Washington Avenue (330 ft. from Allen Ave. to Auburn St.) and a short section of Auburn Street...
(410 ft. from Washington Ave. to Chapman St.) to the Allen Avenue paving project to address the paving need on this 740-foot section of arterial roadway.

IV. INTENDED RESULT AND COUNCIL GOAL ADDRESSED
This project will improve the pavement surface and ride quality in the project area.

V. FINANCIAL IMPACT
As mentioned above, approving this agreement would obligate the City to pay 25% of the total project cost for paving Allen Avenue plus 100% of the cost to pave Washington Avenue between Allen Ave. and Auburn St. and Auburn Street between Washington Ave. and Chapman St. The total estimated City share of the project is $276,250.

The total estimated project cost (including State plus local shares) is $590,000. If the total project costs were to exceed $590,000, the City would be obligated to pay for 100% of the total project costs in excess of $590,000, in addition to the $276,250 amount described above.

As the owner of the sanitary sewer system in the project area, the City would be solely responsible for the cost of sewer system improvements associated with the project. The cost of this work, which typically includes adjusting sewer manhole frames to finish grade, would be in addition to the amounts described above.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION
The DPW request for the FY19 CIP includes $106,250 for the City’s 25% share of the Allen Avenue collector paving work (ID# 184327). The City’s 100% share of the cost for paving on Washington Avenue and Auburn Street, which is estimated to be $170,000, would be paid from funds approved, through the CIP, for Pavement Preservation (Project no. C18104, for example).

The DPW request for the FY19 CIP includes $30,000 for ineligible utility related costs for PACTS Paving projects (ID#184376). These funds could be used for sewer manhole frame adjustments on Allen Avenue, Washington Avenue, and Auburn Street.

VII. RECOMMENDATION
The Department of Public Works recommends approving and signing the subject Two-Party Agreement to allow MaineDOT and City staff to proceed with the Allen Avenue Collector Pavement Preservation Project.

VIII. LIST ATTACHMENTS
A. Two-Party Agreement for WIN # 022450.00.
B. Project Location Map.

Prepared by: Michael Farmer
Date: January 17, 2018
This Agreement is entered into between the Maine Department of Transportation (hereafter the MaineDOT) and the Municipality of PORTLAND, a municipal corporation located in the County of CUMBERLAND (hereafter the “Municipality”) (collectively hereinafter the “Parties”).

RECITALS

A. The scope of work that is the subject of this Agreement consists of making improvements to ALLEN AVENUE, in PORTLAND, Maine, (hereafter the “Project”).

B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.

C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project’s Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

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

D. The following checked appendices are hereby incorporated into this Agreement by reference:

- Appendix A – Project scope, cost sharing, and payment schedule
- Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- Appendix B – Perpetual Drainage Maintenance
- Appendix B – Perpetual Landscape Maintenance
- Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
- Appendix B – Perpetual Traffic Signal Operation and Maintenance
- Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- Appendix C – Additional work requested by Municipality
E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.

2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.

3. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

4. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality’s additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

5. The Municipality agrees to allow MaineDOT’s contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:

i. MaineDOT’s Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).

ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.

iii. MaineDOT’s PM & Designer will incorporate these comments where practical based on engineering judgment.
iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project
design, Special Provision 105 – Limitations of Operations, Special Provision 107 -
Time, etc.

H. Utilities

6. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair
of any portion of a utility service, whether above or below ground, that is located within the
limits of the highway right-of-way and connected to any municipal utility, which might become
necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT
harmless from any claims for damages occurring as a result thereof.

7. The Municipality agrees that during and after construction it will apply the requirements of the
most recent version of MaineDOT’s “Utility Accommodation Rules” as the minimum guidelines
notwithstanding any municipal rules that are more lenient.

8. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide
utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a
part of the Project in such a manner as necessary to preserve the use and function thereof for the
expected period of their normal useful life as determined by accepted engineering and/or industry
standards. To the extent any warranty exists for said improvements or fixtures, said warranty
shall be first relied on by MaineDOT to address maintenance and/or repairs described in this
paragraph.

