AGENDA
SPECIAL CITY COUNCIL MEETING
JULY 18, 2016 - 4:00 PM

1. 4:00 P.M.  City Council Meeting Agenda
   Documents:
   CITY COUNCIL MEETING AGENDA 2018-07-16 400PM.PDF

2. 4:00 P.M.  City Council Meeting Agenda And Packet - Tab 1 Thru Tab 12
   Documents:
   CITY COUNCIL MEETING AGENDA AND PACKET 2018-07-12 400 PM (TAB 1 THRU TAB 12).PDF

3. 4:00 P.M.  City Council Meeting Agenda And Packet - Tab 13 Thru Tab 23
   Documents:
   CITY COUNCIL MEETING AGENDA AND PACKET 2018-07-12 400 PM (TAB 13 THRU TAB 23).PDF
AGENDA
SPECIAL CITY COUNCIL MEETING
JULY 16, 2018

The Portland City Council will hold a Special City Council Meeting at 4:00 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

PROCLAMATIONS:

Proc 1  Proclamation Honoring Officer Anthony Stewart as Police Officer of the Month for May 2018 – Sponsored by Mayor Ethan K. Strimling.
(Tab 1)

APPOINTMENTS:

CONSENT ITEMS:

Order 1-18/19  Order Declaring September 8, 2018 the Greater Portland Sustainability Council’s Portland GreenFest Festival – Sponsored by Jon P. Jennings City Manager.
(Tab 2)

This order declares Saturday, September 8, 2018, the Greater Portland Sustainability Council’s Portland GreenFest Festival to be held at indoor locations downtown, as well as outdoor locations at Monument Square/Monument Way. The festival will run from 10:00 a.m. to 6:00 p.m. Federal Street Extension will be barricaded to traffic from 6:00 a.m. to 8:00 p.m. and posted “No Parking” from 5:00 a.m. to 6:00 p.m.
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(Order Declaring September 18, 2018 the Trail to Ale 10K Race/Walk Festival – Sponsored by Jon P. Jennings, City Manager.)

This order declares the 19th Annual Portland Trails’ Trail to Ale 10K Race/Walk to be held Sunday, September 16, 2018, from 6:00 a.m. to 1:00 p.m. The race begins at 9:00 a.m.

The race starts on the Eastern Prom roadway near the bottom of Quebec Street and takes a route through East Bayside, and around Back Cove, and back to the Eastern Prom Trail. Street closures are included in the agenda backup.

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

LICENCES:

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(Order Granting Municipal Officers’ Approval of The Francis LLC dba Bolster Snow & Company. Application for Outdoor Dining on Private Property at 747 Congress Street - Sponsored by Michael Russell, Director of Permitting and Inspections.)

Application was filed on 6/12/2018. New City application. Applicant currently holds a Class I License.

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Application was filed on 6/25/2018. Location was formerly Kingspoke Creative Agency.

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**BUDGET ITEMS:**

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

**RESOLUTIONS:**

**UNFINISHED BUSINESS:**

Order 248-18/19 (Tab 13) Amendment to Portland City Code Chapter 14 Re: Street Access - Sponsored by the Planning Board, Sean Dundon, Chair.

The Planning Board met on May 17, 2018, and voted unanimously (6-0, Whited absent) to forward this item to the City Council with a recommendation for passage.
Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits.

The goals of the text amendments are to increase the predictability and clarity of Section 14-403 while managing the competing needs of new housing construction, sustainability of infrastructure, and public safety. Maintenance of public roadways and related infrastructure is a significant expense for the City and one where our priority must be addressing deferred maintenance and existing needs.

As required by the Portland’s Plan 2030, the city must try to find a balance between the sometimes competing needs of a sustainable, equitable, secure and connected community. The proposed amendments, unanimously recommended by the Planning Board, seek to achieve that balance by allowing development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

This item must be read on two separate days. It was given a first reading on June 4, 2018. At the June 18 City Council meeting this item was postponed to this meeting. Staff is recommending that this item be postponed indefinitely, which means that it will not return to the Council Agenda. The Planning and Urban Development Department is now rewriting Chapter 14, the City Land Use Code, and will review these proposed amendments for inclusion in the final updated version for City Council consideration later this year. If, however, the City Council wishes to move ahead with these, five affirmative votes are required for passage after public comment.

Order 265-18/19 (Tab 14)  

Order Appropriating $1,850,000 for Improvements to the Portland International Jetport Passenger Terminal – Sponsored by Jon P. Jennings, City Manager.

The Portland International Jetport is requesting an appropriation from its unrestricted fund balance to make further improvements as it responds to significant passenger growth this year.

Outbound capacity is up 109,000 seats or 17% in the 2nd and 3rd quarters. The Jetport completed a significant expansion in 2012, which greatly improved the passenger experience; this was followed by a $3.975 million appropriation by the Council for passenger terminal improvements last year which are now currently underway.
In 2017, the Jetport was awarded the best airport under 2 million passengers in North America for service under the Airport Council International’s Airport Service Quality program.

In order to maintain this level of service with rising passenger counts it is critical that infrastructure investments at the Jetport continue. This appropriation is proposed to fund the following infrastructure improvements.

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<thead>
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<th>Description</th>
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</table>

This item must be read on two separate days. It was given a first reading on June 18. Five affirmative votes are required for passage after public comment.

Order 271-18/19 (Tab 15) Amendment to Portland City Code Chapter 6 Re: Disorderly Houses – Sponsored by the Housing Committee, Council Jill C. Duson, Chair.

The Housing Committee met on April 25, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The Police Department requests the amendment of the disorderly house ordinance (City Code of Ordinances, Section 6-202) to provide notice to tenants when the enforcement of the disorderly house ordinance against the landlord may impact the interests of the tenants. Providing notice will ensure transparency and accountability while affording due process protections to all parties involved.

The first amendment to the disorderly house ordinance requires the City to provide notice to tenants once a formal complaint (e.g. typically a Rule 80(k) action) is filed in court against the landlord/owner for enforcement of the ordinance. The tenants would receive notice of the complaint by posting at the premises or regular mail. Following receipt of said notice, tenants would be allowed to join in the matter as interested parties. This provision is important to protect the rights of all tenants, especially those tenants that may not have contributed to the incidents that gave rise to the designation of the property as a disorderly house but may be impacted by the relief granted by the Court.
The second amendment requires the City to provide all tenants of the building with “reasonable written notice of said condemnation or posting against occupancy.” With regard to enforcement against disorderly houses involving an immediate threat to the health and safety of the tenants, the City may be required to move forward with condemnation of the property. The proposed amendment will allow tenants adequate time to seek alternate housing or retain counsel if additional relief is required.

This item must be read on two separate days. It was given a first reading on June 18. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 11-18/19 (Tab 16)  
Order Approving Memorandum of Understanding between the City of Portland, Maine and the Portland Parks Conservancy – Sponsored by Jon Jennings, City Manager.

This order approves the Memorandum of Understanding between the Portland Parks Conservancy and the City of Portland. Upon approval and execution of the Memorandum of Understanding, the Portland Parks Conservancy will commence with fundraising efforts to support parks projects and programs that are priorities of the city.

Five affirmative votes are required for passage after public comment.

Order 12-18/19 (Tab 17)  
Order Approving the Third Amendment to 178 Kennebec Street Purchase and Sale Agreement – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on June 5, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Ross Furman, the buyer for 178 Kennebec Street and Nathan Szanton, his development partner, are requesting a change to the agreed upon residential portion of the Proposed Development Project from a mixed income affordable housing project to an elderly affordable housing project due to State of Maine Housing Authority Program funding selection criteria changes, and this change of project scope requires an amendment to the Purchase and Sale Agreement Section 12.

The project original number of housing units was approximately 50, and the latest number of housing units is 51. Two Purchase and Sale Amendments to allow extensions of the property closing were approved administratively.
Five affirmative votes are required for passage after public comment.

Order 13-18/19 (Tab 18) Order of Discontinuance of Public Easement on Lancaster Street – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on June 5, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On October 2, 2017, the City Council approved the Purchase and Sale Agreement with Tom Watson of Watson & Co., LLC (“Purchaser”) for its purchase of approximately 1.25 acres of land located at 82 Hanover Street for the purchase price of $2,350,000. The Purchase and Sale Agreement is included in the agenda backup.

The Purchaser then submitted a Site Plan application to the Portland Planning Board, which was approved on May 17, 2018. All site plan improvements proposed for the Lancaster Street right-of-way were conditioned upon the discontinuance of the public easement and the provision of a 10-foot wide public pedestrian easement to provide midblock permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

The approved Site Plan and project includes adaptive reuse of the 1940 Department of Public Works building with retail, restaurant, bar/eatery, brewery, fitness center, office space, and the following improvements: 39 newly paved parking spaces with landscaping, new concrete sidewalks, street trees, and lights along Parris and Hanover Streets. The site plan also includes outdoor seating areas within the Lancaster Street right-of-way and a 10' wide public pedestrian easement to provide midblock permeability.

On June 18, the City Council voted to approve the Order Proposing the Discontinuance of a Public Easement on Lancaster Street, which is found in the back up material. That order was posted in the Clerk's Office. The purpose of that order was simply to propose the discontinuance. At the vote on to propose the discontinuance and to post the notice in the Clerk's office, the Council took public comment on the proposal. At tonight’s meeting, the City Council will vote on the Order of Discontinuance of a Public Easement on Lancaster Street. That vote, if in the affirmative, will finally approve the discontinuance of the public easement. Public comment is not required but is, of course, permitted at the Council's discretion.
Five affirmative votes are required for passage.

**Order 14-18/19 (Tab 19)**

**Order the Approving First Amendment to the 44 Hanover Street Purchase and Sale Agreement – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.**

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street.

The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff proposes amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line.

Staff is requesting emergency passage to allow immediate execution of the amendment prior to the due diligence deadline of July 23, 2018. Seven affirmative votes are required for passage as an emergency after public comment.

**Order 15-18/19 (Tab 20)**

**Order Approving the Fourth Amendment to the 82 Hanover Street Purchase and Sale Agreement - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.**

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.
EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street. The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line. Following guidance from the EDC at its June 19, 2018, the amendments to the Purchase and Sale Agreement for 82 Hanover also require a covenant in the deed restricting parking in the 30-foot wide portion of the property currently encumbered by the public easement in the former Lancaster Street right of way.

Staff is requesting emergence passage to allow immediate execution of the amendment prior to the due diligence deadline of July 23, 2018. Seven affirmative votes are required for passage as an emergency after public comment.

Order 16-18/19 (Tab 21) Order Proposing the Discontinuance of a Public Way along a Portion of Portland Pier - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The Department of Economic Development, the Facilities Division, and the Department of Public Works recommend that the City Council hold a public hearing to consider discontinuance of a portion of public right of way at the southerly end of Portland Pier. The portion of right of way considered for discontinuance serves only a single property, 60 Portland Pier, Portland Pier Holdings, LLC. All private properties on Portland Pier, including 60 Portland Pier, will continue to have access from a public right of way and public access rights are to remain in effect for both commercial fishing and pedestrian use of the pier.

City staff and the Economic Development Committee recommend the discontinuance to promote private investment and maintenance of currently degraded pier infrastructure. Only with immediate and continued
investment will public and fishing access be retained on the subject portion of right of way.

The subject portion of right of way is occupied by a pile-supported pier structure over submerged lands owned by the State of Maine. Following the proposed discontinuance, the City-owned portion of pier described will transfer to the surrounding property owner, Portland Pier Holdings, LLC, subject to the limits and requirements of the State Submerged Lands program.

Portland Pier Holdings, LLC. At 60 Portland Pier is amenable to the discontinuance and has agreed to waive damages and has further agreed to conduct immediate necessary repairs to the pier to promote continued public and fishing access.

Discontinuance of a street is a statutory process outlined in 23 M.R.S. § 3026-A. According to the statute, it is typically a 3-meeting process. In this case, that process should be as follows:

At its July 16, 2018 meeting, the Council is asked simply to vote to propose the discontinuance. No public hearing or comment is required.

If it so votes, notice of that proposal and of the public hearing at which the proposal will be considered must then be mailed to the abutter and posted in the City Clerk’s office.

The Council must then hold the public hearing on the proposal. If this proposed discontinuance is approved, that Public Hearing would take place on August 13, 2018, at the next City Council meeting. Public comment should be taken but no vote by the Council will be taken at this hearing.

Finally, ten or more business days after the public hearing, the Council must take a vote on the order of discontinuance. If it votes to discontinue the street, the Clerk will file a certification of that fact in the Registry of Deeds.

Five affirmative votes are required for passage after public comment.

**Order Setting a Public Hearing on Proposed Amendment to Portland City Charter, Article IV Elections Re: 42-Day Finance Reports Required for Municipal Candidates – Sponsored by Councilor Belinda Ray.**

A public hearing is required in order to consider an amendment to the charter that would add a 42-day pre-election campaign finance report to the financial reporting requirements for municipal candidates, bringing the
reporting requirements for municipal candidates into alignment with the reporting requirements for state candidates.

The public hearing for this item will be held on August 13 at 4:00 p.m. at City Hall in City Council Chambers.

Five affirmative votes are required for passage after public comment.

Order 18-18/19 (Tab 23)  Order Setting a Public Hearing on Proposed Amendment to Portland City Charter, Article IV Elections Re: Immigrant Voting – Sponsored by Councilor Pious Ali and Mayor Ethan Strimling.

The Portland Council will hold a public hearing on the following proposed amendment to Article IV (Election) of the Portland City Charter on August 13, 2018 at 6:00 p.m. in the Council Chambers at Portland City Hall.

This amendment to the Charter would add legal immigrants who are residents of Portland to the list of those allowed to vote in Portland.

The amendment will be placed upon the November 6, 2018, Regular Municipal Election ballot if submission to the voters is approved by the Council.

Five affirmative votes are required for passage after public comment.

**AMENDMENTS:**

**5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:**

**DINNER BREAK:**
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Parking Facility Improvements $265,000
Site Improvements:
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Total $1,850,000

This item must be read on two separate days. It was given a first reading on June 18. Five affirmative votes are required for passage after public comment.

Order 271-18/19 Amendment to Portland City Code Chapter 6 Re: Disorderly Houses – Sponsored by the Housing Committee, Council Jill C. Duson, Chair.

The Housing Committee met on April 25, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The Police Department requests the amendment of the disorderly house ordinance (City Code of Ordinances, Section 6-202) to provide notice to tenants when the enforcement of the disorderly house ordinance against the landlord may impact the interests of the tenants. Providing notice will ensure transparency and accountability while affording due process protections to all parties involved.

The first amendment to the disorderly house ordinance requires the City to provide notice to tenants once a formal complaint (e.g. typically a Rule 80(k) action) is filed in court against the landlord/owner for enforcement of the ordinance. The tenants would receive notice of the complaint by posting at the premises or regular mail. Following receipt of said notice, tenants would be allowed to join in the matter as interested parties. This provision is important to protect the rights of all tenants, especially those tenants that may not have contributed to the incidents that gave rise to the designation of the property as a disorderly house but may be impacted by the relief granted by the Court.
The second amendment requires the City to provide all tenants of the building with “reasonable written notice of said condemnation or posting against occupancy.” With regard to enforcement against disorderly houses involving an immediate threat to the health and safety of the tenants, the City may be required to move forward with condemnation of the property. The proposed amendment will allow tenants adequate time to seek alternate housing or retain counsel if additional relief is required.

This item must be read on two separate days. It was given a first reading on June 18. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 11-18/19
Order Approving Memorandum of Understanding between the City of Portland, Maine and the Portland Parks Conservancy – Sponsored by Jon Jennings, City Manager.

This order approves the Memorandum of Understanding between the Portland Parks Conservancy and the City of Portland. Upon approval and execution of the Memorandum of Understanding, the Portland Parks Conservancy will commence with fundraising efforts to support parks projects and programs that are priorities of the city.

Five affirmative votes are required for passage after public comment.

Order 12-18/19
Order Approving the Third Amendment to 178 Kennebec Street Purchase and Sale Agreement – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on June 5, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Ross Furman, the buyer for 178 Kennebec Street and Nathan Szanton, his development partner, are requesting a change to the agreed upon residential portion of the Proposed Development Project from a mixed income affordable housing project to an elderly affordable housing project due to State of Maine Housing Authority Program funding selection criteria changes, and this change of project scope requires an amendment to the Purchase and Sale Agreement Section 12.

The project original number of housing units was approximately 50, and the latest number of housing units is 51. Two Purchase and Sale Amendments to allow extensions of the property closing were approved administratively.
Five affirmative votes are required for passage after public comment.

Order 13-18/19 (Tab 18)

Order of Discontinuance of Public Easement on Lancaster Street – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on June 5, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On October 2, 2017, the City Council approved the Purchase and Sale Agreement with Tom Watson of Watson & Co., LLC (“Purchaser”) for its purchase of approximately 1.25 acres of land located at 82 Hanover Street for the purchase price of $2,350,000. The Purchase and Sale Agreement is included in the agenda backup.

The Purchaser then submitted a Site Plan application to the Portland Planning Board, which was approved on May 17, 2018. All site plan improvements proposed for the Lancaster Street right-of-way were conditioned upon the discontinuance of the public easement and the provision of a 10-foot wide public pedestrian easement to provide midblock permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

The approved Site Plan and project includes adaptive reuse of the 1940 Department of Public Works building with retail, restaurant, bar/eatery, brewery, fitness center, office space, and the following improvements: 39 newly paved parking spaces with landscaping, new concrete sidewalks, street trees, and lights along Parris and Hanover Streets. The site plan also includes outdoor seating areas within the Lancaster Street right-of-way and a 10’ wide public pedestrian easement to provide midblock permeability.

On June 18, the City Council voted to approve the Order Proposing the Discontinuance of a Public Easement on Lancaster Street, which is found in the back up material. That order was posted in the Clerk's Office. The purpose of that order was simply to propose the discontinuance. At the vote on to propose the discontinuance and to post the notice in the Clerk's office, the Council took public comment on the proposal. At tonight’s meeting, the City Council will vote on the Order of Discontinuance of a Public Easement on Lancaster Street. That vote, if in the affirmative, will finally approve the discontinuance of the public easement. Public comment is not required but is, of course, permitted at the Council's discretion.
Five affirmative votes are required for passage.

**Order 14-18/19 (Tab 19)**

**Order the Approving First Amendment to the 44 Hanover Street Purchase and Sale Agreement – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.**

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street.

The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff proposes amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line.

Staff is requesting emergency passage to allow immediate execution of the amendment prior to the due diligence deadline of July 23, 2018. Seven affirmative votes are required for passage as an emergency after public comment.

**Order 15-18/19 (Tab 20)**

**Order Approving the Fourth Amendment to the 82 Hanover Street Purchase and Sale Agreement - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.**

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.
EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street. The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line. Following guidance from the EDC at its June 19, 2018, the amendments to the Purchase and Sale Agreement for 82 Hanover also require a covenant in the deed restricting parking in the 30-foot wide portion of the property currently encumbered by the public easement in the former Lancaster Street right of way.

Staff is requesting emergence passage to allow immediate execution of the amendment prior to the due diligence deadline of July 23, 2018. Seven affirmative votes are required for passage as an emergency after public comment.

Order 16-18/19 (Tab 21)

Order Proposing the Discontinuance of a Public Way along a Portion of Portland Pier - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The Department of Economic Development, the Facilities Division, and the Department of Public Works recommend that the City Council hold a public hearing to consider discontinuance of a portion of public right of way at the southerly end of Portland Pier. The portion of right of way considered for discontinuance serves only a single property, 60 Portland Pier, Portland Pier Holdings, LLC. All private properties on Portland Pier, including 60 Portland Pier, will continue to have access from a public right of way and public access rights are to remain in effect for both commercial fishing and pedestrian use of the pier.