I. Governing Law:

9. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A,
it will prohibit the excavation of the highway within the limits of the Project for a period of at
least five (5) years after completion of the Project, and agrees to make all necessary notifications
to abutters and occupants of the highway as otherwise required of any municipal government
under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-
of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in
its most recent “Utility Accommodation Rules”, which is incorporated herein and made a part
hereof by reference.

10. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes,
rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and
Agreement provisions; avoid hindering each other’s performance; fulfill all obligations
diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality’s Responsibility:

11. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the
Project, any municipal property, including all fixtures, facilities or monuments, located on, under
or above the ground, as necessary to permit construction of the Project, which has not otherwise
been provided for during the development of the Project. Any work necessary to do so during
the period of construction shall be coordinated with the contractor for the Project.

12. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities
in usable condition including snow and ice control.
13. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.

14. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.

15. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

16. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.

17. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those provisions that by their very nature are intended to survive.

L. Miscellaneous Provisions:

18. Debarment. The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

19. All provisions of this Agreement, except those that by their very nature are intended to survive, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

20. Non-Appropriation. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.

21. Assignment. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
22. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

**MaineDOT:**
Maine Department of Transportation  
16 State House Station  
Augusta, ME 04333-0016  
Attn.: Robert K. Betz  
Email: robert.k.betz@maine.gov

**Municipality:**
City of Portland  
389 Congress Street  
Portland, ME 04101  
Attn.: Jon Jennings, City Manager  
Email: jensjennings@portlandmaine.gov

**IN WITNESS WHEREOF,** the Parties hereto have executed this AGREEMENT effective on the day and date last signed below.

**MUNICIPALITY OF PORTLAND**

**MAINE DEPARTMENT OF TRANSPORTATION**

By: ________________________________  
Jon Jennings, City Manager

By: ________________________________  
William A. Pulver, Director  
Bureau of Project Development

(Date Signed)  
(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.
## APPENDIX A
### PROJECT SCOPE AND COST SHARING
#### MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

**MUNICIPALITY OF PORTLAND**

**PROPOSED IMPROVEMENTS TO**  ALLEN AVENUE AND WASHINGTON AVENUE

**FEDERAL AID PROJECT NO.**  224500
**STATE PROJECT IDENTIFICATION NUMBER (WIN)**  22450.00

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**Project Scope:** Mill and Fill on Allen Ave

**Funding Outline:** The Total Project Estimated Cost is $595,000.00, and the Parties agree to share costs through all stages of the Project under the terms outlined below.

<table>
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<th>Work Element</th>
<th>Municipal Share %</th>
<th>Municipal Share $</th>
<th>Project Share MPO %</th>
<th>Project Share Portion $</th>
<th>Project Share MaineDOT (State) Portion $</th>
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<tr>
<td>Preliminary Engineering</td>
<td>25.0%</td>
<td>$5,312.50</td>
<td>75.0%</td>
<td>$15,937.50</td>
<td>$</td>
<td>$21,250.00</td>
</tr>
<tr>
<td>Right of Way</td>
<td>25.0%</td>
<td>$125.00</td>
<td>75.0%</td>
<td>$375.00</td>
<td>$</td>
<td>$500.00</td>
</tr>
<tr>
<td>Construction</td>
<td>25.0%</td>
<td>$90,187.50</td>
<td>75.0%</td>
<td>$270,562.50</td>
<td>$</td>
<td>$360,750.00</td>
</tr>
<tr>
<td>Construction Engineering</td>
<td>25.0%</td>
<td>$10,625.00</td>
<td>75.0%</td>
<td>$31,875.00</td>
<td>$</td>
<td>$42,500.00</td>
</tr>
<tr>
<td><strong>PROJECT SHARES</strong></td>
<td></td>
<td>$106,250.00</td>
<td></td>
<td>$318,750.00</td>
<td>$</td>
<td>$425,000.00</td>
</tr>
<tr>
<td>Total Cost of Additional Work</td>
<td>100.0%</td>
<td>$170,000.00</td>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Requested by Municipality</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$276,250.00</td>
<td>$</td>
</tr>
</tbody>
</table>
Additional Work as outlined in Appendix C to this Agreement.

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

<table>
<thead>
<tr>
<th>Additional Work</th>
<th>Cost: 100% Municipal Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>WASHINGTON AVE MILL AND FILL</td>
<td>$ 170,000.00</td>
</tr>
<tr>
<td>TYPE OF WORK</td>
<td>$  -</td>
</tr>
<tr>
<td>TYPE OF WORK</td>
<td>$  -</td>
</tr>
<tr>
<td>TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY</td>
<td>$ 170,000.00</td>
</tr>
</tbody>
</table>

Payment:
The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project. Invoicing will include the following:
   a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
   b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
   c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

<table>
<thead>
<tr>
<th>Municipality Name</th>
<th>Receivable Amount</th>
<th>Estimated Invoice Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>PORTLAND</td>
<td>$225,843.75</td>
<td>5/1/2018</td>
</tr>
<tr>
<td>PORTLAND</td>
<td>$50,406.25</td>
<td>12/1/2018</td>
</tr>
<tr>
<td>PORTLAND</td>
<td>Balance (If Any)</td>
<td>12/1/2019</td>
</tr>
</tbody>
</table>

Total Receivable Amount: $276,250.00
APPENDIX C
Additional Work

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO ALLEN AVENUE

FEDERAL AID PROJECT NO. 2245000
STATE PROJECT IDENTIFICATION NUMBER (WIN) 22450.00

1. **Description of Work Being Added to Project by the Municipality:**
   MILL AND FILL ON WASHINGTON AVENUE FROM ALLEN AVENUE TO CHAPMAN STREET

2. **The Municipality agrees to furnish all plans, specifications and estimates necessary to include additional work under the Project:** No ☒ - *Disregard this Section*, or Yes ☐ - as follows:

   a) All plans and specifications shall conform to the standards used by MaineDOT as set forth in the latest version of its "Highway Design Guide" and "Standard Details" and comply with MaineDOT's Utility Accommodation Rules.

   b) All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.

   c) All specifications shall be printed on 8-1/2 inch wide by 11 inch long paper suitable for binding in MaineDOT's proposal book.

   d) The Municipality shall provide a detailed engineer's estimate of the cost of such additional work calculated in a manner acceptable to MaineDOT and allowable for bidding. The Municipality agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.

   e) The Municipality shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Section 1 above.

   f) The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals shall be done in such a timely manner as not to unreasonably delay MaineDOT's schedule for soliciting bids to construct the Project.

   g) The Municipality may utilize the electronic exchange of CADD data; the Municipality must accept pertinent electronic input data as specified by MaineDOT. A copy of MaineDOT's specifications can be found on its website under Business and CADD support. It is the responsibility of the Municipality to translate this data into other formats required for use in their design software.
3. Following solicitation of competitive bids for the Project under Paragraph D of the Agreement; but before award of a contract to construct the Project that includes additional work as described in Section 1 above; action must be taken by the Municipality:

a) If the bid price received for such additional work exceeds the detailed engineers estimate by any more than ten (10%) percent, the Municipality may reject such bid price by notifying MaineDOT in writing within five (5) business days following the opening of such bids. The Municipality may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance of bids and the award of any construction contract shall be the sole discretion of MaineDOT.

b) If the bid price for such additional work is acceptable to the Municipality, the Municipality shall pay MaineDOT, an amount equal to the Municipality’s share of the estimated cost of such additional work based upon the prices of the successful bidder. Following receipt of payment, MaineDOT agrees to award a contract to construct the Project including the additional work.

c) The parties agree that any additional adjustments to the amount of any payment or deposit made pursuant to the provisions of subparagraph b) above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities, unless MaineDOT determines that the actual cost of such additional work is expected to differ measurably from the amount of such payment, due to changes in quantities placed or work performed during the period of construction.
ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND, PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM AND MAINE DEPARTMENT OF TRANSPORTATION RE: PAVING CUMBERLAND AVENUE FROM ELM STREET TO STATE STREET