City staff and the Economic Development Committee recommend the discontinuance to promote private investment and maintenance of currently degraded pier infrastructure. Only with immediate and continued
investment will public and fishing access be retained on the subject portion of right of way.

The subject portion of right of way is occupied by a pile-supported pier structure over submerged lands owned by the State of Maine. Following the proposed discontinuance, the City-owned portion of pier described will transfer to the surrounding property owner, Portland Pier Holdings, LLC. subject to the limits and requirements of the State Submerged Lands program.

Portland Pier Holdings, LLC. At 60 Portland Pier is amenable to the discontinuance and has agreed to waive damages and has further agreed to conduct immediate necessary repairs to the pier to promote continued public and fishing access.

Discontinuance of a street is a statutory process outlined in 23 M.R.S. § 3026-A. According to the statute, it is typically a 3-meeting process. In this case, that process should be as follows:

At its July 16, 2018 meeting, the Council is asked simply to vote to propose the discontinuance. No public hearing or comment is required.

If it so votes, notice of that proposal and of the public hearing at which the proposal will be considered must then be mailed to the abutter and posted in the City Clerk’s office.

The Council must then hold the public hearing on the proposal. If this proposed discontinuance is approved, that Public Hearing would take place on August 13, 2018, at the next City Council meeting. Public comment should be taken but no vote by the Council will be taken at this hearing.

Finally, ten or more business days after the public hearing, the Council must take a vote on the order of discontinuance. If it votes to discontinue the street, the Clerk will file a certification of that fact in the Registry of Deeds.

Five affirmative votes are required for passage after public comment.


A public hearing is required in order to consider an amendment to the charter that would add a 42-day pre-election campaign finance report to the financial reporting requirements for municipal candidates, bringing the
The public hearing for this item will be held on August 13 at 4:00 p.m. at City Hall in City Council Chambers.

Five affirmative votes are required for passage after public comment.

Order 18-18/19 (Tab 23)  Order Setting a Public Hearing on Proposed Amendment to Portland City Charter, Article IV Elections Re: Immigrant Voting – Sponsored by Councilor Pious Ali and Mayor Mayor Ethan Strimling.

The Portland Council will hold a public hearing on the following proposed amendment to Article IV (Election) of the Portland City Charter on August 13, 2018 at 6:00 p.m. in the Council Chambers at Portland City Hall.

This amendment to the Charter would add legal immigrants who are residents of Portland to the list of those allowed to vote in Portland.

The amendment will be placed upon the November 6, 2018, Regular Municipal Election ballot if submission to the voters is approved by the Council.

Five affirmative votes are required for passage after public comment.

AMENDMENTS:

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

DINNER BREAK:
PROCLAMATION

HONORING

OFFICER ANTHONY STEWART

WHEREAS, Officer Stewart joined the department in July of 2016. Prior to joining the force, Officer Stewart graduated from the University of Maryland Eastern Shore with a bachelor's in criminal justice. He also worked as a correctional officer for the Maine Correctional Center where he learned de-escalation and communication skills that directly translate into his position as an officer and,

WHEREAS, Officer Stewart is a member of the newly formed social media and recruitment team; providing assistance to police candidates through all stages of the hiring process and using the department's social media outlets to connect with the community, and

WHEREAS, Officer Stewart recently responded to a call for shots fired in the Bayside area. He located the victim, who sustained a severe injury to the leg. Officer Stewart quickly applied a tourniquet and rendered assistance until Medcu arrived. If not for the immediate actions of Officer Stewart, this individual may have suffered more serious injuries, and

WHEREAS, Officer Stewart is commended for his exemplary performance and clear commitment to a higher standard of public service and public safety.

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 Officer Anthony Stewart as Officer of the Month for May 2018.

Signed and sealed this 16th day of July 2018

Ethan K. Strimling, Mayor
City of Portland, Maine
ORDER DECLARING SEPTEMBER 8, 2018 THE GREATER PORTLAND SUSTAINABILITY COUNCIL’S PORTLAND GREENFEST FESTIVAL

ORDERED, that the Greater Portland Sustainability Council’s Portland Greenfest is hereby declared as a Festival to be held in Portland from 10:00 a.m. – 6:00 p.m. on Saturday, September 8, 2018, to be co-sponsored by the Sustainable Portland Office; and

BE IT FURTHER ORDERED, that the festival area shall be Monument Square, Monument Way, the sidewalk areas in front of One City Center and Federal Street Extension; and

BE IT FURTHER ORDERED, that Federal Street Extension shall be closed to vehicular traffic Saturday, September 8, 2018 from 6 a.m. to 8 p.m.; and

BE IT FURTHER ORDERED, that Federal Street Extension shall be posted “No Parking” on Saturday, September 8, 2018 from 5 a.m. to 6 p.m.; and

BE IT FURTHER ORDERED, that 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 the Greater Portland Sustainability Council, for the purpose of conducting the Portland Greenfest, subject to the direction and control of the City Manager; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to issue a revocable permit under §§25-26 – 25-30 of the Portland City Code to the Greater Portland Sustainability Council subject to the following conditions:

* The Greater Portland Sustainability Council shall defend and 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 per occurrence for personal or bodily injury, death or property damage and naming the City as an additional insured thereon for Portland Greenfest;

* Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said Festival;

* Conditions for use of grounds and requirements for the event, specified in a permit issued from the Public Assembly Facilities Division Office shall be adhered to;
The Business Licensing Office will charge the usual fees for licensing food vendors, street goods vendors, and other needed licenses for the Festival; the Inspections Division will also charge permit fees for needed Tent Permits. However, Public Assembly Facilities Division Office Permit Fees for use of grounds will be waived and will deliver barricades, there will be no charge for "No Parking" Signs, and Public Works will participate in the Festival at the Recycling Booth; and

The Greater Portland Sustainability Council shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the events; and

BE IT FURTHER ORDERED, that the City Manager is also authorized to waive any other fees and to issue such other temporary licenses, including licenses for food service establishments and permits for sales of non-food-related items, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of said Festival.
I am requesting that the following order be placed on the next City Council agenda:

Order declaring Greater Portland Sustainability Council’s "Portland GreenFest,"
Saturday, September 8, 2018, as a festival.

Greater Portland Sustainability Council has put together a community festival which highlights renewable energy, solar power, and recycling. Many organizations and businesses will participate in the event. The festival will include indoor and outdoor locations downtown at Monument Square/Monument Way. Scheduled for Saturday, September 8, 2018, and running from 10am – 6pm, the outdoor portion of the festival will also feature food vendors, local music and entertainment. As part of the proposal, a number of large tents will be setup on the square, many smaller canopies will be situated along Monument Way (similar to Farmers Market), and a small stage (with PA System) will be set up on the sidewalk area in front of One Monument Square (beside Federal Street Ext.). The city’s Sustainable Portland Office is a co-sponsor of the festival.

Festival Zone (areas falling under GPSC’s purview):
Monument Square, Monument Way, and the sidewalk areas in front of One City Center, as well as Federal Street Ext. and sidewalk areas abutting Federal Street Ext.

Street Closures:
In order for the festival to be held, Federal Street Ext. needs to be barricaded to traffic (6am – 8pm), and posted "No Parking" from 5am – 6pm.

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 the Greater Portland Sustainability Council for the purpose of conducting the "Portland GreenFest" Festival, subject to the direction and control of the City Manager.

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

(continued)
Greater Portland Sustainability Council 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 combined single limit for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to "Portland GreenFest" and its activities;

- Under no circumstances may alcoholic beverages be sold or consumed on the streets or public property of said area during said festival;

- Conditions for use of grounds/requirements for the events/concerts/tent placement, and other items specified in a permit issued from the Public Assembly Facilities Division 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; the Inspections Div. will also charge permit fees for needed Tent Permits. However, PAFD Office Permit Fees for use of grounds will be waived, there will be no charge for "No Parking" Signs; and

- Greater Portland Sustainability Council shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the events.

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

Document prepared by Ted Musgrave, PAFD Event Coordinator
ORDER DECLARING SEPTEMBER 16, 2018
THE TRAIL TO ALE 10K RACE/WALK FESTIVAL

ORDERED, that Sunday, September 16, 2018 is hereby declared to be the Portland Trails Trail To Ale 10K Race/Walk Festival, sponsored by Portland Trails; and

BE IT FURTHER ORDERED, that the Trail to Ale 10K Race/Walk Festival area shall be Eastern Promenade Park, Eastern Promenade, Cutter Street Parking Lot and the streets and trails on the race route, which is: Eastern Prom Roadway near Quebec Street; northwest on the Eastern Prom, round Loring Memorial down to Washington Avenue, left on Washington, left on Fox Street, right on Anderson Street, the Bayside Trail to the Back Cove Trail, under Tukey's Bridge and continuing on Back Cove Trail, around the cove (clockwise), back under the bridge, and on the Eastern Prom Trail heading south, finishing on the grass area beside the Trail just before reaching Cutter Street; and

BE IT FURTHER ORDERED, that Cutter Street shall be closed to traffic from 6:45 a.m. to 1:15 p.m. and Eastern Promenade from Turner Street to Washington Avenue will be closed from 8:30 a.m. to 9:15 a.m. on Sunday, September 16, 2018, and other streets may be closed briefly to allow races to cross; 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 Trail To Ale 10K Race/Walk Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

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

1. Portland Trails shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of $400,000 per occurrence for personal or bodily injury, death or
property damage and covering the obligation of indemnification hereunder. Portland Trails 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, except in an enclosed Beer and Wine Garden at the Cutter Street Middle Parking Lot for people 21-years-old and older, monitored by City staff;

3. Portland Trails shall be responsible for all fees for a permit issued from the Public Assembly Facilities Division for use of grounds, except that fees for the use of the parking lot, streets and trails are waived, and requirements for food service, vending sales, tent and stage installations and other items specified in that permit shall be adhered to,

4. Portland Trails shall pay any fees for staff assistance from Public Assembly Facilities staff and the Police Department;

5. Portland Trails shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the Trail To Ale 10K Race/Walk Festival;

6. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and concert licenses for the Festival to those vendors the Portland Trails 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

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

Order declaring 19th Annual Portland Trails “Trail to Ale 10K Race/Walk,”
Sunday, September 16, 2018, as a festival.

This is the 19th year for this event - a fundraiser for Portland Trails. The race and festivities area organized by Portland Trails staff and race managers. A Beer Garden (at the Cutter Street Parking Lot) is staffed by a city Event Manager and security staff from the city’s Public Assembly Facilities Division.

2,100 runners, spectators and volunteers are expected to attend this year’s event.

The race registration area makes use of the Middle Parking Lot on Cutter Street (and the Eastern Prom grass areas). The race begins at 9:00am in the street.

The route of the race is as follows: Start Line is on the Eastern Prom Roadway near Quebec Street; runners head northwest on the E. Prom, round Loring Memorial down to Washington Ave., take a left onto Washington, then take a left onto Fox Street, then a right onto Anderson Street, then up onto the Bayside Trail to connect with the Back Cove Trail, running under Tukey’s Bridge and continuing on Back Cove Trail, running around the cove (clockwise), back under the bridge, and onto the Eastern Prom Trail heading south, finishing on the grass area beside the Trail just before reaching Cutter Street.

A number of Streets need to be closed to traffic for the race. Some streets need to be posted "No Parking" and traffic needs to be held back at some intersections while runners cross. Race organizers will hire Police Officers to assist with street closures (Washington Ave. & E. Prom intersection).

The Order should include the following items:

The Portland Trails "Trail to Ale 10K Race/Walk" be authorized for Sunday, September 16, 2018, from 6am - 1pm (race time: 9am - 11am), to be held in Portland, specifically: Festival Zone (areas falling under Portland Trails’ purview) - Eastern Prom Park, Eastern Prom Roadway for the Start Line area, Cutter Street Middle Parking Lot area for After Party Awards Ceremony, and streets listed above for the race route.

These areas above will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and are reserved for the use of Portland Trails for the purpose of conducting the Portland Trails "Trail to Ale 10K Race/Walk,” 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 Portland Trails 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, other than what is approved by City Council/Business Licensing Office (a beer garden is proposed for the Festival/Awards Ceremony Area at the Cutter Street Middle Parking Lot. Portland Trails is the non-profit associated with the application. City staff will monitor the Beer Garden.);

- Portland Trails 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 simple limit for personal or bodily injury, death, or property for said purposes, and shall provide alcohol liability coverage as well;

- Conditions for use of grounds, specified in a permit issued from Public Assembly Facilities Division Office, 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 Festival, as well as charge a registration fee to race participants;

- City license fees, tent permit fee, and costs for city staff assistance, will be paid by organizer, Portland Trails (permit fees for use of Parking Lot, Streets, and Trails are waived); and

- Route of the course is subject to change, depending on construction projects along the race route, and Police Dept. needs.

During the Portland Trails "Trail to Ale 10K Race/Walk", streets listed below will be closed to vehicular traffic, Sunday, September 16, 2018 (Portland Police Officer hired for the race route):

Cutter Street, 6:45am - 1:15pm (however, Boat Traffic will be let through, unless number of runners in area makes this a safety issue)
Eastern Prom Roadway – both lanes (Turner Street to Washington Ave.), 8:30 - 9:15am.

Those closed sections of Eastern Prom and the Cutter Street Parking Lot will also need to be posted "No Parking." **Vehicles in violation of the "No Parking" signs in the Festival Zones shall be towed (at owner’s expense).**
Other streets along the race route will be closed for short amounts of time to allow runners to cross over intersections, etc. Race intersections will be staffed by Police and qualified volunteers – so that traffic may proceed when there are no runners nearby.

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

Attachment: PT 10K Race – Application to Use City Property

Document prepared by Ted Musgrave, PAFD Event Coordinator
For uses of city property, there are normally:

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>PARK AREA OR PUBLIC SPACE REQUESTED</th>
<th>Western Prom Roadway (Morning to North Street) portions of Washington Ave, Fox, Anderson, and Plowman Streets, 9:05-9:35am; Bayside Trail, Back Cove Trail, Eastern Prom Trail; Middle parking lot – Cutter Street (after party event / beer garden); Cutter Street CLOSED to traffic except for boaters/kayakers; from 6:45am-1:15pm. Eastern Prom Roadway (Congress – Turner) closed to traffic: 8:30 – 9:15am</th>
</tr>
</thead>
<tbody>
<tr>
<td>EVENT DAY &amp; DATE(S)</td>
<td>SUN 9-16-18</td>
</tr>
<tr>
<td>EVENT START TIME</td>
<td>6AM (i.e. set-up start time)</td>
</tr>
<tr>
<td>EVENT END TIME</td>
<td>1pm (i.e. when event cleanup is complete)</td>
</tr>
<tr>
<td>RAIN DAY &amp; DATE(S)</td>
<td>NA</td>
</tr>
<tr>
<td>ACTUAL START &amp; END TIME OF EVENT</td>
<td>7:45am – 12:00pm Race Ends: 10:30am</td>
</tr>
</tbody>
</table>

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

Fundraiser for Portland Trails. Timed race from Eastern Prom through East Bayside and around Back Cove, and back to E Prom Trail.

Start location is on Eastern Prom near bottom of Quebec Street. Runners proceed west to Washington Avenue, left to Fox St, right onto Anderson St, and right onto the Bayside Trail to connect to Back Cove Trail (clockwise around) and back to the Eastern Prom Trail, ending before East End Beach. **Both lanes of Eastern Prom (and side streets) from Congress St. to Washington Ave. closed to traffic:** 8:30am – 9:15am (via Barricades, volunteers, and a Police Officer). Some sections of streets / PARKING LOTS posted “No Parking.”

After the race runners proceed to **mid-Cutter Street parking lot for the awards and party. Pizza will be supplied by Portland Pie Company and beer by Shipyard Brewing and snacks by Whole Foods Market / fruit from Shaw’s.** A 20’x40’ tent will cover the beer table in a fenced-in beer garden within the lot. The **beer garden** will be specifically designated for runners and supporters 21+. A live DJ will be present with speakers and microphone. Several awards will be presented. Families of runners will be able to hang out inside the parking lot but outside the tent and cordoned area. Several sponsors’ 10x10 tents will be set up. Party will wrap up around noon. The **beer garden area will be overseen by CITY PAF STAFF (EM: Jake O’Donal / Jen Hale).**

Experienced volunteers will direct parkers and runners. Portland Trails requests PPD Officer presence on Washington Ave at Eastern Prom corner to help stop vehicle traffic (8:50 – 9:15 a.m.). 2 Police Officers and 2 PCO’s to be hired by organizer. All other race intersections would be staffed by qualified volunteers.

**IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?**

Please check: X FEE NA PLEDGES

**IF YES FOR FEES, HOW MUCH?**

FEE $35

**WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?**
**Please check off and answer: Please see attached fee schedule / dept. information if you answer yes**

<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? Approx. 6 in Cutter St. Lot</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 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): 20x40 Exact Location(s) of Tent Placement Requested: Cutter St. Middle Lot. In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Will you be setting up tables and/or chairs? How many tables: 20 (8') chairs: 0</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Are other items or equipment being placed on city property?</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Will there be refreshments at the event? Beer Garden?</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Do you wish to sell food? NO</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>(If so, you will need approval from PAFD and possibly a temporary food service license from business licensing office)</td>
<td></td>
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<tr>
<td>List food and drink / Food Trucks, etc.: Portland Pie Pizza, Snacks provided by Whole Foods &amp; Fruit From Shaw's</td>
<td></td>
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</tr>
<tr>
<td><strong>Please note:</strong> A temporary food service license is NOT needed when:</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1. Food vendors have a current city of Portland Food license</td>
<td></td>
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<tr>
<td>2. Just pre-packaged refreshments, or food &amp; drink items are purchased or donated from a licensed establishment</td>
<td></td>
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<tr>
<td>3. Bottled water / water is served</td>
<td></td>
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</tr>
<tr>
<td>Please give the BL Office at least a 2-week notice (874-8557). A TFSL is needed when food vendors are not licensed, or when food is being prepared and cooked at the event</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Do you wish to sell non-food items (like t-shirts, crafts, cd's, etc.)?</td>
<td></td>
<td>X</td>
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<tr>
<td>Are you setting up a PA (sound) system?</td>
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<tr>
<td>Your event does not require a concert license, however, a sound security deposit will be required.</td>
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<tr>
<td>Will your event require electricity? AT Cleeves Mon</td>
<td></td>
<td>X</td>
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<tr>
<td>Are you planning on bringing a Grill for a Barbecue?</td>
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<tr>
<td>Will the event require reserved parking spaces / parking meters? How many?</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Eastern Prom Roadway/Cutter St. Posted &quot;No Parking&quot; Sat PM-Noon Sun &quot;No Parking&quot; signs may be purchased at PAFD Office, 212 Canco Rd.</td>
<td></td>
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<tr>
<td>Will your event need safety vests, signs, barricades and/or cones?</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Please list what you would like to borrow/rent: 31 Barricades</td>
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<tr>
<td>Will your event require street closures? (Please see &quot;Description of Event&quot;)</td>
<td></td>
<td>X</td>
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<tr>
<td>Will your event affect Metro Bus Routes? NO</td>
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<tr>
<td>Will your event require Police assistance? PPD Officer #1: Washington/Eastern Prom +</td>
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<tr>
<td>PPD Officer #2: Tukey Connector @ Anderson Street</td>
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<tr>
<td>Will your event require Fire/EMS assistance? EMT's @ Finish Line</td>
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<td>X</td>
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<tr>
<td>Will your event require Parking Control assistance? PCO #1 @ Washington &amp; Walnut +</td>
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<tr>
<td>PPD #2 @ Washington &amp; Fox</td>
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<tr>
<td>Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned?</td>
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<tr>
<td>15 PORTO-RESTROOMS lined up on Eastern Prom facing water.</td>
<td></td>
<td>X</td>
<td></td>
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<tr>
<td><strong>Insurance Certificate Information</strong></td>
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<tr>
<td>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.)</td>
<td>X</td>
<td></td>
<td>NEED</td>
</tr>
</tbody>
</table>

* 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 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 dates).
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. 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 Hannaford’s, East End Beach). 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, 207-799-1980, 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
The City 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 KW DATE 4/16/18

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 KW DATE 4/16/18

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 or more.
Porta Restroom User Fee (if attendance is 150+): $25
### CREDIT CARD INFORMATION

<table>
<thead>
<tr>
<th>Visa or MasterCard Number</th>
<th>Exp Date (Mon/Yr)</th>
</tr>
</thead>
</table>

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

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

<table>
<thead>
<tr>
<th>Permit Fee for use of area: $50 - $200 per hour (i.e. a 3 hour event at $50 totals $150) includes use of elect. If your event is rained out / cancelled, the bulk of the fee is returned (however $50 is non-refundable)</th>
<th>$ WAIVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Hours of Use: Approx. 7 hours</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Vest/Cone Deposit: $15 per item</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Barricade Deposit: $25 per item</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Single Concert (Amplified Sound) License Fee ($36 per event - if applicable)</td>
<td>$ N/A</td>
</tr>
<tr>
<td>Admin/Staff Fee (support for events): $30/hour啤酒花园</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Beer Garden</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Public Space / Park Security Deposit: Sound Security Deposit: $100 - $1000</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Key Deposit: $50 per key</td>
<td>$ N/A</td>
</tr>
<tr>
<td>Impact/Street Closure Fee (variable based on impact): $100-$500</td>
<td>$ N/A</td>
</tr>
<tr>
<td>Beer Garden</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Other (Porta-Restroom User Fee: $25, etc.)</td>
<td>$ TBD</td>
</tr>
<tr>
<td>NP Signs: $1 / $15 each</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Cone Rental: $2 each</td>
<td>$ TBD</td>
</tr>
<tr>
<td>Barricade Rental: $5 each Bike Rack: $10 each</td>
<td>$ TBD</td>
</tr>
</tbody>
</table>

### FOR OFFICE USE ONLY

<table>
<thead>
<tr>
<th>DATE REC'D APPLICATION</th>
<th>DATE REC'D INSURANCE</th>
<th>NEED</th>
<th>PERMIT FEE AMT REC'D</th>
<th>$ waived</th>
<th>SECURITY DEPOSIT</th>
<th>$ possible sound sec. dep needed also if renting/borrowing items</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-25-2018</td>
<td></td>
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<table>
<thead>
<tr>
<th>PAYMENT TYPE</th>
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<tbody>
<tr>
<td>VISA $</td>
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</table>
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’
APPROVAL OF:

The Francis LLC dba Bolster Snow & Company. Application for Outdoor Dining on
Private Property at 747 Congress Street.
Dear Mayor Strimling and Portland City Council,

We are very excited to announce our intent to provide outdoor dining to the guests of The Francis Hotel and Bolster, Snow & Company, and the people of Portland underneath our port couchette and the adjacent bricked driveway located at 747 Congress Street. We have intentions to serve our full menu including beer, wine and spirits during our restaurant operating hours. We will be open Wednesday through Sunday starting at 4:00 pm, and Saturday and Sunday brunch starting at 10:00 am. Our last seating will be 9:00 pm to ensure guests can dine and we can clean up the outdoor space before 11:00 pm. Our outdoor dining space is offset from the street and located solely on hotel property. We plan to keep the patio contained using stanchions on the south and north facing sides, our landscaped medium on the property line to the West, and our hotel on the eastern border. Bistro chairs and small folding tables will be used for dining while no music or entertainment will be used for ambience. We want to provide upscale outdoor dining to our wonderful city.

Sincerely,

Anthony DeLois
Portland, Maine  Yes. Life's good here.

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

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

### Business Information

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (db/a):</td>
<td>THE FRANCIS, LLC d.b.a. BOSTER</td>
</tr>
<tr>
<td>Location Address:</td>
<td>747 Congress St. Portland, ME 04102</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>Same</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>ANTHONY DELOIS</td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>ANTHONY DELOIS 06/14/1981</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>747 MM, LLC (ANTHONY IS A MEMBER)</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>747 Congress</td>
</tr>
</tbody>
</table>

### Owner Information

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>747 MM, LLC</td>
<td>745 Congress Portland, ME 04102</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Person</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANTHONY DELOIS</td>
<td>646 784-3304</td>
</tr>
</tbody>
</table>

### Principal Officers

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANTHONY DELOIS</td>
<td>Owner</td>
<td>06/14/1981</td>
<td>102 BUCKS AVE ARLINGTON, MA 02174</td>
</tr>
<tr>
<td>KATE DELOIS</td>
<td>Owner</td>
<td>04/26/1976</td>
<td>4 OLD PORT RD CAPE ELIZABETH, ME</td>
</tr>
<tr>
<td>JEFF HAUSER</td>
<td>Owner</td>
<td>08/17/1976</td>
<td>404119 RD FAIRMOUTH, ME</td>
</tr>
</tbody>
</table>
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th>CLASS A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>See Attached Menu</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>OPEN 7 PM - 9:00 PM, Wed-Mon</td>
</tr>
<tr>
<td>Number of Tables:</td>
<td>6</td>
</tr>
<tr>
<td>Number of Chairs:</td>
<td>16</td>
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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 874-8763.

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 __________________________ Title __________________________ Date ____________

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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</table>
REQUEST FOR EXTENSION OF LICENSE ON PREMISE

Legal Name: The Francis, LLC d.b.a Bolster Snow & Co

Physical Address: 747 Congress Street, Portland, ME 04102

State: ME Zip: 04102 Phone: 207-772-7496 Fax: ____________________

Email address: anthony@uncommongroups.com

Mailing address: 747 Congress Street, Portland, ME 04102

Please attach letters and diagrams for reference.

This request for an extension of service area for on premise license location MUST have Town / City approval and MUST have a diagram submitted with this form.

Outdoor Restrictions:
There must be a stanchion or fence completely enclosing the area. Signs must be posted, stating “no alcohol beyond this point”. There must be sufficient employees at the extension of premise, which would be able to control and monitor the area.

TO STATE OF MAINE MUNICIPAL OFFICERS & COUNTY COMMISSIONERS:
Hereby certify that we have complied with Section 653 of Title 28-A Maine Revised Statutes and hereby approve said application.

Dated at: ____________________________ , Maine ____________________________ (County)

On: ____________________________

The undersigned being: ☐ Municipal Offices ☐ County Commissioners of the

☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: ____________________________ , Maine

EXTENSION OF PREMISE ON 6/2017
Uline Black Crowd Control Barrier Posts with Retractable Belt - Black, 10'

Indoor portable barrier diverts traffic where you need it.

- 2" wide self-retracting universal belt. Connects to all common posts.
- Hook up to 3 additional barriers with clips on post.
- Galvanized 18 gauge steel post with concrete filled base. Extra-long 10' belt reduces number of posts needed.
- Crowd Control Cart sold separately.

<table>
<thead>
<tr>
<th>MODEL NO.</th>
<th>DESCRIPTION</th>
<th>HEIGHT</th>
<th>BELT LENGTH</th>
<th>WT. (LBS)</th>
<th>PRICE/CARTON OF 2</th>
<th>ADD TO CART</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-3736BL</td>
<td>Black Posts with Retractable Belt</td>
<td>40&quot;</td>
<td>10'</td>
<td></td>
<td>$119</td>
<td>$109</td>
</tr>
</tbody>
</table>

**DIMENSIONS:**
- Diameter:
  - Post: 2 1/2"
  - Base: 14"

**FEATURES:**
- Black anti-scruff base cover.
- Belt locks into place at base of receiving clip.

**WEIGHT:**
- Base: 20 lbs

**PACKAGING:**
- Ships flat and unassembled.
- Carton contains (2) posts. 
  - Each post contains a 10' retractable belt.

**Additional Info**

*Availability: In Stock
Unit Weight: 45 lbs.
Catalog Page: 187*
SNACKS
1 FOR $6 | 3 FOR $15
Carrot Fries – Curry Blue Cheese
Potato Chips – Pink Peppercorn, Kombu
Egg – Trout Roe, Parsnip
Fried Olives – Sausage, Harissa Aioli
Tempura Asparagus – Soy-Miso Aioli
Corn Dogs – Honey Mustard

APPETIZERS
Lobster – Aji Amarillo, Mango, Yuzu, Chantrel
Torched Field Greens – Beets, Strawberries, Raddish, Pistachio
Broccoli – Almonds, Herbs, Lime, Sesame Seeds
Tuna – Parsnip, Kale, Barley, Cherries
Fresh Chickpea Hummus – Frenos, Dill, Mint, Toast
Terrine – Egg Yolk Gnocchi, Toast, Salsa Verde, Chantrel, Queso Fresco

ENTREES
Cavatelli – English Peas, Fava, Ricotta Salata
Market Fish – Peas, Mushroom, Pearl Onions, Lemon Emulsion
Bavette – Haricot Vert, Herbed Potatoes, Onion Relish
Chicken Breast – Beluga Lentils, White Truffle Ragu, Cippolins
Squash Spaghetti – Preserved Tomato, Soubise, Pecorino, Pumpkin Seeds
Agnoletti – Lamb, Stinging Nettles, Pistachio, Breadcrumbs

Bolster, Snow & Co.

*Consuming undercooked or raw shellfish and meats may increase the risk of food born illnesses
Re: Bolster Snow & Company

Kevin Cashman <kevindc@portlandmaine.gov>  Thu, Jun 14, 2018 at 4:45 PM
To: Jessica Hanscombe <j hanscombe@portlandmaine.gov>
Cc: David Petruccelli <petruccellid@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, James Sweatt <jjs@portlandmaine.gov>, John Brennan <brennanj@portlandmaine.gov>, Keri Ouellette <kouellette@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Vernon Malloch <vwm@portlandmaine.gov>

Pd has no objections. Kevin C

On Thu, Jun 14, 2018 at 11:56 Jessica Hanscombe <j hanscombe@portlandmaine.gov> wrote:

Good Morning

Please see the attached application for Outdoor Dining on Private Property. They are aware that they have to block off the entire section from the front door to the dining space. This will go before council on 7/16. Please advise. Thanks Jessica

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

Sent from Gmail Mobile
June 26, 2018

The Francis LLC
747 Congress Street
Portland ME 04102


Dear Anthony Delois

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for Outdoor Dining on Private Property at 747 Congress 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., The Francis LLC dba Bolster Snow & Co. Application for Outdoor Dining on Private Property at 747 Congress Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

Giri Portland Inc dba Hilton Garden Inn. Application for a Class 1A Hotel at 145 Jetport Boulevard.
To the Mayor and Members of the City Council,

Giri Portland Inc will be the new owner of the Hilton Garden Inn Portland Airport located at 145 Jetport Boulevard, Portland, ME 04102.

We are submitting this application to obtain a city and state liquor license to run the Garden Grille and Bar, that is a restaurant within the Hilton Garden Inn Portland Airport.

The ownership, Giri Hotels, currently own and manage 29 hotels in Connecticut, Massachusetts, New Hampshire and Maine. Eight of those hotels currently serve or sell liquor. In Maine alone, we have 4 liquor licenses located in: Waterville (Best Western Plus), Augusta (Best Western Plus Augusta Civic Center Inn), Bangor (Holiday Inn Bangor), and in Oxford (Hampton Inn).

We hope you will consider this letter and our application satisfactory for approval of the liquor license required for the Hilton Garden Inn.

I thank you in advance for your consideration.

Thank You,

Ashish Sangani

President
asangani@girihotels.com
617-770-0045
## Application for Food Service Establishment with Alcoholic Beverages License

### Business Information

<table>
<thead>
<tr>
<th>Business Name (d/b/a):</th>
<th>Hilton Garden Inn</th>
<th>Phone:</th>
<th>207-828-1117</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location Address:</td>
<td>145 Jetport Blvd., Portland, ME</td>
<td>Zip:</td>
<td>04102</td>
</tr>
</tbody>
</table>

If new, what was formerly at this location:

| Mailing Address: | 225 W. Squantum St., #200, Quincy, MA | Zip: | 02171 |

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Megha Sangani</th>
<th>Phone:</th>
<th>617-770-3722</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:msangani@girihotels.com">msangani@girihotels.com</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Manager of Establishment: Silvia Corone Date of Birth: 11/14/1981 Phone: 207-828-1117

Owner of Premises (Landlord):

| Address of Premises Owner: | 225 W. Squantum St., #200, Quincy, MA | Zip: | 02171 |

### 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>
</tr>
</thead>
<tbody>
<tr>
<td>Giril Portland Inc</td>
<td>225 W. Squantum St., Suite 200, Quincy, MA 02171</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Megha Sangani</th>
<th>Phone:</th>
<th>617-770-3722</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Officers</td>
<td>Title</td>
<td>Date of Birth</td>
<td>Residence Address</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------</td>
<td>---------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Ashish Sangani</td>
<td>President</td>
<td>7/19/76</td>
<td>79 Shore Ave, Quincy, MA 02171</td>
</tr>
<tr>
<td>Umesh Asra</td>
<td>Shareholder</td>
<td>6/25/71</td>
<td>41 Silaswood Road, Marbleville, NY</td>
</tr>
<tr>
<td>Terath Bajaj</td>
<td>Shareholder</td>
<td>11/14/62</td>
<td>50 Lexington Ave, Babylon, NY</td>
</tr>
<tr>
<td>Sagar Malavia</td>
<td>V.P.</td>
<td>11/22/66</td>
<td>49 Putnam St, Quincy, MA 02169</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lorraine Sheehan</th>
<th>Shareholder</th>
<th>1/4/47</th>
<th>33 Nelson Street, Braintree, MA 02184</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ryan Famm</td>
<td>Shareholder</td>
<td>7/7/88</td>
<td>60 Lamplighter Dr., Shrewsbury, MA 01545</td>
</tr>
</tbody>
</table>
About Your Establishment

Class of Liquor License: 1-A

Type of food served: Bar Food & Evening Room Service

Please circle all that will be served: Beer Wine Liquor

Projected percentage of sales: Generated from Food: U% Generated from Alcohol: 3%

Hours & days of operation: M-F 6am - 10pm Sat & Sunday 7am - 10pm

QUESTIONS

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

If No, please explain:

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

If yes, give the distance:

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

Will you permit dancing on the premises? Y/N

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

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

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

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

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

What is your targeted opening date? 7/12/13

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

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

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

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

Is any principal officer under the age of 21? Y/N

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

If Yes, please explain:

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

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

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

Signature ______________________ Title ______________ Date ______________

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

NEW application: ☑ Yes ☐ No

PRESENT LICENSE EXPIRES ________ application

INDICATE TYPE OF PRIVILEGE: ☑ MALT ☑ VINOUS ☑ SPIRITUOUS

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

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

Corporation Name:
Giri Portland Inc.

Business Name (D/B/A):
Hilton Garden Inn Portland Airport

APPLICANT(S) - (Sale Proprietor)

DOB:

DOB:

Address
225 W. SQuamish St., Suite 200

City/Town
Quincy

State
MA

Zip Code
02171

Mailing Address
225 W. SQuamish St., Suite 200

City/Town
Quincy

State
MA

Zip Code
02171

Telephone Number
617-770-3722

Fax Number
617-770-0075

Business Telephone Number
207-828-1117

Fax Number
207-828-1118

Federal ID, #
83-0681656

Seller Certificate #:

Or Sales Tax #:

# 119179

Email Address:
msangani@girihotels.com

Website:
www.hilton.com/HiltonGardenInn

If business is NEW or under new ownership, indicate starting date:
Estimated: 7/1/13

Requested inspection date: ____________ Business hours:

3. If a premise is a hotel, indicate number of rooms available for transient guests: 124

4. State amount of gross income from period of last license:
ROOMS $500,000 FOOD $300,000 LIQUOR $200,000

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: Silvia Cofoe

8. Business records are located at: 145 Seaport Blvd., Portland ME

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

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

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please see attached</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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 ☑

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

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

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) Attached.

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

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1.5 miles Which of the above is nearest? Church

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☑ If YES, give details: Mortgage: Institution for Savings Bank

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 ___________, 20__

Please sign in blue ink

Signature of Applicant or Corporate Officer(s) 

Ashish Sangani

Print Name: President

Signature of Applicant or Corporate Officer(s)

Print Name
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: Gursi Portland Inc.

2. Doing Business As, if any: Hilton Garden Inn Portland Airport

3. Date of filing with Secretary of State: 6/28/18 State in which you are formed: ME

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

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

<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>Ashish Sangani</td>
<td>79 Shore Ave, Quincy MA 02169</td>
<td>7/14/76</td>
<td>President</td>
<td>51%</td>
</tr>
<tr>
<td>Umesh Arora</td>
<td>41 Springwood Dr, Manassas VA 20111</td>
<td>4/23/71</td>
<td>Shareholder</td>
<td>12%</td>
</tr>
<tr>
<td>Teerth Bajaj</td>
<td>60 Lexington Ave, Beverly MA 01915</td>
<td>4/14/62</td>
<td>Shareholder</td>
<td>12%</td>
</tr>
<tr>
<td>Sagar Malwani</td>
<td>49 Putnam St, Quincy MA 02169</td>
<td>4/22/76</td>
<td>V.P.</td>
<td>10%</td>
</tr>
<tr>
<td>Ryan Amin</td>
<td>60 Lamplighter Drive, Brookline MA 02145</td>
<td>7/7/88</td>
<td>Shareholder</td>
<td>10%</td>
</tr>
<tr>
<td>Lorraine Sheehan</td>
<td>33 Nelson Street, Boston MA 02134</td>
<td>11/14/47</td>
<td>Shareholder</td>
<td>5%</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: ________________________________________________________
   ____________________________ Date 6/7/18
   ____________________________
   Print Name of Duly Authorized Person
   ____________________________
   President

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
<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ashish Sangani</td>
<td>7/19/76</td>
<td>India</td>
</tr>
<tr>
<td>Umesh Arora</td>
<td>6/25/71</td>
<td>India</td>
</tr>
<tr>
<td>Terath Bajaj</td>
<td>4/14/62</td>
<td>Afghanistan</td>
</tr>
<tr>
<td>Sagar Malavia</td>
<td>4/22/76</td>
<td>India</td>
</tr>
<tr>
<td>Ryan Amin</td>
<td>7/7/88</td>
<td>Massachusetts, USA</td>
</tr>
<tr>
<td>Lorraine Sheehan</td>
<td>1/4/47</td>
<td>Massachusetts, USA</td>
</tr>
<tr>
<td>General Manager: Silvia Cofone</td>
<td>11/14/81</td>
<td>Sofia, Bulgaria</td>
</tr>
</tbody>
</table>

Residence address on all of the above for previous 5 years

<table>
<thead>
<tr>
<th>Name in Full</th>
<th>Address</th>
</tr>
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<tbody>
<tr>
<td>Ashish Sangani</td>
<td>79 Shore Ave, Quincy, MA 02169</td>
</tr>
<tr>
<td>Umesh Arora</td>
<td>41 Silas Wood Road, Manorville, NY 11949</td>
</tr>
<tr>
<td>Terath Bajaj</td>
<td>219 Frederick Ave, Babylon NY 11702</td>
</tr>
<tr>
<td>Sagar Malavia</td>
<td>49 Putnam Street, Quincy MA 02169</td>
</tr>
<tr>
<td>Ryan Amin</td>
<td>60 Lamplighter Dr, Shrewsbury MA 01545</td>
</tr>
<tr>
<td>Lorraine Sheehan</td>
<td>33 Nelson St, Braintree, MA 02184</td>
</tr>
<tr>
<td>General Manager: Silvia Cofone</td>
<td>12 Lawrence Street, Westbrook, Maine 04092</td>
</tr>
</tbody>
</table>
ON PREMISE DIAGRAM

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

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, restrooms, decks and all areas that you are requesting approval from the Division for liquor consumption.
“Egg”cellent Breakfast $8 per person
Eggs Benedict, with your choice of Canadian bacon, or Sausage & Spinach served with home fries and fresh fruit

Frittata’s $8 per person
Spinach and feta frittata or a spinach and lobster frittata with your choice of Canadian bacon, Sausage or Spinach served with home fries and fresh fruit

French Toast $7 per person
Thick Slices of Texas Toast Dipped in Vanilla Cinnamon Egg Batter, topped with fresh strawberries and blueberries. Served with Warm Maple Syrup, Your Choice of Crisp Bacon, Grilled Ham or Sausage Links

Multigrain Waffles with Blueberries $8 per person
Buckwheat. Ground flax seed and other grains topped with a blueberry compote served with turkey sausage and maple syrup.