ORDERED, that the Agreement between the City of Portland, Portland Area Comprehensive Transportation System and the Maine Department of Transportation for pavement preservation on Cumberland Avenue from Elm Street to State Street, with the MDOT identification number of 022164.00, is hereby approved in substantially the form attached hereto; and

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

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

FROM: Michael Farmer, Senior Engineer, Department of Public Works

DATE: January 17, 2018

SUBJECT: Maine Department of Transportation
Three-Party Partnership Agreement
Cumberland Avenue Pavement Preservation Project - Elm Street to State Street, WIN 022164.00

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: 2/5/2018 Final Action: 2/21/2018

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

PRESENTATION: (List the presenter(s), type and length of presentation)
Not Applicable

I. ONE SENTENCE SUMMARY
The City Council is being asked to approve the attached Three-Party Partnership Agreement, which would allow PACTS, MaineDOT and City staff to move ahead with plans to pave Cumberland Avenue between Elm Street and State Street in 2019.

II. AGENDA DESCRIPTION
Approving and signing this agreement would confirm the City’s intent to undertake this project and pay 25% of the total project cost. The estimated total project cost is $397,100. The City’s 25% share would be $99,275.

III. BACKGROUND
This project has been developed through the PACTS Collector Pavement Preservation program. The scope of work is planned to be a “mill and fill.”

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED
This project will improve the pavement surface and ride quality in the project area.
V. FINANCIAL IMPACT

By approving this Three-Party Agreement, the City Council would indicate its intent to undertake this project and pay 25% of the total estimated project cost. The total estimated cost is $397,100. The City's 25% share of this amount, $99,275, would be funded through the City's annual capital improvement program.

If the total project costs were to exceed $397,100, the City would be obligated to pay for 100% of the total project costs in excess of $397,100, in addition to City's 25% share of $397,100.

As the owner of the sanitary sewer system in the project area, the City would be solely responsible for the cost of sewer system improvements associated with the project. The cost of this work, which typically includes adjusting sewer manhole frames to finish grade, would be in addition to the 25% share listed above for paving.

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

The DPW request for the FY19 CIP includes $145,000 for the City's share of the pavement related cost of the Cumberland Avenue collector paving project (ID# 184327). The DPW request for the FY19 CIP also includes $30,000 for ineligible utility related costs for PACTS Paving projects (ID#184376).

Maine DOT is planning three collector paving projects in Portland in 2019. Maine DOT is planning to pave Danforth Street from High Street to Vaughn Street and Washington Avenue from Riverside Street to Greenwood Lane in 2019, in addition to the Cumberland Avenue project that is the focus of this memorandum.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject Three-Party Partnership Agreement to allow PACTS, MaineDOT and City staff to proceed with the Cumberland Avenue Collector Pavement Preservation Project.

VIII. LIST ATTACHMENTS

A. Three Party Partnership Agreement for WIN # 022164.00.
B. Project Location Map.

Prepared by: Michael Farmer
Date: January 17, 2018
This Cooperative Agreement ("Agreement") is entered into by and between the Maine Department of Transportation ("MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, the City of Portland ("Municipality"), a municipality in the State of Maine with offices located at 389 Congress Street, Portland, Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area ("PACTS"), with its offices located at 970 Baxter Boulevard, Portland, Maine, hereinafter referred to as (the "Parties.")

Whereas, the work that is the subject of this Agreement consists of a mill and fill on Cumberland Avenue beginning at State Street and extending north 0.46 of a mile to Elm Street (the "Project"); and

Whereas, PACTS has programmed the Project for inclusion in the 2017-2018-2019 MaineDOT Work Plan, using Federal capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by PACTS to program the Project; and

Whereas, the Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the budget programmed, using a process that maximizes communication and cooperation; and

Whereas, the purpose of this Agreement is to identify the Parties' individual responsibilities during the design, permitting and right-of-way phases of the Project through completion of final Plans, Specifications and Estimate ("PS&E"), and to identify the intended financial allocations between the Parties through all phases of the Project if and when the parties formally approve and commit financial resources for the Project; and
Whereas, following the preparation of the project PS&E, a separate Municipal/State Agreement will be executed by MaineDOT and the Municipality.