Breakfast Burritos $9 per person
Flour Tortilla Stuffed with Scrambled Eggs, Breakfast Potatoes, Green Chile and Cheddar Cheese, Choice of Crispy Bacon, Grilled Ham or Sausage Links, Served with Sour Cream, Salsa & Tabasco

A twenty-one percent service charge and applicable sales taxes will be added to all food and beverage charges.
BREAKFAST BUFFET

All American $12 per person
Scrambled eggs, apple wood bacon, sausage, home fries, waffles, fresh fruit, cereal, yogurt's and an assortment of bagels, English muffins, cinnamon rolls, artisan breads, Danish, assorted flavored cream cheese & fruit preserves.

Breakfast Sandwich $8 per person
A variety of egg and cheese, sausage egg and cheese, ham egg and cheese sandwiches served on English muffins served with granola and fruit yogurt parfaits

Healthy Choice $10 per person
Buckwheat. Ground flax seed and other grains waffles, granola, ground flax & fruit yogurt parfaits, Egg white, low fat cheddar and spinach lavash wraps, Heart healthy butter, fresh fruit and served with turkey sausage & turkey bacon

A twenty-one percent service charge and applicable state sales tax will be added to all food and beverage arrangements.
FROM THE
BAKERY

Continental Breakfast $8 per person
An assortment of cereals, fresh fruit, bagels, muffins, Danishes, artisan breads, odwalla bars, and juices served with butter, heart healthy butter, jams and jellies and Iced or regular coffee, Iced or assorted teas.

NY Style Bagel Bar $ per person
An assortment of New York style bagels served with flavored cream cheeses, Lox, Onion and tomato, butter, juices, chocolate, strawberry, blueberry milk and Iced or regular coffee, Iced or assorted teas.

A twenty-one percent service charge and applicable state sales tax will be added to all food and beverage arrangements.
Sandwich Style Lunches

Maine Lobster Roll  Market Price
A heaping portion of lightly seasoned Fresh Maine lobster salad in a toasted roll with fresh leaf lettuce.

It's a Wrap

Option I  $14 per person
Vegetarian, Apple chicken salad & tuna Salad in large flour, sundried tomato and spinach wraps or

Option II  $16 per person
Roasted wild mushrooms & brie with caramelized onions and red peppers, flank steak with grilled peppers, onions, avocado cilantro and lettuce with chipotle sauce & buffalo Chicken wraps in large flour, sundried tomato and spinach wraps.

Sandwich Buffet  $18 per person
Assorted Deli meats with Cheddar, Provolone, American, & Swiss cheeses served with lettuce, tomatoes, onions and pickles and 12 grain, white and wheat bread. Served with your choice of a House or Caesar salad, Homemade Pasta or Potato salad and an assortment of potato chip bags. Served with fresh baked cookies and brownies.

Classic Reuben  $14 per person
Our extra lean turkey or pastrami piled high on grilled marble rye bread with Russian dressing, sauerkraut, and Swiss cheese.

A twenty-one percent service charge and applicable state sales tax will be added to all food and beverage arrangements.

(All Sandwich Style Lunches are served with assorted bagged chips, Cole slaw, House or Caesar Salad and Homemade Pasta or potato or cucumber, tomato & red onion salad)
Honey Bourbon Salmon  $18 per person
An 4oz. Salmon filet infused with a honey bourbon marinade served with fresh sautéed vegetables and chef’s choice of starch.

Lobster Ravioli  $25 per person
Lobster and goat cheese filled ravioli with sautéed garlic and shallots in a Lobster cream sauce finished with chunks of Fresh Maine Lobster meat

Grill 6oz. Rib Eye Steak  $23 per person
Served with roasted Yukon potato’s, brocolli rabe & house made herb butter.

Risotto Cakes  $14 per person
Roasted vegetables served over warm risotto cakes topped with herbed goat cheese.

Apple Chicken Salad  $16 per person
Grilled Chicken, walnuts, Granny smith apples, apple wood smoked bacon, cheddar cheese, romaine and spinach tossed is apple cider vinaigrette.

All Plated Lunch options are served with assorted soft drinks, water, coffee and assorted teas, a cup of the Soup Du jour, house Caesar or Grilled pear and onion salad and Chef’s choice of dessert.

Quoted Prices do not include 20% Service Charge or 7% Tax. A nineteen percent service charge and applicable state sales tax will be added to all food and beverage arrangements.

Hilton Garden Inn
BUFFET LUNCHES

Little Italy $18 per person
Tomato & Mozzarella Napoleons with Balsamic reduction, Fresh assorted flatbread pizzas. Italian antipasto board with Italian meats & cheeses. Italian Sausage and peppers served with mini pastries and chocolates.

Stir Fry $20 per person
Fresh spring rolls, Stir fry with sautéed broccoli, bean sprouts, snow peas, carrots, celery, leeks, onions, fresh ginger root, water chestnuts in teriyaki ginger Sauce with sesame seeds finished with fresh cookies and brownies.

Summertime BBQ $18 per person
Grilled Watermelon Salad, 100% certified Angus Beef Burgers with all beef Hot Dogs and BBQ chicken served with Cheddar, Provolone and American sliced deli cheeses, lettuce, tomatoes, onions and pickles, homemade potato or macaroni salad corn on the cob and Cole slaw, Served with Italian ices, & ice-cream.

Quoted Prices do not include 20% Service Charge or 7% Tax.
Shrimp & Broccoli  $21 per person

Ginger Teriyaki Salmon  $28 per person
Grilled 8oz. Salmon basted with soy, fresh ginger & a teriyaki glaze and topped with sliced, grilled pineapple. Served with wild rice and broccoli.

8oz. Rib Eye Steak  $23 per person
Served with homestyle glazed carrots and garlic mashed potatoes or baked potato.

Lobster Pot Pie  $24 per person

Chicken Florentine  $26 per person
Boneless chicken breasts stuffed with a blend of spinach, mushrooms and brie cheese rolled and baked until golden brown served with Rice pilaf, steamed green beans with almond slivers and cranberries.

(All plated dinner options come with, House, Caesar or Grilled pear and onion salad, a cup of the soup du jour, dinner rolls and choice of the following desserts: Maine Blueberry Pie, Carrot Cake or Marble Cheese Cake, Red Velvet cake, regular and Decaf Coffee, assorted teas (herbal and flavored) and an assortment of soft drinks)

Quoted Prices do not include 20% Service Charge or 7% Tax

A twenty-one percent service charge and applicable state sales tax will be added to all food and beverage arrangements.
BUFFET DINNERS

Home-style Italian  $21 per person
Homemade Bruschetta, Pasta with homemade Meatballs, Chicken Parmesan, Eggplant parmesan with sautéed broccoli Rabbe, garlic bread, served with mini pastries and cheesecake bites.

Mexicana  $22 per person
A Tortilla Bowl freshly prepared, and Seasoned ground beef or turkey, caritas pulled pork, served with Homemade Mexican Style brown rice with cilantro & Lime, refried beans, black beans, shredded cheese, shredded lettuce, sour cream, guacamole, homemade salsa, pico de gallo, Tri-colored tortilla chips & jalapeno corn bread with assorted southwester deserts.

BBQ Madness  $30 per person
BBQ chicken & Ribs served with mashed potato's, braised collard greens, baked beans, homemade mac & cheese, cole slaw, and corn bread finished with warm apple crisp.

(All Buffet Dinners are served with regular and Decaf Coffee, Tazo teas (herbal and flavored) and an assortment of soft drinks)

Quoted Prices do not include 20% Service Charge or 7% Tax.
Fresh Start
Regular and Decaf Coffee, Assorted herbal and flavored teas, Cranberry, Apple and Orange Juice Carafes with an assortment of Nutrigrain Kashi or Cliff Bars.

Bakery Break
Assorted Bagels, Muffins, Artisan breads and Danish and cinnamon rolls served with Jellies and Cream Cheese Regular and Decaf Coffee, Assorted herbal and flavored teas, Cranberry, Apples and Orange Juice Carafes.

NEED NEW NAME
Iced regular and decaf coffee, Fresh brewed iced tea, lemonade and assorted sodas with an assortment of fresh fruit yogurt parfaits and granola bars, fresh fruit platter.

Cool down
Ben and Jerry's Novelty bars, Chipwiches, Frozen fruit bars, & Frozen snickers and milky way bars

Sweet Tooth
An assortment of Maine Whoopee Pies served with 2%, skim and chocolate milk with your choice of coffee and assorted tea's or an assortment of soft drinks
# Welcome to The Garden

## Appetizers

<table>
<thead>
<tr>
<th>Appetizer</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHRIMP COCKTAIL*</td>
<td>10.0</td>
<td>280</td>
</tr>
<tr>
<td>APPLEWOOD BACON AND BLEU CHEESE FRIES*</td>
<td>9.0</td>
<td>560</td>
</tr>
<tr>
<td>WINGS OF THE WORLD*</td>
<td>7.0</td>
<td></td>
</tr>
<tr>
<td>Buffalo</td>
<td>530</td>
<td></td>
</tr>
<tr>
<td>Sweet Chilli</td>
<td>610</td>
<td></td>
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</tbody>
</table>

## Sides

<table>
<thead>
<tr>
<th>Side</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>MASHED POTATOES*</td>
<td>5.0</td>
<td>180</td>
</tr>
<tr>
<td>NATURAL CUT STEAK FRIES*</td>
<td>5.0</td>
<td>230</td>
</tr>
<tr>
<td>CABERNET RICE*</td>
<td>5.0</td>
<td>200</td>
</tr>
<tr>
<td>GRILLED VEGETABLES*</td>
<td>5.0</td>
<td>35</td>
</tr>
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</table>

## Desserts

<table>
<thead>
<tr>
<th>Dessert</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>CARAMEL APPLE GRANNY*</td>
<td>9.0</td>
<td>510</td>
</tr>
<tr>
<td>ROCKSLIDE BROWNIE*</td>
<td>9.0</td>
<td>650</td>
</tr>
<tr>
<td>NY CHEESECAKE*</td>
<td>9.0</td>
<td>530</td>
</tr>
</tbody>
</table>

## Kids

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOBLEY JR*</td>
<td>9.0</td>
<td>560-770</td>
</tr>
<tr>
<td>PASTA JR*</td>
<td>9.0</td>
<td>310</td>
</tr>
<tr>
<td>CHICKEN TENDERLOINS* N' FRIES*</td>
<td>8.0</td>
<td>650</td>
</tr>
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</table>

## Soups & Salads

<table>
<thead>
<tr>
<th>Soup/Salad</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOMATO AND BASIL BISQUE*</td>
<td>6.0</td>
<td>270</td>
</tr>
<tr>
<td>GARDEN SALAD*</td>
<td>12.0</td>
<td>210-400</td>
</tr>
<tr>
<td>CAESAR SALAD*</td>
<td>9.0</td>
<td>410</td>
</tr>
<tr>
<td>COBB SALAD*</td>
<td>12.0</td>
<td>370-560</td>
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</table>

## Burgers, Sandwiches & Flatbread

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOBLEY BURGER*</td>
<td>12.0</td>
<td>960-1290</td>
</tr>
<tr>
<td>GARDEN BURGER*</td>
<td>14.0</td>
<td>740-890</td>
</tr>
<tr>
<td>BISTRO CHICKEN SANDWICH*</td>
<td>14.0</td>
<td>850-1000</td>
</tr>
<tr>
<td>COD SANDWICH*</td>
<td>12.0</td>
<td>1000-1160</td>
</tr>
<tr>
<td>CLASSIC PEPPERONI FLATBREAD*</td>
<td>10.0</td>
<td>710</td>
</tr>
</tbody>
</table>

## Entrees

<table>
<thead>
<tr>
<th>Entree</th>
<th>Price</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBQ RIBS*</td>
<td>18.0</td>
<td>670</td>
</tr>
<tr>
<td>GRILLED VEGETABLE PASTA PRIMAVERA*</td>
<td>23.0</td>
<td>570</td>
</tr>
<tr>
<td>PASTA MARINARA*</td>
<td>18.0</td>
<td>540</td>
</tr>
<tr>
<td>SMOTHERED CHICKEN*</td>
<td>21.0</td>
<td>740</td>
</tr>
<tr>
<td>GRILLED SALMON*</td>
<td>22.0</td>
<td>720</td>
</tr>
<tr>
<td>GRILLED SIRLOIN*</td>
<td>26.0</td>
<td>940</td>
</tr>
</tbody>
</table>

2,000 calories a day is used for general nutrition advice, but calorie needs vary.

Additional nutrition information available upon request.

*Please note that some of our dishes may contain traces of nuts. For guests with special dietary requirements or allergies, who may wish to know about the food ingredients used, please ask a member of the restaurant staff. Consuming raw or undercooked meats, poultry or seafood may increase your risk of foodborne illness, especially if you have certain medical conditions.

Nutrition information is credited and calculated with information provided by manufacturers, vendors, published resources, and/or the USDA Nutrient Database for Standard Reference.
Beverages

COCA-COLA®  •  3.0  (200 Cal)
DIET COKE®  •  3.0  (0 Cal)
SPRITE®  •  3.0  (190 Cal)
COFFEE  •  2.5  (0 Cal)
HOT TEA  •  2.5  (0 Cal)
ICED TEA, Unsweet  •  3.0  (0 Cal)
MILK, 2%  •  3.0  (120 Cal)

Bottled Beers

BUD LIGHT  •  5.5  (110 Cal)
BUDWEISER  •  5.5  (150 Cal)
MICHELOB ULTRA  •  5.5  (100 Cal)
STELLA ARTOIS  •  6.5  (150 Cal)
CORONA EXTRA  •  6.5  (150 Cal)

White Wines  Served by the glass or by the bottle.

SUTTER HOME, WHITE ZINFANDEL  •  8.0 / 31.0  (G 110 Cal / B 550 Cal)
CHATEAU STE. MICHELLE, RIESLING  •  9.0 / 35.0  (G 150 Cal / B 750 Cal)
TRINITY OAKS, PINOT GRIGIO  •  8.0 / 31.0  (G 120 Cal / B 630 Cal)
MURPHY-GOODE, SAUVIGNON BLANC  •  8.0 / 35.0  (G 120 Cal / B 600 Cal)
TRINITY OAKS, CHARDONNAY  •  8.0 / 31.0  (G 120 Cal / B 600 Cal)
KENDALL-JACKSON, CHARDONNAY  •  9.0 / 35.0  (G 130 Cal / B 650 Cal)

Red Wines  Served by the glass or by the bottle.

SEA GLASS, PINOT NOIR  •  8.0 / 28.0  (G 120 Cal / B 600 Cal)
MURPHY-GOODE, PINOT NOIR  •  9.0 / 35.0  (G 120 Cal / B 600 Cal)
COLUMBIA CREST, GRAND ESTATES, MERLOT  •  9.0 / 35.0  (G 120 Cal / B 600 Cal)
14 HANDS, CABERNET SAUVIGNON  •  10.0 / 39.0  (G 160 Cal / B 800 Cal)
TRINITY OAKS, CABERNET SAUVIGNON  •  8.0 / 31.0  (G 130 Cal / B 650 Cal)
MÉNÉGÀ TROIS, RED BLEND  •  8.0 / 26.0  (G 130 Cal / B 650 Cal)

Cocktail Favorites

MARGARITA  •  12.0  (210 Cal)
The fiesta begins with Hornitos Tequila, Olé!

CLASSIC MARTINI  •  9.0  (160 Cal)
Pinnacle Vodka, the secret agent choice.

LONG ISLAND ICED TEA  •  15.0  (290 Cal)
Pinnacle Vodka gives iced tea an attitude.

GIN AND TONIC  •  9.0  (180 Cal)
Gilbey’s Gin and tonic water. So smooth.

LEMON DROP  •  12.0  (140 Cal)
Pinnacle Vodka, Triple Sec and lemon juice.

COSMOPOLITAN  •  9.0  (140 Cal)
It’s a savvy sipper with Pinnacle Vodka.

2,000 calories a day is used for general nutrition advice, but calorie needs vary.
Re: Hilton Garden Inn

Kevin Cashman <kevindc@portlandmaine.gov>  Thu, Jun 14, 2018 at 4:44 PM
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>
Cc: Benjamin Pearson <bnp@portlandmaine.gov>, David Petruccelli <petruccellid@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, James Sweatt <js@portlandmaine.gov>, John Brennan <brennanj@portlandmaine.gov>, Laurie Carlson <lc@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 Thu, Jun 14, 2018 at 12:56 Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached application. This is a change of ownership of an existing business. This will go before council on 7/16. 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
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):

Inquiries Name(s) - UMESH ARORA (1971-06-25)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):

Inquiries Name(s)  TERATH BAJAJ (1962-04-14)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):
Inquiries Name(s) SILVIA COFONE (1981-11-14)

NO MATCH WAS FOUND FOR YOUR REQUEST.
MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JESSICA HANSCOMBE
389 CONGRESS STREET
ROOM 307
PORTLAND, ME 04101

Transaction Response #: MIQ99D626773

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):
Inquiries Name(s) SAGAR MALAVIA (1976-04-21)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):
Inquiries Name(s) RYAN AMIN (1988-07-07)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):
Inquiries Name(s) ASHISH SANGANI (1976-07-19)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-15):
Inquiries Name(s) LORRAINE SHEEHAN (1947-01-04)

NO MATCH WAS FOUND FOR YOUR REQUEST.
June 26, 2018

Giri Portland Inc
225 W Squantum Street #200
Quincy MA 02171

Re: Giri Portland Inc dba Hilton Garden Inn. Application for a Class 1A Hotel at 145 Jetport Boulevard.

Dear Megha Sangani

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class 1A Hotel at 145 Jetport Boulevard. 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., Giri Portland Inc dba Hilton Garden Inn. Application for a Class IA Hotel at 145 Jetport Boulevard. Sponsored by Michael Russell, Director of Permitting and Inspections.
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’
APPROVAL OF:

Sablage LLC dba Gross Confection Bar. Application for a Class I FSE at 57 Exchange Street.
Dear Mayor Strimling and members of the City Council,

My name is Brant Dadaleares. I am a pastry chef, born and raised in Maine, who has worked in the kitchens of many of Portland's finest restaurants over the past twenty years including Fore Street, Central Provisions, Hugo's, Eventide, The Honey Paw and Tipo. The experience and knowledge that I have gained through working at those establishments has brought me to the point where I feel I can open and run my own restaurant.

In 2014 I came up with the idea for Gross Confection Bar, a dessert-only restaurant and bar. I began posting photos of my creations on social media describing them only as "Gross" a term coined straight out of restaurant sarcasm. Gross Confection Bar will be a full-service dessert restaurant and bar during the evening, with take-out treats, pastries and coffee available during the day.

In the enclosed packet please find my City application for food and alcohol, State application for alcohol, a check for applicable fees as well as a menu for Gross Confection Bar. I am very excited to serve the greater Portland community as well as the many patrons who visit our city.

Thank you for your time and consideration.

Sincerely yours,

Brant Dadaleares
Application for Food Service Establishment with Alcoholic Beverages License

**Business Information**

<table>
<thead>
<tr>
<th>Business Name (d/b/a):</th>
<th>Gross Confection Bar</th>
<th>Phone: 207-650-1763</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location Address:</td>
<td>57 Exchange Street Portland, ME 04101</td>
<td>Zip:</td>
</tr>
<tr>
<td>If new, what was formerly at this location:</td>
<td>Noel Christmas</td>
<td></td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>57 Exchange Street Portland, ME 04101</td>
<td>Zip:</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Brant Dadalavieas</td>
<td>Phone: 207-650-1763</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:brant@grossconfectionbar.com">brant@grossconfectionbar.com</a></td>
<td></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Greg Arruda</td>
<td>Phone: 207-650-2971</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>Dirigo Management</td>
<td></td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>One City Center Portland, ME 04101</td>
<td></td>
</tr>
</tbody>
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**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>
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</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>Sablege LLC</td>
<td>152 Cumberland Ave #1</td>
<td>04101</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Brant Dadalavieas</td>
<td>Phone: 207-650-1763</td>
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<table>
<thead>
<tr>
<th>Principal Officers</th>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
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<tbody>
<tr>
<td>Brant Dadalavieas</td>
<td>co-owner</td>
<td>12/19/70</td>
<td>152 Cumberland Ave #1 04101</td>
</tr>
<tr>
<td>David Clark</td>
<td>co-owner</td>
<td>9/30/65</td>
<td>3766 Ashwood Ave LA, CA 90066</td>
</tr>
</tbody>
</table>
About Your Establishment

| Class of Liquor License: | Restaurant (Class I, II, III, IV) |
| Type of food served: | Dessert |
| Please circle all that will be served: | Beer, Wine, Liquor |
| Projected percentage of sales: | Generated from Food: 720K, Generated from Alcohol: 112K |
| Hours & days of operation: | 5pm - 1am, 7 days/week |

Questions

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

If No, please explain: We will be serving hot & cold desserts

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

If yes, give the distance: __________

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

Will you permit dancing on the premises? Y/N

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

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

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

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

If yes, please list:

- # of pinball machines: _______
- # of arcades: _______
- # of pool tables: _______

What is your targeted opening date? __________

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

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

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

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

Is any principal officer under the age of 21? Y/N

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

If Yes, please explain: __________

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

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

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

Signature: ________________ Title: co-owner Date: 6/20/18

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov
NEW application: ☐ Yes ☐ No

PRESENT LICENSE EXPIRES ______________________

INDICATE TYPE OF PRIVILEGE: ☑️ MALT ☑️ VINOUS ☑️ SPIRITUOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I, II, III, IV)
☐ HOTEL (Class I, II, III, IV)
☐ CLUB w/o Catering (Class V)
☐ TAVERN (Class IV)

Class: By: Deposit Date: Amt. Deposited: Cash Ck Mo:

DIVISION USE ONLY

Corporate Name: Seablose LLC

Business Name (D/B/A): Gross Confection Bar

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

DOB: City/Town State Zip Code

Address

City/Town State Zip Code

Telephone Number Fax Number

Federal I.D. # 81-5112652 Seller Certificate #: 191811

Email Address: Brantegrossconfectionbar.com Name of Business: Gross Confection Bar.com

Website:

If business is NEW or under new ownership, indicate starting date: 10/1/2018

Requested inspection date: TBD Business hours: 5 pm - 12am

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.

License # Name of Business ______________________ (Use an additional sheet(s) if necessary.)

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: Greg Arruda

7. Business records are located at: 57 Exchange St Portland, ME 04101

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

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

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

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) Brant Dalalacres</td>
<td>12/15/70</td>
<td>New Haven, CT</td>
</tr>
<tr>
<td>B) Greg Arruda</td>
<td>6/13/53</td>
<td>Brockton, MA</td>
</tr>
<tr>
<td>C) Roxanne Drake</td>
<td>7/29/83</td>
<td>Orlando, FL</td>
</tr>
</tbody>
</table>

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

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Portland, ME</td>
<td></td>
</tr>
<tr>
<td>Windham, ME</td>
<td></td>
</tr>
<tr>
<td>Portland, ME</td>
<td></td>
</tr>
</tbody>
</table>

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

Name: Brant Dalalacres  Date of Conviction: 12/29/11, Location: Bath, ME

Offense: O.U.T.  Disposition: _____________________________ (use additional sheet(s) if necessary)

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

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

14. Does/do applicant(s) own the premises? Yes □ No □  If No give name and address of owner: Dresco Management Portland, ME

15. Describe in detail the premises to be licensed: (On Premise Diagram Required) Dessert Only Restaurant with Full Bar — See Diagram

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? 25 miles

Which of the above is nearest? Church

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: Cambden National Bank Portland, ME

Private Investors (5)
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 June 18, 2018

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

Print Name

Print Name

FEE SCHEDULE

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

Class I Spirituous, Vinous and Malt ........................................................................................................ $ 900.00

CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.

Class I-A Spirituous, Vinous and Malt, Optional Food (Hotels Only) ...................................................... $1,100.00

CLASS I-A: Hotels only that do not serve three meals a day.

Class II Spirituous Only .......................................................................................................................... $ 550.00

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

Class III Vinous Only ............................................................................................................................ $ 220.00

CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.

Class IV Malt Liquor Only .................................................................................................................... $ 220.00

CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.

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

CLASS V: Clubs without catering privileges.

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

CLASS X: Class A Lounge

Class XI Spirituous, Vinous and Malt – Restaurant Lounge ................................................................ $1,500.00

CLASS XI: Restaurant/Lounge; and OTB.

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

2. Doing Business As, if any: CROSS CONFECTION BAR

3. Date of filing with Secretary of State: 12/25/16 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: (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>Brant</td>
<td>75 State St., Portland, ME</td>
<td>12/15/70</td>
<td>Co-owner</td>
<td>75</td>
</tr>
<tr>
<td>Dadaleave</td>
<td>307 Spinnaker St., Portland, ME</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>152 Cumberland Ave., Portland</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>David</td>
<td>654 Ashbury St., San Francisco, CA</td>
<td>9/10/65</td>
<td>Co-owner</td>
<td>25</td>
</tr>
<tr>
<td>Clark</td>
<td>316 Ashwood Ave., Los Angeles, CA</td>
<td></td>
<td></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: [Handwritten: B.J. Delilahes]

   Date of Conviction: 12/29/01

   Offense: O.L.I.

   Location of Conviction: Both, ME

   Disposition: ____________________________

   Signature: ____________________________

   [Handwritten: 6/20/18]

   Signature of Duly Authorized Person  Date

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
ON PREMISE DIAGRAM

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

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, restrooms, decks and all areas that you are requesting approval from the Division for liquor consumption.
(1) FROZEN LEMON PUDDING CAKE $6
-meringue
-white chocolate
-passion fruit
-pineapple
-pistachio

(2) CHILLED BLUEBERRY CRISP VERrine $7
-blueberries
-moscovite
-corn
-vanilla bean
-toasted almond

(3) BROWN BUTTER PAMPA COTTA $8
-graham cracker
-strawberry
-cocnut
-banana
-milk

(4) GOAT CHEESE CHEESECAKE $8
-teats
-walnuts
-golden raisins
-fennel
-pear
-apricot
-sour

(5) ~

(1) FROZEN PEANUT BUTTER MOUSSE $11
-peanut cake
-caramel
-peanuts
-vanilla
-popcorn
-crunch

(2) MEYER LEMON HONEY BAVARIAN CREAM $12
-kumquats
-coconut
-olive oil
-lavender
-black sesame
-concord grape

(3) RHUBARB PARFAIT $12
-boysenberry meringue
-mascarpone
-strawberry
-basil
-platina
-lime

(4) CHERRY CHOCOLATE TART $15
-peach
-sweet cream
-custard
-blackberry
-coffee

(5) "CRUMB" BRULÉE $10
-French custard
-daily crumb crunch
-flaked gel
Re: Gross Confection Bar

Kevin Cashman <kevindc@portlandmaine.gov>  
Sat, Jun 23, 2018 at 5:47 PM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>
Cc: Benjamin Pearson <bnp@portlandmaine.gov>, David Petruccelli <petruccellid@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>, Zoning <zoning@portlandmaine.gov>

PD has no objections.
Kevin C.

On Fri, Jun 22, 2018 at 11:34 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

Please see the attached application for Gross Confection Bar, 57 Exchange Street for a Class I FSE. This will be going before council on 7/16. Please advise.

Thanks Jessica

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

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

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-22):

Inquiries Name(s)

DAVID CLARK (1965-09-30)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-22):
Inquiries Name(s) BRANT DADALEAVES (1970-12-19)

NO MATCH WAS FOUND FOR YOUR REQUEST.
June 26, 2018

Sablage LLC
152 Cumberland Ave #1
Portland ME 04101

Re: Sablage LLC dba Gross Confection Bar. Application for a Class I FSE at 57 Exchange Street.

Dear Brent Dadaleaves,

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class I FSE at 57 Exchange 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., Sablage LLC dba Gross Confection Bar. Application for a Class I FSE at 57 Exchange Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
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
GRANTING MUNICIPAL OFFICERS’
APPROVAL OF:

Sophia LK, LLC dba Blue Spoon. Application for a Class I FSE with Outdoor Dining on
Public Property at 89 Congress Street.
June 18, 2018

Mayor Strimling and Member of the City Council,

We, Elizabeth Koenigsberg and William Lavey, are requesting a new liquor license and outdoor dining permit for The Blue Spoon. The Blue Spoon is located at 89 Congress St. We hope to purchase and transfer ownership of the currently operating restaurant on July 30th, 2018. We will abide by all city regulations for serving both food and alcohol. WE are excited by this new venture and look forward to working with the city in the future.

Sincerely,

Elizabeth Koenigsberg and William Lavey
Application for Food Service Establishment with Alcoholic Beverages License

<table>
<thead>
<tr>
<th>Business Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business Name (d/b/a):</strong></td>
<td>Blue Spoon</td>
</tr>
<tr>
<td><strong>Location Address:</strong></td>
<td>89 Congress St, Portland, ME 04101</td>
</tr>
<tr>
<td><strong>If new, what was formerly at this location:</strong></td>
<td>Blue Spoon</td>
</tr>
<tr>
<td><strong>Mailing Address:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Contact Person:</strong></td>
<td>Elizabeth Koenigsberg</td>
</tr>
<tr>
<td><strong>Contact Person Email:</strong></td>
<td><a href="mailto:ewkayo@gmail.com">ewkayo@gmail.com</a></td>
</tr>
<tr>
<td><strong>Manager of Establishment:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Date of Birth:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Owner of Premises (Landlord):</strong></td>
<td>David Lowno</td>
</tr>
<tr>
<td><strong>Address of Premises Owner:</strong></td>
<td>89 Congress St, Portland, ME 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>Elizabeth Koenigsberg</td>
<td>11/30/80</td>
<td>500 Ocean House Rd, 04107</td>
</tr>
<tr>
<td>William Loney</td>
<td>2/20/85</td>
<td></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>
</tr>
</thead>
<tbody>
<tr>
<td>Sophia LK, LLC</td>
<td>500 Ocean House Rd</td>
<td>04107</td>
</tr>
<tr>
<td><strong>Contact Person:</strong></td>
<td>Elizabeth Koenigsberg</td>
<td></td>
</tr>
<tr>
<td><strong>Phone:</strong></td>
<td>207-321-8052</td>
<td></td>
</tr>
</tbody>
</table>

**Principal Officers**

<table>
<thead>
<tr>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>11/30/80</td>
<td>500 Ocean House Rd, Cape Elizabeth, 04107</td>
</tr>
<tr>
<td>Owner</td>
<td>2/20/85</td>
<td></td>
</tr>
<tr>
<td>Owner</td>
<td>2/20/85</td>
<td></td>
</tr>
</tbody>
</table>
### About Your Establishment

| Class of Liquor License: | Class I - Restaurant  
American Bistro |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>Beer, Wine, Liquor</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: 500,000, Generated from Alcohol: 200,000</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>M-F 11-10pm, Sa&amp; 9am-10pm</td>
</tr>
</tbody>
</table>

### QUESTIONS

- Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?  
  - [ ] Yes  
  - [x] No  

- Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?  
  - [ ] Yes  
  - [ ] No  

- If yes, give the distance:  
  - [ ]  

- Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)  
  - [ ] Yes  
  - [ ] No  

- Will you permit dancing on the premises?  
  - [ ] Yes  
  - [ ] No  

- Will you permit dancing after 1:00 a.m.?  
  - [ ] Yes  
  - [ ] No  

- Will you have outside dining? (If yes, an Outdoor Dining Application is required)  
  - [ ] Yes  
  - [ ] No  

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

- Will you have any amusement devices (pinball, video games, juke box)?  
  - [ ] Yes  
  - [ ] No  

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

- What is your targeted opening date?  
  - [ ]  

- Does the Issuance of this license directly or Indirectly benefit any City employee(s)?  
  - [ ] Yes  
  - [ ] No  

- 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?  
  - [ ] Yes  
  - [ ] No  

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

- Is any principal officer under the age of 21?  
  - [ ] Yes  
  - [ ] No  

- Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?  
  - [ ] Yes  
  - [ ] No  

- If Yes, please explain:  
  - [ ]  

---

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

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

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

Signature: [Signature]  
Title: [Owner]  
Date: [Date]

For more information about Liquor Licenses, see Portland City Code Chapter 15 at [www.portlandmaine.gov](http://www.portlandmaine.gov) and M.R.S.A. Title 28-A at [www.maine.gov](http://www.maine.gov).
Legal Advertisement Deposit $100.00

- Outdoor Dining on Public Property $80.00 plus $2.00 per Square foot $2.00 X ___ SF = ___
- Outdoor Dining on Public Property in a City Park $80.00 plus $6.00 per Square foot $6.00 X ___ SF = ___

<table>
<thead>
<tr>
<th>Business Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business Name (db/a):</strong></td>
<td>The Blue Spoon</td>
</tr>
<tr>
<td><strong>Location Address:</strong></td>
<td>Congress St</td>
</tr>
<tr>
<td><strong>Mailing Address:</strong></td>
<td><strong>Phone:</strong></td>
</tr>
<tr>
<td><strong>Contact Person:</strong></td>
<td>Elizabeth Koenigsberg</td>
</tr>
<tr>
<td><strong>Contact Person Email:</strong></td>
<td><a href="mailto:ewkayo@gmail.com">ewkayo@gmail.com</a></td>
</tr>
<tr>
<td><strong>Manager of Establishment:</strong></td>
<td><strong>Date of Birth:</strong></td>
</tr>
<tr>
<td><strong>Owner of Premises (Landlord):</strong></td>
<td>David Lavinio</td>
</tr>
<tr>
<td><strong>Address of Premises Owner:</strong></td>
<td>89 Congress St</td>
</tr>
</tbody>
</table>

**Owner Information**

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sophia L.K., LLC</td>
<td>500 Ocean House Rd Cape Elizabeth</td>
<td>04107</td>
</tr>
<tr>
<td><strong>Contact Person:</strong></td>
<td>Elizabeth Koenigsberg</td>
<td><strong>Phone:</strong></td>
</tr>
<tr>
<td><strong>Principal Officers</strong></td>
<td><strong>Title</strong></td>
<td><strong>Date of Birth</strong></td>
</tr>
<tr>
<td>William Lavey</td>
<td>chef/owner</td>
<td>2/10/85</td>
</tr>
<tr>
<td>Elizabeth Koenigsberg</td>
<td>gm/owner</td>
<td>11/30/80</td>
</tr>
</tbody>
</table>
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th>Class 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>American Bistro</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td>Beer &gt; Wine &lt; Liquor</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>Mon-Fri 11am-10pm Sat-Sun 8am-10pm</td>
</tr>
<tr>
<td>Number of Tables</td>
<td>4</td>
</tr>
<tr>
<td>Number of Chairs</td>
<td>14</td>
</tr>
</tbody>
</table>

Design and Construction

<table>
<thead>
<tr>
<th>Existing Sidewalk Width (property line to curb)</th>
<th>Sidewalk Dining Allowed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 8'0&quot;</td>
<td>No</td>
</tr>
<tr>
<td>≥ 8'0&quot;</td>
<td>Yes – up to 60% of sidewalk</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sidewalk Type</th>
<th>Sidewalk Passage Width (Min)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard sidewalk</td>
<td>4'0&quot;</td>
</tr>
<tr>
<td>Street corner</td>
<td>5'0&quot;</td>
</tr>
</tbody>
</table>

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

Barriers

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

Example barrier types that meet regulation
Maintenance and Operations

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

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/your 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 Owner ___________ Date 6/15/18

For Administrative Use Only

Amount: ___________________________
Date Paid: ________________________
CC ______ GA ______ CK ______

Amount: ___________________________
Date Paid: ________________________
CC ______ GA ______ CK ______

Request Date / Approval __________________________

FD: ___________________________
Health: ________________________
PD: ___________________________
Treasury: _____________________
Zoning: ______________________

Notes: __________________________

**Division Use Only**

- **License No:**
- **Class:**
- **Deposit Date:**
- **Amount Deposited:**
- **Cash/Ck Mo:**

---

**New Application:**
- Yes ☐
- No ☐

Present License Expires: __________

**Indicate Type of Privilege:***
- [ ] Malt
- [ ] Venous
- [ ] Spirituous

**Indicate Type of License:**
- [ ] Restaurant (Class I,II,III,IV)
- [ ] Hotel-Optional Food (Class I-A)
- [ ] Class A Lounge (Class X)
- [ ] Club (Class V)
- [ ] Tavern (Class IV)
- [ ] Other: ______________

Refer to Page 3 for Fee Schedule

---

**Corporation Name:**

- **Sophialk, LLC**

**Applicant(s) – (If Proprietor):**
- **DOB:**

**Business Name (D/B/A):**
- **Blue Spoon**

**Physical Location:**
- **89 Congress St.**

**City/Town:**
- **Portland**

**State:**
- **ME**

**Zip Code:**
- **04101**

**Mailing Address:**

**Telephone Number:**
- **Applied**

**Fax Number:**
- **Applied**

**Business Telephone Number:**
- **207-321-8052**

**Federal ID #**
- **Applied**

**Sellers Certificate #:**
- **Applied**

**Website:**
- **eukaydogmail.com**

If business is new or under new ownership, indicate starting date: __________

- **Requested inspection date:** __________
- **Business hours:** __________

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: __________

8. Business records are located at: __________

9. Business is located at: __________

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

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

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>William Lavey</td>
<td>1/20/85</td>
<td>IN</td>
</tr>
<tr>
<td>Elizabeth Koengsberg</td>
<td>11/30/80</td>
<td>Portland, ME</td>
</tr>
</tbody>
</table>