Now therefore, in consideration of the foregoing, the Parties hereby establish and agree to the following terms and conditions:

A. Financial Provisions:

1. The total estimated cost of the Project through all phases is $397,100.00 (the “Project Estimate”), and the Parties agree to share in and allocate the associated costs of each phase as outlined in this section:

<table>
<thead>
<tr>
<th>Work Phase</th>
<th>Estimated Federal Share</th>
<th>Estimated State Share</th>
<th>Estimated Municipal Share</th>
<th>Estimated Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td>$14,891.25</td>
<td>$-</td>
<td>$4,963.75</td>
<td>$19,855.00</td>
</tr>
<tr>
<td>Right of Way</td>
<td>$375.00</td>
<td>$-</td>
<td>$125.00</td>
<td>$500.00</td>
</tr>
<tr>
<td>Construction</td>
<td>$252,776.25</td>
<td>$-</td>
<td>$84,258.75</td>
<td>$337,035.00</td>
</tr>
<tr>
<td>Construction Engineering</td>
<td>$29,782.50</td>
<td>$-</td>
<td>$9,927.50</td>
<td>$39,710.00</td>
</tr>
<tr>
<td><strong>Total Project Share</strong></td>
<td><strong>$297,825.00</strong></td>
<td><strong>$-</strong></td>
<td><strong>$99,275.00</strong></td>
<td><strong>$397,100.00</strong></td>
</tr>
</tbody>
</table>

2. Estimated allocations are further identified as follows:
   a. **Federal share** (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of $297,825.00.
   b. **State share** (provided through PACTS State Allocation) - 0% of federally participating costs, up to a maximum of $0.00.
   c. **Municipal share** (provided through the Municipality’s obligation of funds) - 25% federally participating costs, which is estimated at $99,275.00, plus 100% of any additional costs incurred in accordance with Section A.3.

3. The Municipality shall be fully responsible for any and all Project costs exceeding $397,100.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.

4. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.

5. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.

B. **MaineDOT Agrees:**

1. To prepare, or cause to be prepared, construction plans and specifications for the Project within the scope described above, using MaineDOT’s standard project development process to ensure adherence to federal and state regulations.

2. To share information about the status of the Project with staff from PACTS and the Municipality at the following milestones, as appropriate:
• Project kickoff/initial team meeting/formal public contact.
• Horizontal/Vertical Alignment Complete ("HVAC").
• Preliminary public meeting.
• Preliminary Design Report ("PDR") complete.
• Formal public meeting.
• Plan Impacts Complete ("PIC").
• PS&E complete.
• Changes in the Project Schedule or Engineer’s Estimate.

C. Miscellaneous Provisions:

1. After the final PS&E package is prepared, MaineDOT and the Municipality will execute a Municipal/State Project Agreement covering Project advertisement, award, construction and construction engineering. Said Municipal/State Agreement will carry the financial terms outlined in the Financial Provisions section of this Agreement, as well as a schedule for collection of the Municipality’s share of Project costs.

2. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.

3. The Parties will participate as partners in any public meetings held to discuss the Project.

4. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by PACTS and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.

5. If the Municipality withdraws its financial support for the Project as described in the Financial Provisions section of this Agreement, leading MaineDOT to cancel the Project before it has been advertised for construction, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.

6. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by its federal partners and the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.

7. The Municipality represents that its governing body has taken all steps necessary and lawful to approve the Project and the Municipality’s entry into this Agreement, has appropriated or authorized the use of any necessary funds in connection with the Municipality’s participation, and has further authorized the undersigned Municipal representative to execute this Agreement on the Municipality’s behalf.
8. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold for the purposes of set-off monies due the Municipality under a specific Project Contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other Agreement/Contract, any other Agreement/Contract with any State Department or Agency, including any Agreement/Contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise it set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.