Residence address on all of the above for previous 5 years (Limit answer to city & state)
| Bruce St | Portland, ME |
| Cape Elizabeth | Portland, ME |

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 ☑

<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>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disposition:</th>
<th></th>
</tr>
</thead>
</table>

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: 

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>David</td>
<td>Congress St, Portland, ME</td>
</tr>
</tbody>
</table>

17. Describe in detail the premises to be licensed: (On Premise Diagram Required) 30 seat restaurant serving lunch and dinner

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? 3/4 mile Which of the above is nearest? School

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: Bangor Savings Bank loan

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, ME on June 20, 2018

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

[Signature]

Print Name

Signature of Applicant or Corporate Officer(s)

[Signature]

Print Name
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: **Sapphire LLC**

2. Doing Business As, if any: **Blue Spoon**

3. Date of filing with Secretary of State: __________ 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>William Lavey</td>
<td>161 Ridgefield South, Portland, ME</td>
<td>2/40/85</td>
<td><strong>Owner</strong></td>
<td>50</td>
</tr>
<tr>
<td>Elizabeth Koenigsberg</td>
<td>Portland, ME</td>
<td>1/30/80</td>
<td><strong>Owner</strong></td>
<td>50</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: __________________________

Date: 01/15/18

Print Name of Duty Authorized Person: E. Koenigsberg

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
## Brunch

### Starters and Sides

<table>
<thead>
<tr>
<th>Toast (choice)</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>spicy cocoa - sweet butter, brown sugar tahini, cinnamon, and pear fresh ricotta and jam cheddar cheese and pickled peppers</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Yogurt Power Bowl</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>local greek yogurt - whole grain muesli - fresh berries - seeds - honey</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cage Free Local Egg</th>
<th>1.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>applewood smoked thick cut bacon or Italian sausage</td>
<td></td>
</tr>
</tbody>
</table>

### Side Panake with Maple Cinnamon Yogurt

<table>
<thead>
<tr>
<th>Buttermilk Biscuit with Butter and Honey</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>casco bay mussels garlic toast - pimenton aioli - garlic broth</td>
<td></td>
</tr>
</tbody>
</table>

### Bistro Salad

<table>
<thead>
<tr>
<th>Mesclun greens - goat cheese - radish - sunflower seeds - warm sourdough croutons - dijon vinaigrette</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td>smoothie - strawberry - ginger - vanilla and greek yogurt</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Seasonal Soup</th>
<th>4/8</th>
</tr>
</thead>
</table>

### Breakfast Plate

| 2 farm eggs - bacon or sausage - home fries - sourdough toast |
|---------------------|------------------|

### Eggs Bolognese

| Fried polenta - bolognese sauce - poached egg - grated parmesan |
|--------------------------|-------------------|

### Breakfast Toast

| Farmers greens - pickled peppers - fingerlings - egg - fresh ricotta |
|------------------------|--------------------|

### Pork Belly Hash

| Roast root vegetables - fried egg - pork belly - cressa |
|-------------|------------------|

### Cornmeal Buttermilk Pancakes

| Maple, cinnamon yogurt - rhubarb compote |
|-----------------|------------------|

### Egg Sandwich

| Capicola ham - provolone - fried egg - spicy mayo and whole grain mustard - toasted bun |
|-----------------|------------------|

### Bistro Burger

| Wee Bit Farm Beef - warm potato salad - toasted bun |
|-----------------|------------------|

### Pulled Chicken Salad Club

| Smoked cheddar - dill - thick cut bacon - lettuce & tomato |
|----------------|------------------|

### Sourdough BLT

| Thick cut bacon - rosemary mayo - salad greens - tomato |
|-----------------|------------------|

### Cacio e Pepe

| Pasta with parmesan and black pepper - poached egg |
|-----------------|------------------|

### Brunch Cocktails

| Bloody Mary with pepperoncini mimosa with a campari float Irish coffee - dark brown sugar, whiskey, whipped cream the argentine - fernet branca and cola the Irish twin - stone cider and Jameson the day drinker - burton and limonata cherry cola - cherry heering and cola the day walker - canton ginger and ginger beer |
|-----------------|------------------|

### Homegrown Tea

| Darjeeling ginger snap jasmine green tea lemon squeezer simply minty holy basil assam chai hibiscus iced |
|-----------------|------------------|

Blue Spoon supports these and other local farms: Black Kettle Farm, Stone Cipher Farm, Valley View Farm, Fishbowl Farm, Fuzzy Udder, Lakin’s Gorges Cheese, Wee Bit Farm Beef and Pork, Commonwealth Farm Chickens, North Spore Mushrooms.
Lunch

starters

dips - trio of daily spreads and dips - grilled flatbread 11
warm marinated olives - lemon, herbs and spices 5
patatas bravas - maine fingerlings - capers - spicy aoli 6
gold and red beets - sesame aoli - gold and black sesame seeds 7
sauteed farmer’s greens - garlic - coltura di alici - parmesan 5
casco bay mussels* - garlic toast - pimenton aioli - roast garlic and wine broth (season allowing) 9
blue cheese toast - garlicky spinach 8
seasonal soup 4/8

cup of soup and 1/2 sandwich 13

salads

roast beet salad - farro tabbouleh - spinach - feta and yogurt dressing 12
bavette steak salad* - radicchio and mesclun - parmesan crisps - pickled cherry peppers - Maine honey 15
bistro salad - goat cheese - watermelon radish - herbs - sunflower seeds - sourdough crouton - dijon vinaigrette 8

lunch

bistro burger* - wee bit farm beef - warm potato salad - house made bun 14
burger toppings; blue spoon smoked onions, fried egg, thick cut bacon or sautéed mushrooms 2.5
egg sandwich - capicola ham - provolone - fried egg - whole grain mustard 8
pulled chicken salad club - cheddar - dill - thick cut bacon - lettuce and tomato 13
b.l.t. - thick cut bacon - rosemary mayo - mesclun greens - tomato - sourdough toast 12
grilled cheese - provolone and asiago - pickled cherry peppers and green onion - sourdough bread 10
braising pot - seasonal ragu - bucatini - parmesan 14
mushroom polenta - seared polenta cake - roast mushrooms - fried garlicky greens - ricotta 14
fish stew* - casco bay mussels and atlantic hake - red broth - garlic crostini 14

Blue Spoon supports these and other local farms: Black Kettle Farm, Stonecipher Farm, Valley View Farm, Fuzzy Udder, Lakin’s Gorges Cheeses, Wee BIt Farm Beef and Pork, Commonwealth Farm Chickens, North Spore Mushrooms.

*consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of food borne illness.
Dinner

**tapas and small plates**

- patatas bravas - maine fingerlings - capers - spicy aioli 6
- warm marinated olives - lemon, herbs and spices 5
- sautéed farmer's greens - fried garlic - coltura di alici - parmesan 6
- gold and red beets - sesame aioli - black and gold sesame seeds 7
- blue cheese toast - garlic spinach - toasted sourdough 8

**starters and salads**

- dips - trio of daily spreads and dips - grilled flatbread 11
- a plate for christina - charcuterie and cheese board 15
- grilled asparagus - fried quail egg - toasted almonds - pork belly 14
- seared scallops - peas and pancetta - brown butter sauce 15
- charred cauliflower - garlic tahini - mint and dates - toasted breadcrumbs 8
- casco bay mussels - roast garlic and white wine broth - garlic toast - pimentón aioli (season allowing) 9/18
- house made fregola di sardi pasta - caramelized napa cabbage - anchovy and garlic - parmesan 12
- bistro salad - watermelon radish, sherry vinaigrette - goat cheese - sunflower seeds - sourdough crouton 8
- roast beet salad - farro tabbouleh - spinach - feta and yogurt dressing 12
- bavette steak salad - radicchio and mesclun - parmesan crisps - pickled cherry peppers - Maine honey 15

**seasonal soup** 8

**dinner**

- grilled ribeye* - asparagus with bacon, oregano, and goat cheese - fingerlings - burgundy demi 32
- roast half chicken* - preserved lemons, with arugula, green olives, and red potato - sage chicken jus 29
- bistro burger* - wee bit farm beef - warm potato salad - toasted bun 14
- burger toppings: smoked onions, thick cut bacon, farm egg or mushrooms 2.5

- atlantic pollock - green garlic charmoula - middle eastern cous cous with spinach and cipollini onions - toasted almonds 29
- summer risotto - snap peas and italian sausage - mint - fresh ricotta and parmesan 16/25
- from the braising pot - daily braised ragù - house made pasta - shaved parmesan 16/25

Pasta variety (substitute polenta for a gluten free option on the braising pot)

Blue Spoon supports these and other local farms; Black Kettle Farm, Stone Cipher Farm, Velley View Farm, Fuzzy Udder, Lakin's Gorges Cheeses, Wee Bit Farm Beef and Pork, Broad Arrow Farm, Commonwealth Farm Chickens, North Spore Mushrooms.

* consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of food borne illness

---

Blue Spoon

89 Congress Street, Portland Maine 04101 ph 207.773.1116

bluespoonme.com
Re: Blue Spoon

Kevin Cashman <kevindc@portlandmaine.gov>  Sat, Jun 23, 2018 at 5:47 PM
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>
Cc: Benjamin Pearson <bnp@portlandmaine.gov>, David Petruccelli <petruccellid@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 Fri, Jun 22, 2018 at 10:33 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Morning

Please see the attached application for Blue Spoon, 89 Congress Street for a Class I FSE with Outdoor Dining on Public Property. This is a change of ownership of an existing business. This will go before council on 7/16. Please advise. Thanks Jessica

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

--

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

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-22):

Inquiries Name(s) WILLIAM LAVEY (1983-02-20)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-22):

Inquiries Name(s) ELIZABETH KOENIGSBERG (1980-11-30)

NO MATCH WAS FOUND FOR YOUR REQUEST.
June 26, 2018

Sophia LK, LLC
500 Ocean House Road
Cape Elizabeth ME 04107

Re: Sophia LK, LLC DBA Blue Spoon. Application for a Class I FSE with Outdoor Dining on Public Property at 89 Congress Street.

Dear Elizabeth Koenigsberg,

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class I FSE with Outdoor Dining on Public Property at 89 Congress 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., Sophia LK, LLC DBA Blue Spoon. Application for a Class I FSE with Outdoor Dining on Public Property at 89 Congress Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’ APPROVAL OF:

TSNR Inc. dba Bonobo Wood Fire Pizza. Application for a Class III & IV with Outdoor Dining on Public Property at 46 Pine Street.
May 28, 2018

To: Mayor Ethan Strimling, and City Council Members:

Letter of Intent

Justin Grey and Dominique Gonzalez are business partners and would like to take over the lease and operate the business of Bonobo, wood fired pizza on 46 Pine Street in the West End of Portland.

We intend to operate the business in much the same manner as the current owner. We are working with her to create a seamless transition for all persons involved. We will serve wood fired pizza, salads, soups, desserts and beer and wine, coffee, tea and non-alcoholic beverages. We are applying for a Class A restaurant (Class I) license as well. We are interested in featuring local/organic Maine made products—whenever possible. We will provide friendly service, and a pleasant atmosphere.

The total floor area for use of the public is 1,000 sq. ft. The hours of operation are from 11 am to 10 pm- weekdays and till 11 pm on Friday and Saturday evenings. Food service and consumption will be the main function of the restaurant. Drive through service will not be available.

We have requested the necessary city and state inspections be conducted and application materials are in progress or complete up to this point for the required licenses for us to close the purchase of Bonobo and begin our work as new owners.

We are excited about this, we have a good product, we are looking forward to working in the city of Portland and to making a positive contribution to the West End neighborhood.

Dominique Gonzalez
Justin Grey
254 Spring St #4
Portland, ME
04102
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>BONOBOD WOOD FIRE PIZZA</td>
</tr>
<tr>
<td>Location Address:</td>
<td>46 PINE ST PORTLAND ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04102</td>
</tr>
<tr>
<td>If new, what was formerly at this location:</td>
<td>Same</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>46 PINE ST PORTLAND ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04102</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>JUSTIN O'NEEY</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td>justin@<a href="mailto:ooneey@gmail.com">ooneey@gmail.com</a></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Dominique Gonzalez</td>
</tr>
<tr>
<td>Date of Birth:</td>
<td>7/27/1974</td>
</tr>
<tr>
<td>Phone:</td>
<td>619 302-8545</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>BILL STAUFFER</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>131 NEWBURY ST PORTLAND ME</td>
</tr>
<tr>
<td>Zip:</td>
<td>04102</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></td>
<td></td>
<td></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>
</tr>
</thead>
<tbody>
<tr>
<td>TSNR INC</td>
<td>46 PINE ST PORTLAND</td>
<td>04102</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>JUSTIN O'NEEY</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td>619 302-8545</td>
<td></td>
</tr>
</tbody>
</table>

Principal Officers

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dominique Gonzalez</td>
<td>President</td>
<td>07/27/1974</td>
<td>254 SYKING ST PORTLAND 04102</td>
</tr>
<tr>
<td>JUSTIN O'NEEY</td>
<td>Vice Pres.</td>
<td>07/27/1965</td>
<td>254 SYKING ST PORTLAND 04102</td>
</tr>
</tbody>
</table>
About Your Establishment

Class of Liquor License: CLASS 3 RESTAURANT III + IV

Type of food served: PIZZA, SMOKED MEATS, OYSTERS

Please circle all that will be served: Beer Wine Liquor

Projected percentage of sales: Generated from Food: 75 Generated from Alcohol: 25

Hours & days of operation: SUN-SAT 5:00 - 10:00

 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 or 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?

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

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

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

Signature __________________________ Title __________________________ Date 06/25/2016


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

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

- Legal Advertisement Deposit $100.00
- Outdoor Dining on Public Property $80.00 plus $2.00 per Square foot $2.00 x 50 SF = $140
- Outdoor Dining on Public Property in a City Park $80.00 plus $6.00 per Square foot $6.00 x SF =

<table>
<thead>
<tr>
<th>Business Information</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>207-347-8267</td>
</tr>
<tr>
<td>Location Address:</td>
<td>46 Pine St Portland 04102</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>46 Pine St Portland 04102</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Justin Gray</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:justgray@gmail.com">justgray@gmail.com</a></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Dominique Bonznet 07/27/1972 619-370-2067</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>Bill Stavaffer</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>151 Newbury St Portland 04102</td>
</tr>
</tbody>
</table>

Owner Information

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TSNB 1NC</td>
<td>46 Pine St Portland 04102</td>
<td></td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Justin Gray</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td>619-302-8545</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>Dominique Bonznet</td>
<td>President</td>
<td>07/27/1972</td>
<td>254 Speight St. #4 Portland 04102</td>
</tr>
<tr>
<td>Justin Gray</td>
<td>Vice President</td>
<td>07/12/1974</td>
<td>254 Speight St. #4 Portland 04102</td>
</tr>
</tbody>
</table>
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th>CLASS A RESTAURANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>PIZZA, SALADS, SOUP, DESSERT</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td>Beer ❋ Wine ❡ Liquor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours &amp; days of operation:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Tables</td>
<td>2</td>
</tr>
<tr>
<td>Number of Chairs</td>
<td>4</td>
</tr>
</tbody>
</table>

Design and Construction

### Existing Sidewalk Width (property line to curb) vs. Sidewalk Dining Allowed?

<table>
<thead>
<tr>
<th>Sidewalk Width</th>
<th>Sidewalk Dining Allowed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 8'0&quot;</td>
<td>No</td>
</tr>
<tr>
<td>≥ 8'0&quot;</td>
<td>Yes – up to 60% of sidewalk</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sidewalk Type</th>
<th>Sidewalk Passage Width (Min)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard sidewalk</td>
<td>4'0&quot;</td>
</tr>
<tr>
<td>Street corner</td>
<td>5'0&quot;</td>
</tr>
</tbody>
</table>

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

**Barriers**

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

**Example barrier types that meet regulation**

---

2
Maintenance and Operations

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- Request for the use of adjacent on street parking space for outdoor dining installations requires Parking Office and Building Authority review and approval.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We 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) caused 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: [Title]

Date: 6/25/2018

For Administrative Use Only

<table>
<thead>
<tr>
<th>Amount:</th>
<th>Request Date / Approval</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Paid:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CC CA CK</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Amount: | | |
| Date Paid: | | |
| CC CA CK | | |
NEW application: Yes ☐ No ☑

PRESENT LICENSE EXPIRES

INDICATE TYPE OF PRIVILEGE: ☑ MALT ☐ DIVINOUS ☐ SPIRITUOUS

INDICATE TYPE OF LICENSE:
☐ RESTAURANT (Class I,II,III,IV)
☐ HOTEL-OPTJONAL FOOD (Class I-A)
☐ CLASS A LOUNGE (Class X)
☐ CLUB (Class V)
☐ TAVERN (Class IV)

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

<table>
<thead>
<tr>
<th>Corporation Name: TSNR INC</th>
<th>Business Name (D/B/A): Bonobos Wood Fire Pizza</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPLICANT(S) - (Sole Proprietor): JUSTIN GRAY</td>
<td>DOB: 07/02/1966</td>
</tr>
<tr>
<td>DOB: 07/22/1974</td>
<td></td>
</tr>
<tr>
<td>Address: 46 Pine St, Portland, ME 04102</td>
<td></td>
</tr>
<tr>
<td>City/Town: Portland</td>
<td></td>
</tr>
<tr>
<td>State: ME</td>
<td></td>
</tr>
<tr>
<td>Zip Code: 04102</td>
<td></td>
</tr>
<tr>
<td>Telephone Number: 207.367.8545</td>
<td></td>
</tr>
<tr>
<td>Fax Number:</td>
<td></td>
</tr>
<tr>
<td>Business Telephone Number: 207.347.8267</td>
<td></td>
</tr>
<tr>
<td>Seller Certificate #:</td>
<td></td>
</tr>
<tr>
<td>or Sales Tax #:</td>
<td></td>
</tr>
<tr>
<td>Email Address: <a href="mailto:Jotgray@gmail.com">Jotgray@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>Website: bonobospizza.com</td>
<td></td>
</tr>
</tbody>
</table>

If business is NEW or under new ownership, indicate starting date: 4/24/2018

Requested inspection date: 4/26/2018

Business hours: 3pm-10pm

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: |

8. Business records are located at: 46 Pine St, Portland, ME 04102 |

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

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

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justin Green</td>
<td>07/02/1969 NY, USA</td>
<td></td>
</tr>
<tr>
<td>Dominique T. Gonzalez</td>
<td>03/28/1974 Los Angeles, USA</td>
<td></td>
</tr>
</tbody>
</table>

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

- Portland, Maine
- San Diego, California

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 X

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 X 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 X If No give name and address of owner: ___________________________

17. Describe in detail the premises to be licensed: (On Premise Diagram Required) TOTAL AREA USED BY THE PUBLIC IS 1000 SQUARE FEET; 47 SEATS INSIDE W/LIMITED OUTDOOR SEATING

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? 500 FT. Which of the above is nearest? REICITE SCHOOL

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: RITA J. JESUS GONZALETE

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, ME on 6/25, 2015

Please sign in blue ink

[Signature]

[Print Name]

[Signature]

[Print Name]
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: 

2. Doing Business As, if any: 

3. Date of filing with Secretary of State: 
   State in which you are formed: ME

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

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

<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>Dominique Gonzalez</td>
<td>154 Southgate St Portland ME 04102 119 19Th St Sanford</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>07/24/1974</td>
<td>President</td>
<td>50%</td>
</tr>
<tr>
<td>Justin Grey</td>
<td>154 Southgate St Portland ME 04102 119 24Th St Sanford</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>07/04/1975</td>
<td>Vice President</td>
<td>50%</td>
</tr>
</tbody>
</table>

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

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

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

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

Signature:

______________________________
Signature of Duly Authorized Person

______________________________
Date

6/25/2018

DOMINIQUE E. GONZALEZ
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

Corporate Supplemental 7-2016
bonobo wood fire pizza

12' from window box to side door

Tables and seating extend 4 ft into sidewalk. About 4'11" excess.

brackett st
Bonobo, 46 Pine Street
Lay-out of the Premises/ Floor Plan
# Bonobo Wood Fire Pizza

**Dine in or Take out!**

(207)347-8267

46 Pine St, West End, Portland ME
bonobopizza.com

## Menu

**Lunch:** Wed-Fri 11:30-2:30  |  **Dinner:** Mon-Thurs 4:00-9:30  Fri 4-10pm  Sat 4-9:30  Sun 4:00-9:00

<table>
<thead>
<tr>
<th>Farm</th>
<th>Ocean</th>
<th>Bonobo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pork sausage &amp; mozzarella roasted onions oregano &amp; red sauce 15.75</td>
<td>White clam sauce with cream &amp; parmesan garlic, scallions 13.50</td>
<td>Mushroom-leek sauce prosciutto &amp; spinach fontina &amp; cream 17.50</td>
</tr>
<tr>
<td>Greek</td>
<td>Goat</td>
<td>Gruyere</td>
</tr>
<tr>
<td>Kalamata olives spinach tomatoes, basil &amp; garlic feta, mozz &amp; red sauce 16.25</td>
<td>Sun dried tomatoes roasted red peppers spinach &amp; rosemary goat cheese &amp; parm roasted garlic butter 16.75</td>
<td>Potatoes prosciutto spinach &amp; leeks gruyere &amp; parm roasted garlic butter 16.50</td>
</tr>
<tr>
<td>Margherita</td>
<td>Taleggio</td>
<td>Smokey</td>
</tr>
<tr>
<td>Tomatoes</td>
<td>Smoked tomatoes taleggio cheese smoked tomato sauce leeks &amp; arugula 17.25</td>
<td>Smokey roasted squash, roasted onion &amp; leeks, gorgonzola, parm &amp; cream 16.50</td>
</tr>
<tr>
<td>Cheese</td>
<td>Caspian</td>
<td>Marley</td>
</tr>
<tr>
<td>Just</td>
<td>Roasted chicken smoked tomatoes garlic &amp; basil mozz &amp; parm &amp; sauce 17.50</td>
<td>Jerk chicken sausage roasted red peppers hot peppers &amp; scallions cheddar, mozz &amp; red sauce 17.50</td>
</tr>
</tbody>
</table>

## Salads

<table>
<thead>
<tr>
<th>Romaine &amp; spinach &amp; endive leaves, pickled cukes &amp; lemon vinaigrette 6.75</th>
<th>Caesar with our dressing &amp; croutons &amp; parmesan reggiano 6.75</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add a wedge of brie 1.75</td>
<td>Add marinated white anchovies 2.50</td>
</tr>
<tr>
<td>Add goat cheese 3.00</td>
<td>Add smokey roasted chicken 3.50</td>
</tr>
<tr>
<td>Add smokey roasted chicken 3.50</td>
<td></td>
</tr>
</tbody>
</table>

*Ask about our specials*  
*Slices (Cheese, Pepperoni, Rotating Veggie Option)*  
*Gluten Free crust $3*

Meats are produced w/o antibiotics, hormones, nitrites.
SPECIALS

SOUP
west african peanut (vegan)
$4

PIZZA

ASPIRE
garlic butter, asparagus, basil, red onion, fontina
16.50

BARBIE
pulled pork, bbq sauce, roasted red peppers, scallions, roasted onions, cheddar, grated mozz
16.50

WINE DEALS

red
barbera, italy 2016
glass $7.00 bottle $25

white
vinho verde, portugal 2017
glass $6.75 bottle $22

DRAFT BEER

brooklyn lager $4.75
new york / red lager 5.2%

maine beer co. peeper ale $7
portland / american blonde ale 5.5%

atlantic brewery coal porter $4.75
maine / porter 5.0%

bissell brothers substance $7
portland / IPA 6.5%

allagash saison $6
portland / saison 6.1%

foundation burnside $6.25
portland / english brown ale 5.1%

rising tide daymark $6
portland / american rye pale ale 5.5%

banded horn veridian $6.50
biddeford / IPA 6%

(more beer and wine options inside)
Re: Bonobo

Kevin Cashman <kevindc@portlandmaine.gov>                      Mon, Jun 25, 2018 at 6:26 PM
To: Jessica Hanscombe <j hanscombe@portlandmaine.gov>
Cc: Benjamin Pearson <bnp@portlandmaine.gov>, David Petruccelli <petruccellid@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, James Sweat <js@ portlandmaine.gov>, John Brennan <brennanj@ portlandmaine.gov>, 
    Laurie Carlson <lsc@ 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 Mon, Jun 25, 2018 at 11:12 AM, Jessica Hanscombe <j hanscombe@ portlandmaine.gov> wrote:

Good Morning

Please see the attached application for Bonobo Wood Fire Pizza. They will be going before council for approval for a Class III & IV with outdoor dining on Public Property. This is a change of ownership of an existing business. Thanks Jessica

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

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

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s)  DOMINIQUE GONZALEZ (1974-07-27)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s) JUSTIN GREY (1965-07-02)

NO MATCH WAS FOUND FOR YOUR REQUEST.
June 26, 2018

TSNR Inc
46 Pine Street
Portland ME 04102

Re: TSNR Inc. dba Bonobo Wood Fire Pizza. Application for a Class III & IV with Outdoor Dining at 46 Pine Street.

Dear Justin Grey,

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class III & IV with Outdoor Dining at 46 Pine 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., TSNR Inc. dba Bonobo Wood Fire Pizza. Application for a Class III & IV with Outdoor Dining at 46 Pine Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’ APPROVAL OF:

Fish Shack LLC dba Boones Fish House & Oyster Room. Application for a Class I FSE and Entertainment with Dance with Outdoor Dining on Private Property at 6 Custom House Wharf.
Mayor of Portland and Members of City Council:

Please accept this letter of intent to record a change of ownership of the Fish Shack LLC, d/b/a Boone’s Fish House and Oyster Room.

Ownership has been transferred from Harding Lee Smith to Darcy Paige Smith.

We respectfully request the required licensing be granted - and changed to reflect this transfer.

Thank you,

Darcy Paige Smith
Owner
Fish Shack LLC, d/b/a Boone’s Fish House and Oyster Room
6 Custom House Wharf
#16
Portland, ME 04101
### Application for Food Service Establishment with Alcoholic Beverages License

<table>
<thead>
<tr>
<th>Business Information</th>
<th>Fish Shack LLC</th>
<th>Phone: 207-994-5725</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>Boones Fish House &amp; Oyster Bar</td>
<td>Zip: 04101</td>
</tr>
<tr>
<td>Location Address:</td>
<td>Custom House Wharf # 16</td>
<td>Phone: 207-994-2914</td>
</tr>
<tr>
<td>If new, what was formerly at this location:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>Same</td>
<td>Zip:</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Darcy Smith</td>
<td>Phone: 207-949-2783</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:boonesbusiness@gmail.com">boonesbusiness@gmail.com</a></td>
<td>Phone: 207-949-2783</td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Darcy Smith</td>
<td>Date of Birth:</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>Proprietors of Custom House Wharf</td>
<td></td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>18 Custom House Wharf Portland 04101</td>
<td></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></td>
<td></td>
<td></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>
</tr>
</thead>
<tbody>
<tr>
<td>Fish Shack LLC</td>
<td>Same</td>
<td>Phone: 207-949-2783</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Darcy Smith</td>
<td>Phone: 207-949-2783</td>
</tr>
<tr>
<td>Principal Officers</td>
<td>Title</td>
<td>Date of Birth</td>
</tr>
<tr>
<td>Darcy Smith</td>
<td>Owner</td>
<td>08-29-71</td>
</tr>
</tbody>
</table>
### About Your Establishment

<table>
<thead>
<tr>
<th>Class of Liquor License:</th>
<th>Class 1 - ESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>American Seafood</td>
</tr>
<tr>
<td>Beer, Wine, Liquor</td>
<td></td>
</tr>
<tr>
<td>Projected percentage of sales:</td>
<td>Generated from Food: Generated from Alcohol:</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>Mon-Sun 11am - 11pm</td>
</tr>
</tbody>
</table>

### QUESTIONS

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

**Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?**
- Y/N: N

**Will you have entertainment on the premises?**
- Y/N: Y

**Will you permit dancing on the premises?**
- Y/N: N

**Will you permit dancing after 1:00 a.m.?**
- Y/N: N

**Will you have outside dining?**
- Y/N: Y

**Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?**
- Y/N: N

**Is any principal officer under the age of 21?**
- Y/N: N

**Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?**
- Y/N: N

### Signature

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

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

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

**Signature**

**Date**: 6-25-18

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

REVISED 3/15/15
Supplemental Application for Dancing and Entertainment License

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

- □ Entertainment without Dancing: $281
- □ Entertainment with Dancing: $504
- □ After-Hours (1 a.m. to 3 a.m.): $567

Business Information

<table>
<thead>
<tr>
<th>Fish Shack LLC</th>
<th>Phone: 207-774-5725</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barnes Fish House</td>
<td>Zip: 04101</td>
</tr>
<tr>
<td>Location Address: 1 Custom House Wharf #16</td>
<td></td>
</tr>
</tbody>
</table>

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:

- Live music and DJ for special events and functions

Will music be electric, acoustical, or both? (Circle)

Will amplification be used? yes

If yes, where and at what level?

Will music be played? (Circle all that apply): Inside Outside

Will you permit dancing on the premises? yes

Will you permit dancing after 1:00 a.m.? no

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? Y 100 ft. N

What is your targeted opening date? Current

Does the issuance of this license directly or indirectly benefit any City employee(s)? no

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

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

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

Signature: [Signature] Title: Owner Date: 6.25.18

For more information, refer to the City Code of Ordinance; Chapter 4 Amusements, at www.portlandmaine.gov
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>Fish Shack LLC</th>
<th>Phone: 207-774-5725</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>Fish Shack LLC</td>
<td>Phone: 207-774-5725</td>
</tr>
<tr>
<td>Location Address:</td>
<td>1/2ba Boones Fish House</td>
<td>Zip: 04101</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>6 Custom House Wharf</td>
<td>Zip: 04101</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Darcy Smith</td>
<td>Phone: 207-443-2783</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:boonesbusiness@gmail.com">boonesbusiness@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>Darcy Smith</td>
<td>Date of Birth: 08/29/71</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>Darcy Smith</td>
<td>Phone: 207-443-2783</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>16 Custom House Wharf</td>
<td>Zip: 04101</td>
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</table>

Owner Information

<table>
<thead>
<tr>
<th>Corporate Name</th>
<th>Corporate Mailing Address</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fish Shack LLC</td>
<td>Same</td>
<td></td>
</tr>
</tbody>
</table>

| Contact Person: | Darcy Smith | Phone: 207-443-2783 |

<table>
<thead>
<tr>
<th>Principal Officers</th>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Darcy Smith</td>
<td>Owner</td>
<td>08/29/71</td>
<td>48 Germain Dr, Portland, 04103</td>
</tr>
</tbody>
</table>
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th>FSE 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>American Seafood</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td>Bites, Wine, Liquor</td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>Mon - Sun 11 AM - 11 PM</td>
</tr>
<tr>
<td>Number of Tables</td>
<td>25</td>
</tr>
<tr>
<td>Number of Chairs</td>
<td>90</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 caused 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 Business Manager Date 6-25-18

For Administrative Use Only

<table>
<thead>
<tr>
<th>Amount:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Paid:</td>
<td></td>
</tr>
<tr>
<td>CC</td>
<td>CA</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>FD:</th>
<th>Request Date / Approval</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health:</td>
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<tr>
<td>PR:</td>
<td></td>
<td></td>
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<tr>
<td>Treasury:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zoning:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
NEW application: □ Yes ☑ No

PRESENT LICENSE EXPIRES 8/8/18

INDICATE TYPE OF PRIVILEGE: ☑ MALT ☑ VINOUS ☑ SPIRITUOUS

INDICATE TYPE OF LICENSE:

[ ] RESTAURANT (Class I,II,III,IV)
[ ] MALT BEVERAGE (Class I)
[ ] HOTEL-OPTIMUM FOOD (Class I-A)
[ ] SPIRITUOUS LIQUOR (Class X)
[ ] CLASS A LOUNGE (Class II)
[ ] VINOUS LIQUOR (Class III)
[ ] REstaURANT/LOUNGE (Class XI)
[ ] CL2B-ON-PREMISE CATERING (Class I)
[ ] GOLF CLUB (Class I,II,III,IV)
[ ] OTHER:

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

<table>
<thead>
<tr>
<th>Corporation Name:</th>
<th>Business Name (DBA):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fish Shack LLC</td>
<td>Boones Fish House + Oyster Ru</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPLICANT(S) (Copy Proprietor)</th>
<th>DOB:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City/Town</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Le Custom House Wharf</td>
<td>Portland</td>
<td>ME</td>
<td>04101</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City/Town</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portland</td>
<td>ME</td>
<td>04101</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Telephone Number</th>
<th>Fax Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>207-449-2783</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal I.D. #</th>
<th>Email Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>46-1020293</td>
<td><a href="mailto:boonesbusiness@grand.com">boonesbusiness@grand.com</a></td>
</tr>
</tbody>
</table>

If business is NEW or under new ownership, indicate starting date: 6-1-18

Requested inspection date: __________________________________ Business hours: ______________________

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: Darby Smith

8. Business records are located at: Le Custom House Wharf Portland 04101

9. Business records are located at: ____________________________

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

   YES ☑ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  

   Use a separate sheet of paper if necessary.

<table>
<thead>
<tr>
<th>Name in Full (Print Clearly)</th>
<th>DOB</th>
<th>Place of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Darcy Paige Smith</td>
<td>08-29-71</td>
<td>Maine</td>
</tr>
</tbody>
</table>

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

18 Garage Drive Portland ME 04101

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 ☑

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

<table>
<thead>
<tr>
<th>Offense:</th>
<th>Disposition:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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)

   Full Service Restaurant and Bar

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?  

   ¥/10 mile 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: Portland, ME on June 25, 2018

Signature of Applicant or Corporate Officer(s)

Darcy Paige Smith

Print Name
NOTICE — SPECIAL ATTENTION

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

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

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

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

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

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

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

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

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

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

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

All fees must accompany application, made payable to the Treasurer of Maine. This application must be completed and mailed to Bureau of Alcoholics Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Station, Augusta ME 04333-0008. Payments by check subject to penalty provided by Title 28A, MRS, Section 3-B.
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: **Fish Shack LLC**
2. Doing Business As, if any: **Boone's Fish House and Oyster Room**
3. Date of filing with Secretary of State: **09-14-12** 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>Davy Smith</td>
<td>48 Garsoe Drive Portland 4 years</td>
<td>08/29/71</td>
<td>Owner</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>73 Congress Street Portland, ME</td>
<td></td>
<td></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: __________________________________________

Dwuy P. Smith
Print Name of Duly Authorized Person

6-25-18
Date

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
PD has no objections.

Kevin C.

On Mon, Jun 25, 2018 at 2:21 PM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good afternoon

Please see the attached application for Boones Fish House. Class I FSE, Outdoor Dining on Private Property and Entertainment with Dance. This is a change of ownership of an existing business. Please advise, Thanks Jessica

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

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

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s) Darcy Smith (1971-08-29)

No match was found for your request.
June 26, 2018

Fish Shack LLC
6 Custom House Wharf #16
Portland ME 04101

Re: Fish Shack LLC dba Boones Fish House & Oyster Room. Application for a Class I FSE and Entertainment with Dance with Outdoor Dining on Private Property at 6 Custom House Wharf.

Dear Darcy Smith,

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class I FSE with Outdoor Dining on Private Property at 6 Custom House Wharf. 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., Fish Shack LLC dba Boones Fish House & Oyster Room. Application for a Class I FSE and Entertainment with Dance with Outdoor Dining on Private Property at 6 Custom House Wharf. Sponsored by Michael Russell, Director of Permitting and Inspections.
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’
APPROVAL OF:

MOC Raw Bar LLC dba Maine Oyster Company. Application for a Class III & IV FSE
with Outdoor Dining on Private Property at 38 Portland Street.
Application for Food Service Establishment with Alcoholic Beverages License

<table>
<thead>
<tr>
<th>Business Information</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>MOC Raw Bar LLC dba Maine Oyster Company</td>
<td></td>
</tr>
<tr>
<td>Location Address:</td>
<td>38 Portland St, Portland</td>
<td>04101</td>
</tr>
<tr>
<td>If new, what was formerly at this location:</td>
<td>Antique Store</td>
<td></td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>38 Portland St, Portland</td>
<td>04101</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>John Herrigel @ gmail.com</td>
<td>207 650 - 5383</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:JohnHerrigel@gmail.com">JohnHerrigel@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>John Herrigel</td>
<td>04/10/79</td>
</tr>
<tr>
<td>Date of Birth:</td>
<td>04/10/79</td>
<td>207 650 - 5383</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>John Herrigel</td>
<td></td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>34 Oliver St, Bath</td>
<td>04530</td>
</tr>
</tbody>
</table>

| Sole Proprietor/Partnership Information (if Corporation, leave blank) |
|-----------------------------|-----------------------------|
| Name of Owner(s) | Date of Birth | Residence Address |
| John | 04/10/79 |          |

| Corporate/LLC/Non-Profit Organization Applicants (if Sole Proprietor or Partnership, leave blank) |
|---------------------------------------------|-----------------------------|
| Corporate Name | Corporate Mailing Address | Zip: |
| MOC Raw Bar, LLC | 38 Portland St, Portland | 04101 |
| Contact Person: | John Herrigel | Phone: 207 650 - 5383 |
| Principal Officers | Title | Date of Birth | Residence Address |
| John Herrigel | owner | 04/10/79 | 40 Hanover St, Portland |
About Your Establishment

Class of Liquor License: Malt + Vinous
Type of food served: Oysters raw, lobster rolls, soup - meat + soup prepared off site
Please circle all that will be served: Beer + Wine + Liquor
Projected percentage of sales: Generated from Food: 65% Generated from Alcohol: 35%
Hours & days of operation: Thurs, Fri, Sat 4:00 - 9:00 for public. Events other nights

QUESTIONS

Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open? [YIN]
If No, please explain:

Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment? [YIN]
If yes, give the distance: 75 ft to Bayside Learning Center

Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.) [YN]
Will you permit dancing on the premises? [YN]
Will you permit dancing after 1:00 a.m.? [YN]
Will you have outside dining? (If yes, an Outdoor Dining Application is required.) [YN]
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).