9. To the extent permitted by law, the Municipality and PACTS shall indemnify and hold harmless MaineDOT, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive any termination or expiration of this Agreement.

10. With the exceptions of the provisions so noted, all provisions of this Agreement shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.

John Duncan
John Duncan, Director
Portland Area Comprehensive Transportation System

Date 5/30/17

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Jon Jennings, City Manager
Municipality of Portland

Date

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Herb Thomson, Director, Bureau of Planning
Maine Department of Transportation

Date

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

3-Party Agreement
Portland, Cumberland Avenue Pavement Preservation
WIN 022164.00
CUMBERLAND AVE. PAVING PROJECT LOCATION
ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND, PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM AND MAINE DEPARTMENT OF TRANSPORTATION
RE: PAVING DANFORTH STREET FROM HIGH STREET TO VAUGHAN STREET

ORDERED, that the Agreement between the City of Portland, Portland Area Comprehensive Transportation System and the Maine Department of Transportation for pavement preservation on Danforth Street from High Street to Vaughan Street, with the MDOT identification number of 022170.00, is hereby approved in substantially the form attached hereto; and

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

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

FROM: Michael Farmer, Senior Engineer, Department of Public Works

DATE: January 17, 2018

SUBJECT: Maine Department of Transportation
Three-Party Partnership Agreement
Danforth Street Pavement Preservation Project – High Street to Vaughan Street, WIN 022170.00

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: 2/5/2018 Final Action: 2/21/2018

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

PRESENTATION: (List the presenter(s), type and length of presentation)
Not Applicable

I. ONE SENTENCE SUMMARY
The City Council is being asked to approve the attached Three-Party Partnership Agreement, which would allow PACTS, MaineDOT and City staff to move ahead with plans to pave Danforth Street between High Street and Vaughan Street in 2019.

II. AGENDA DESCRIPTION
Approving and signing this agreement between PACTS, MaineDOT, and the City would confirm the City’s intent to undertake this project and pay 25% of the total project cost. The estimated total project cost is $706,600. The City’s 25% share would be $176,650.

III. BACKGROUND
This project has been developed through the PACTS Collector Pavement Preservation program. The scope of work is planned to be a “mill and fill.”

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED
This project will improve the pavement surface and ride quality in the project area.
V. FINANCIAL IMPACT

By approving the Three-Party Agreement, the City Council would indicate its intent to undertake this paving project and pay 25% of the total estimated project cost. The total estimated cost is $706,600. The City’s 25% share of this amount would be $176,650.

If the total project costs were to exceed $706,600, the City would be obligated to pay for 100% of the total project costs in excess of $706,600, in addition to City’s 25% share of $706,600.

As the owner of the sanitary sewer system in the project area, the City is solely responsible for the cost of sewer system improvements associated with the paving project. Such work typically includes adjusting sewer manhole frames to finish grade.

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

The DPW has requested funding through the annual capital improvement program to pay for the local share of this project.

Maine DOT is planning three collector paving projects in Portland in 2019. Maine DOT is planning to pave Cumberland Avenue from Elm Street to State Street and Washington Avenue from Riverside Street to Greenwood Lane in 2019, in addition to the Danforth Street project that is the focus of this memorandum.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject Three-Party Partnership Agreement to allow PACTS, MaineDOT and City staff to proceed with the Danforth Street Collector Pavement Preservation Project.

VIII. LIST ATTACHMENTS

A. Three Party Partnership Agreement for WIN # 022170.00.
B. Project Location Map.

Prepared by: Michael Farmer
Date: January 17, 2018
This Cooperative Agreement ("Agreement") is entered into by and between the Maine Department of Transportation ("MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, the City of Portland ("Municipality"), a municipality in the State of Maine with offices located at 389 Congress Street, Portland, Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area ("PACTS"), with its offices located at 970 Baxter Boulevard, Portland, Maine, hereinafter referred to as (the "Parties.")

Whereas, the work that is the subject of this Agreement consists of a mill and fill on Danforth Street beginning at High Street and extending south 0.83 of a mile to Vaughn Street (the "Project"); and

Whereas, PACTS has programmed the Project for inclusion in the 2017-2018-2019 MaineDOT Work Plan, using Federal capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by PACTS to program the Project; and

Whereas, the Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the budget programmed, using a process that maximizes communication and cooperation; and

Whereas, the purpose of this Agreement is to identify the Parties' individual responsibilities during the design, permitting and right-of-way phases of the Project through completion of final Plans, Specifications and Estimate ("PS&E"), and to identify the intended financial allocations between the Parties through all phases of the Project if and when the parties formally approve and commit financial resources for the Project; and
Whereas, following the preparation of the project PS&E, a separate Municipal/State Agreement will be executed by MaineDOT and the Municipality.

Now therefore, in consideration of the foregoing, the Parties hereby establish and agree to the following terms and conditions:

A. Financial Provisions:

1. The total estimated cost of the Project through all phases is $706,600.00 (the "Project Estimate"), and the Parties agree to share in and allocate the associated costs of each phase as outlined in this section:

<table>
<thead>
<tr>
<th>Work Phase</th>
<th>Estimated Federal Share</th>
<th>Estimated State Share</th>
<th>Estimated Municipal Share</th>
<th>Estimated Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td>$ 26,497.50</td>
<td>$ -</td>
<td>$ 8,832.50</td>
<td>$ 35,330.00</td>
</tr>
<tr>
<td>Right of Way</td>
<td>$ 375.00</td>
<td>$ -</td>
<td>$ 125.00</td>
<td>$ 500.00</td>
</tr>
<tr>
<td>Construction</td>
<td>$ 450,082.50</td>
<td>$ -</td>
<td>$ 150,027.50</td>
<td>$ 600,110.00</td>
</tr>
<tr>
<td>Construction Engineering</td>
<td>$ 52,995.00</td>
<td>$ -</td>
<td>$ 17,665.00</td>
<td>$ 70,660.00</td>
</tr>
<tr>
<td>Total Project Share</td>
<td>$ 529,950.00</td>
<td>$ -</td>
<td>$ 176,650.00</td>
<td>$ 706,600.00</td>
</tr>
</tbody>
</table>

2. Estimated allocations are further identified as follows:
   a. Federal share (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of $529,950.00.
   b. State share (provided through PACTS State Allocation) - 0% of federally participating costs, up to a maximum of $0.00.
   c. Municipal share (provided through the Municipality’s obligation of funds) - 25% federally participating costs, which is estimated at $176,650.00, plus 100% of any additional costs incurred in accordance with Section A.3.

3. The Municipality shall be fully responsible for any and all Project costs exceeding $706,600.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.

4. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.

5. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.

B. MaineDOT Agrees:

1. To prepare, or cause to be prepared, construction plans and specifications for the Project within the scope described above, using MaineDOT’s standard project development process to ensure adherence to federal and state regulations.

2. To share information about the status of the Project with staff from PACTS and the Municipality at the following milestones, as appropriate:
• Project kickoff/initial team meeting/formal public contact.
• Horizontal/Vertical Alignment Complete ("HVAC").
• Preliminary public meeting.
• Preliminary Design Report ("PDR") complete.
• Formal public meeting.
• Plan Impacts Complete ("PIC").
• PS&E complete.
• Changes in the Project Schedule or Engineer’s Estimate.

C. Miscellaneous Provisions:

1. After the final PS&E package is prepared, MaineDOT and the Municipality will execute a Municipal/State Project Agreement covering Project advertisement, award, construction and construction engineering. Said Municipal/State Agreement will carry the financial terms outlined in the Financial Provisions section of this Agreement, as well as a schedule for collection of the Municipality’s share of Project costs.

2. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.

3. The Parties will participate as partners in any public meetings held to discuss the Project.

4. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by PACTS and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.

5. If the Municipality withdraws its financial support for the Project as described in the Financial Provisions section of this Agreement, leading MaineDOT to cancel the Project before it has been advertised for construction, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.

6. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by its federal partners and the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.

7. The Municipality represents that its governing body has taken all steps necessary and lawful to approve the Project and the Municipality’s entry into this Agreement, has appropriated or authorized the use of any necessary funds in connection with the Municipality’s participation, and has further authorized the undersigned Municipal representative to execute this Agreement on the Municipality’s behalf.
8. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold for the purposes of set-off monies due the Municipality under a specific Project Contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other Agreement/Contract, any other Agreement/Contract with any State Department or Agency, including any Agreement/Contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.

9. To the extent permitted by law, the Municipality and PACTS shall indemnify and hold harmless MaineDOT, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive any termination or expiration of this Agreement.

10. With the exceptions of the provisions so noted, all provisions of this Agreement shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.

John Duncan, Director
Portland Area Comprehensive Transportation System

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Jon Jennings, City Manager
Municipality of Portland

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Herb Thomson, Director, Bureau of Planning
Maine Department of Transportation

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.
DANFORTH ST. PAVING PROJECT LOCATION
ROLL CALL: Mayor Pro-Tem, Nicholas Mavodones, Jr. called the meeting to order at 5:00 P.M. (Strimling absent), Councilor Costa arrived during the minutes. Councilor Batson arrived during the consent items.

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

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

Motion was made by Councilor Ray and seconded by Councilor Duson to amend the minutes of December 17, 2018 by deleting “Motion was made by Councilor Ray and seconded by Councilor Cook” and adding “Motion was made by Councilor Ray and seconded by Councilor Cook to override Communication 8. In the next section to add “and seconded by Councilor Batson to call the Question.”” Passage 7-0.

Motion was made by Councilor Duson and seconded by Councilor Ali to approve the minutes of December 17, 2018 as amended. Passage 7-0.

Motion was made by Councilor Thibodeau and seconded by Councilor Duson to approve the January 3, 2018 Regular City Council Meeting Minutes.

Motion was made by Councilor Ray and seconded by Councilor Duson to amend the minutes of January 3 by changing the vote on the sunset clause from 0-9 to 2-7. Passage 7-0.

Motion was made by Councilor Thibodeau and seconded by Councilor Duson to approve the minutes as amended. Passage 7-0.

PROCLAMATIONS:

APPOINTMENTS:

CONSENT ITEMS:

Order 139-17/18 Order Declaring Sundays on the Boulevard Festival Days in 2018 – Sponsored by Jon P. Jennings, City Manager.
Order 140-17/18 Order Declaring May 28, 2018 the Memorial Day Parade and Ceremony Festival - Sponsored by Jon Jennings, City Manager.

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

LICENSES:
BUDGET ITEMS:
COMMUNICATIONS:
RESOLUTIONS:
UNFINISHED BUSINESS:
ORDERS:

AMENDMENTS:

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

This is its first reading.

Order 142-17/18 Amendment to Zoning Map Re: Munjoy Hill Interim Planning Overlay District – Sponsored by the Planning Board, Sean Dundon, Chair.

This is its first reading.

Order 143-17/18 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.

This is its first reading.

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

Motion was made by Councilor Ray and seconded by Councilor Costa to adjourn. Passage 8-0, 5:15 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk
AMENDMENT TO ORDER 143-17/18
PREPARED BY CORPORATION COUNSEL FOR MAYOR ETHAN STRIMLING
RE: DIVIDING ORDER 143 INTO TWO ORDERS:

AMENDMENT TO PORTLAND CITY CODE CHAPTER 2 RE: CIVIL SERVICE -- ORDER 143A-17/18

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 having 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/paramedic, fire 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. 2-58. 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.

(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 declare 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 berehired 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. 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 thereof.

(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), 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 (e)(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 thirty (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

e. 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(c) 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.

See. 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 2-65a(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.

(4) 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 transerees 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.

...
AMENDMENT TO PORTLAND CITY CODE CHAPTER 2 RE: TO POLICE CITIZEN REVIEW SUBCOMMITTEE -- ORDER 143B-17/18

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. 2-48. 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 sevenix (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. 2-76. 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
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.

(e) 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.

(f) 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.

(g) 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.