Will you have any amusement devices (pinball, video games, juke box)? [YN]
If yes, please list: # of pinball machines: # of amusements: # of pool tables:

What is your targeted opening date? [Sep 1st]

Does the issuance of this license directly or indirectly benefit any City employee(s)? [YN]
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? [YN]
If Yes, please list business name(s) and location(s):

Is any principal officer under the age of 21? [YN]

Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law? [YN]
If Yes, please explain: 2002 - DUI 2007 - unregistered vehicle
2007 - DUI 2014 - OUI

I, John Herring, 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 60 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

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

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

Signature [illegible] Title Owner Date 06/22/14


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>
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<tbody>
<tr>
<td>Business Name (d/b/a):</td>
<td>MOC Raw Bar, LLC d/b/a Maine Oyster Company</td>
</tr>
<tr>
<td>Location Address:</td>
<td>38 Portland St, Portland</td>
</tr>
<tr>
<td>Mailing Address:</td>
<td>38 Portland St, Portland</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>John Herrigel</td>
</tr>
<tr>
<td>Contact Person Email:</td>
<td><a href="mailto:JohnHerrigel@gmail.com">JohnHerrigel@gmail.com</a></td>
</tr>
<tr>
<td>Manager of Establishment:</td>
<td>John Herrigel</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
<td>Scot Herrigel</td>
</tr>
<tr>
<td>Address of Premises Owner:</td>
<td>34 Oliver St, Bath</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Owner Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Name:</td>
<td>MOC Raw Bar LLC</td>
</tr>
<tr>
<td>Corporate Mailing Address:</td>
<td>38 Portland St</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>John Herrigel</td>
</tr>
<tr>
<td>Phone:</td>
<td>207.650.5383</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>John Herrigel</td>
<td>Owner</td>
<td>04/10/79</td>
<td>40 Hanover St, Portland, ME</td>
</tr>
</tbody>
</table>
About Your Establishment

| Class of License: | Malt & Vinous |
| Type of food served: | Wisteria, raw, lobster rolls, potluck menu, soup, pre-made |
| Please circle all that will be served: | Beer, Wine, Liquor |
| Hours & days of operation: | Thu, Fri, Sat 11am-9pm, Private events other times |
| Number of Tables | 3 outside tables, 7-9 tables inside, 20-22 seats |
| Number of Chairs | 6 outside chairs, 20-22 seats inside |

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.

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) caused 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 (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 __

For Administrative Use Only

Amount: ____________________________ Request Date / Approval ____________________________ Notes: ____________________________

Date Paid: ________________________ FD:          ____________
CC  CA  CK
Amount: ____________________________ Health: ____________________________
Date Paid: ________________________ PD:          ____________
CC  CA  CK
Amount: ____________________________ PR:          ____________
Date Paid: ________________________ Treasury: ____________________________
CC  CA  CK
Amount: ____________________________ Zoning: ____________________________
BUREAU OF ALCHOHIC BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT
8 STATE HOUSE STATION, AUGUSTA, ME 04333-0008
10 WATER STREET, HALLOWELL, ME 04347
TEL: (207) 624-7220 FAX: (207) 287-3434
EMAIL INQUIRIES: MAINE.LIQUOR@MAINE.GOV

NEW application: ✑ Yes ☐ No

PRESENT LICENSE EXPIRES ____________________

INDICATE TYPE OF PRIVILEGE: ☑ MALT ☑ VINOUS ☐ SPIRITUOUS

INDICATE TYPE OF LICENSE:
☐ RESTAURANT (Class I,II,III,IV) ☐ RESTAURANT/LOUNGE (Class XI)
☐ HOTEL-OPTIONAL FOOD (Class I-A) ☐ HOTEL (Class I,II,III,IV)
☐ CLASS A LOUNGE (Class X) ☐ CLUB-ON-PREMISE CATERING (Class I)
☐ CLUB (Class V) ☐ GOLF CLUB (Class I,II,III,IV)
☐ HOTEL-OPTJONAL FOOD (Class I-A)
☐ OTHER: ______________

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL.

<table>
<thead>
<tr>
<th>Corporation Name:</th>
<th>Business Name (D/B/A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MUL Raw Bar LLC</td>
<td>Maine Oyster Company</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPLICANT(S) (Name, Sole Proprietor)</th>
<th>Physical Location:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOB:</td>
<td>38 Portland St, Portland ME 04101</td>
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</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City/Town</th>
<th>State</th>
<th>Zip Code</th>
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</thead>
<tbody>
<tr>
<td>38 Portland St</td>
<td>Portland</td>
<td>ME</td>
<td>04101</td>
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</table>

<table>
<thead>
<tr>
<th>Mailing Address</th>
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<tbody>
<tr>
<td>38 Portland St</td>
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</table>

<table>
<thead>
<tr>
<th>Telephone Number</th>
<th>Fax Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>207-650-5383</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Seller Certificate #: or Sales Tax #: applied for</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Herrigel @ gmail.com</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Telephone Number</th>
<th>Fax Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>207-650-5383</td>
<td></td>
</tr>
</tbody>
</table>

If business is NEW or under new ownership, indicate starting date: September 15th 2018

Requested inspection date: ____________  Business hours: ____________

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

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

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: John Herrigel + TBA full time manager

8. Business records are located at: 38 Portland St, Portland, ME

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

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

Name in Full (Print Clearly) | DOB | Place of Birth
--- | --- | ---
John Herrigel | 04/10/79 | Summit, NJ

Residence address on all of the above for previous 5 years (Limit answer to city & state):
40 Hanover St, Portland, ME 04101

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: John Herrigel
Date of Conviction: 
Offense: 2002 - OUT, 2007 - unregistered vehicle/1ocation:
Disposition: 2014 - OUT

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:

Sara Herrigel 34 Oliver St, Bath, ME 04530

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

See attached

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services? YES ☐ NO ☐ Applied for: (If Yes, give name)

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:

Small Business Loan w Banger Savings

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, ME on 6/25/15 Date 2015

Signature of Applicant or Corporate Officer(s)
John Herrigel
Print Name

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)
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: \( \text{MC Raw Bar LLC} \)

2. Doing Business As, if any: \( \text{Maine Oyster Company} \)

3. Date of filing with Secretary of State: \( 4/14/17 \)
   State in which you are formed: \( \text{ME} \)

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

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

<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>John Herrigel</td>
<td>40 Hanover St, Portland, ME</td>
<td>04/10/74</td>
<td>owner</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: John Herrigel

Date of Conviction: __________________________


Location of Conviction: __________________________

Disposition: __________________________

Signature: __________________________

Date: 06/22/18

Signature of Duly Authorized Person

Print Name of Duly Authorized Person: John Herrigel

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, MB 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov
proposed fence/doorway on both sides of alleyway

- Exterior brick wall of neighbor
- ADA compliant table
- ADA accessible to street

210 sq ft

31'
NOTES:
Lobster/ Crab meat is purchased picked
Soup purchased pre-made / re-heated

Lobster Rolls & Soup

West Bayside Lobster Roll
100% Lobster Meat with Melted Butter, Chives

Crab Attack
Half Crab/Half Lobster Meat

Kamasouptra Clam Chowder
Bowl of steamy, hot, locally sourced chowder

Oysters

Oysters - Raw
Select Maine Oysters

Thunderball Ball (3 oysters)
Maine Blueberries & Allagash Stout Vinaigrette

From Damariscotta With Love (3 oysters)
Siracha Mignonette

All Oysters served with fresh limes.
Cocktail sauce & horseradish available upon request

Combinations

Sip & Slurp
6 Oysters, Cup of Clam Chowder

Half Course
3 Oysters, lobster roll, cup of soup

Full Course
6 Oysters, lobster/crab roll, cup of soup
To the City Council of Portland:

My name is John Herrigel. I am local resident in the Bayside neighborhood currently residing at 40 Hanover Street.

I recently purchased a property with my brother at 38 Portland Street across from Dyer’s Variety. My hope and intent for this location is to open an exciting oyster raw bar that will integrate and include the multi-faceted and rapidly changing local community.

We have obtained our building permit and are currently in build out mode with the hope of completion by mid August.

Our plan is to open to the public on September 1st pending all inspections have been completed and permits issued.

We will initially be open to the public Thursday, Friday & Saturday evenings from 4:00 to 9:00... utilizing the other days/nights for private events and functions.

Simple in form and function, our cold kitchen under 40 seat restaurant will have a menu focused around raw oysters, lobster rolls, Kamasouptra soup, beer & wine.

We also hope to have a small 6 person outdoor seating area on our private property.

The restaurant will be run by myself and a full time manager with industry experience. I also have an informal board of 5 experienced local restaurateurs that are currently helping with all aspects of starting & running a restaurant business.

I appreciate your time and consideration in obtaining this business license and hope you all will come by to enjoy some oysters!

All the best,

John
Re: Maine Oyster Company

Kevin Cashman <kevindc@portlandmaine.gov>  
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>  
Cc: Benjamin Pearson <bnp@portlandmaine.gov>, David Petruccelli <petruccellid@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, James Sweatt <jjs@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>, Zoning <zoning@portlandmaine.gov>, Keri Ouellette <kouellette@portlandmaine.gov>

PD has no objections.

Kevin C.

On Mon, Jun 25, 2018 at 2:53 PM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached application for Maine Oyster Company for a Class III & IV FSE with outdoor dining on Private Property. Please advise. Thanks Jessica

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

--

Lt. Kevin Cashman  
Portland Police Department  
Patrol Division  
109 Middle St  
Portland, Maine 04101  
(O) 207-756-8294  
kevindc@portlandmaine.gov  

Hours - Saturday thru Tuesday (4pm-2am)
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s) JOHN HERRIGEL (1979-04-10)

The information in this criminal history record is provided subject to the following caveats:

Important! When a criminal history record and juvenile crime information record check is processed by the State Bureau of Identification using personal identifiers such as name and date of birth, it is possible that the record supplied belongs to another person with the same or essentially similar name and date of birth. Confirmation that convictions relate to person whose record has been requested requires fingerprint comparison. If the information contained in this response will be used to disqualify an applicant for employment, housing, credit, or other benefits or programs, the person making the eligibility determination using this record should provide the applicant with an opportunity to complete or contest the accuracy of the criminal history information in the response. An individual may request amendment or correction of criminal history record information by a criminal justice agency pursuant to 16 M.R.S. section 709.

**THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2018-06-25**

This record, effective September 1, 2000, contains information relating to persons arrested as fugitives from justice, 15 M.R.S section 201.4 or arrested or charged with Maine crimes. It does not include former crimes no longer classified as criminal, or Class D and E crimes in Title 12 or Title 29-A, former Title 29, unless the crime is alcohol-related or drug-related 25 M.R.S. section 1541.4-A.A. For information regarding excluded Marine Resources crimes in Title 12, contact the Department of Marine Resources. For information regarding excluded Inland Fisheries and Wildlife crimes in Title 12, contact the Department of Inland Fisheries and Wildlife. For information relating to excluded crimes in Title 29-A former Title 29, contact the Secretary of State, Motor Vehicle Division. A list of

https://www5.informe.org/cgi-bin/online/prc/gelrecord.pl?e=BL@portlandmaine.gov&f=MIQ99D636746&l=3566947
former crimes is available from this Bureau.

THE FOLLOWING ATN(S) ARE UNSUPPORTED BY FINGERPRINTS IN STATE BUREAU OF IDENTIFICATION FILES: (118121A, 502597A).

Identification

Subject Name/or potential Alias Name(s)

HERRIGEL, JOHN
HERRIGEL, JOHN HUNTINGTON (AKA)
HERRIGEL, JOHN H (AKA)

Subject Description (date information provided listed in parentheses)

<table>
<thead>
<tr>
<th>State ID Number</th>
<th>DOC Number</th>
<th>Sex</th>
<th>Race</th>
<th>Skin Tone</th>
<th>Height</th>
<th>Weight</th>
<th>Date of Birth</th>
</tr>
</thead>
</table>

Hair Color
Brown (2014-11-20)

Eye Color
Brown (2014-11-20)

Scars, Marks, and Tattoos
Unknown/NA

Place of Birth
NJ

Citizenship
US (2014-11-20)

Residence

<table>
<thead>
<tr>
<th>Residence as of</th>
<th>Address</th>
<th>Residence as of</th>
<th>Address</th>
<th>Residence as of</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016-03-10</td>
<td>13 HIGHLAND ST</td>
<td>2016-03-10</td>
<td>111 WALLACE CIRCLE</td>
<td>2014-11-20</td>
<td>40 HANOVER ST</td>
</tr>
<tr>
<td>BATH, ME 04530 US</td>
<td></td>
<td>PHIPPSBURG, ME</td>
<td></td>
<td>PORTLAND, ME US</td>
<td></td>
</tr>
</tbody>
</table>

Caution Information

Firearms Disqualified
X - Unknown
Criminal History

<table>
<thead>
<tr>
<th>Cycle 001</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATN/Tracking Number</td>
</tr>
<tr>
<td>Earliest Event Date</td>
</tr>
</tbody>
</table>

| Arrest/Charge | (Cycle 001) |
| Arrest/Charge Date | 2002-09-17 |
| Arresting/Charging Agency | SP BARRACK THOMASTON; MEMSP0D00 |
| Subject Name(s) | HERRIGEL, JOHN |
| Arrest Type | Adult |

| Charge 1 |

Charge Number 118121A 001  
Charge Tracking Number 118121A  
Agency SP BARRACK THOMASTON; MEMSP0D00  
Offense Date 2002-09-17  
Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)  
Statute 29-A MRSA SUBSECTION 2411(1)  
State Sequence Code 1197  
Severity Misdemeanor  
Prosecutor Disposition | No data supplied |

| Court Disposition | (Cycle 001) |
| Court Case Number | WESDCCR200202103 |
| Court Agency | 6TH DISTRICT COURT BATH; ME012025J |

| Charge 1 |

Charge Number 118121A 001  
Charge Tracking Number 118121A  
Agency 6TH DISTRICT COURT BATH; ME012025J  
Offense Date 2002-09-17  
Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)  
Statute 29-A MRSA SUBSECTION 2411(1)  
State Sequence Code 1197  
Severity Misdemeanor  
Disposition 2003-01-23; GUILTY  

<table>
<thead>
<tr>
<th>Sentencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentencing Agency</td>
</tr>
<tr>
<td>Court Case Number</td>
</tr>
<tr>
<td>Charge Number</td>
</tr>
<tr>
<td>Charge Sequence Number</td>
</tr>
</tbody>
</table>
Charge Tracking Number 118121A

Sentence 2003-01-23: FINED $500.00
2003-01-23: INCARCERATED 3 days ALL BUT 0 years 0 months
0 days 0 hours suspended
2003-01-23: LICENSE SUSPENSION 90 days

Corrections
No data supplied

Cycle 002

ATN/Tracking Number 502597A
Earliest Event Date 2006-09-21

Arrest
No data supplied

Prosecutor Disposition
No data supplied

Court Disposition (Cycle 002)
Court Case Number WESDCCR200602152
Court Agency 6TH DISTRICT COURT BATH; ME012025J
Charge 1

Charge Number 502597A 001
Charge Tracking Number 502597A
Agency 6TH DISTRICT COURT BATH; ME012025J
Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)
Statute 29-A MRSA SUBSECTION 2411(1-A)(A)
State Sequence Code 9878
Severity Misdemeanor
Disposition 2007-02-27; TRANSFER FOR JURY TRIAL

Court Disposition (Cycle 002)
Court Case Number PORSCCR200700505
Court Agency SUPERIOR COURT PORTLAND; ME003015J
Charge 1

Charge Number 502597A 001
Charge Tracking Number 502597A
Agency SUPERIOR COURT PORTLAND; ME003015J
Charge Description OPERATING UNDER THE INFLUENCE (Charge Class D)
Statute 29-A MRSA SUBSECTION 2411(1-A)(A)
State Sequence Code 9878
Severity Misdemeanor
Disposition 2007-02-27; TRANSFER FOR JURY TRIAL
2007-06-14; GUILTY

Sentencing (Cycle 002)

https://www5.lnforme.org/cgi-bin/online/pcr/getrecord.pl?e=BL@portlandmaine.gov&f=MIQ99D636748&l=3566947
<table>
<thead>
<tr>
<th>Sentencing Agency</th>
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<tr>
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<tr>
<td>Charge Number</td>
<td>502597A 001</td>
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<td>Charge Sequence Number</td>
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</tr>
<tr>
<td>Charge Tracking Number</td>
<td>502597A</td>
</tr>
<tr>
<td>Sentence</td>
<td>2007-06-14: FINED $700.00</td>
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<tr>
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<td>2007-06-14: INCARCERATED 10 days ALL BUT 0 years 0 months 0 days 0 hours suspended</td>
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<td>2007-06-14: LICENSE SUSPENSION 18 months</td>
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| Corrections | No data supplied |

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<td>ATN/Tracking Number</td>
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<td>Earliest Event Date</td>
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| Arrest | No data supplied |

| Prosecutor Disposition | No data supplied |

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<th>(Cycle 003)</th>
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<tr>
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<tr>
<td>Court Agency</td>
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<tr>
<td>Charge 1</td>
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</tr>
<tr>
<td>Charge Number</td>
<td>109069B 001</td>
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<tr>
<td>Charge Tracking Number</td>
<td>109069B</td>
</tr>
<tr>
<td>Agency</td>
<td>CUMBERLAND CRIMINAL DOCKET COURT; ME003075J</td>
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<tr>
<td>Charge Description</td>
<td>OUI (ALCOHOL)-NO TEST, 1 PRIOR (Charge Class D)</td>
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<tr>
<td>Statute</td>
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<td>Disposition</td>
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<td>CUMBERLAND CRIMINAL DOCKET COURT; ME003075J</td>
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<tr>
<td>Court Case Number</td>
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<td>109069B 001</td>
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<tr>
<td>Charge Tracking Number</td>
<td>109069B</td>
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<tr>
<td>Sentence</td>
<td>2015-03-25: FINED $1000.00</td>
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<tr>
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<td>2015-03-25: INCARCERATED 12 days ALL BUT 0 years 0 months 0 days 0 hours suspended</td>
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<tr>
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<td>2015-03-25: LICENSE SUSPENSION 3 years</td>
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### Index of Agencies

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<thead>
<tr>
<th>Agency</th>
<th>SUPERIOR COURT PORTLAND; ME003015J</th>
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<td>Agency Telephone</td>
<td>207-822-4105</td>
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<td>Agency Telephone</td>
<td>207-822-4113</td>
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<tr>
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<td>207-442-0200</td>
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<tr>
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<table>
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<th>PORTLAND PD; ME0030500</th>
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<td>Agency Telephone</td>
<td>207-874-8479</td>
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<tr>
<td>Address</td>
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<table>
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<tr>
<th>Agency</th>
<th>SP BARRACK A ALFRED; MEMSP0A00</th>
</tr>
</thead>
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<tr>
<td>Agency Telephone</td>
<td>207-324-0613</td>
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<tr>
<td>Address</td>
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</table>

<table>
<thead>
<tr>
<th>Agency</th>
<th>SP BARRACK THOMASTON; MEMSP0D00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Telephone</td>
<td>207-624-8947</td>
</tr>
<tr>
<td>Address</td>
<td>36 HOSPITAL STREET AUGUSTA, ME 04861</td>
</tr>
</tbody>
</table>
Bonobo Sidewalk Seating

Justin Grey <jutgrey@gmail.com>
To: jhanscombe@portlandmaine.gov

Mon, Jun 25, 2018 at 2:50 PM
June 26, 2018

MOC Raw Bar LLC
38 Portland Street
Portland ME 04101

Re: MOC Raw Bar LLC dba Maine Oyster Company. Application for a Class III & IV FSE with Outdoor Dining on Private Property at 38 Portland Street.

Dear John Herrigel,

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class III & IV FSE with Outdoor Dining on Private Property at 38 Portland 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., MOC Raw Bar LLC dba Maine Oyster Company. Application for a Class III & IV FSE with Outdoor Dining on Private Property at 38 Portland Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS’
APPROVAL OF:

Whole Hog LLC dba Whole Hog LLC. Application for a Class I FSE and Entertainment without Dance with Outdoor Dining on Public Property at 480 Congress Street.
25 June 2018

Mayor Ethan Strimling & Portland City Council
389 Congress Street
Portland, ME 04101

Dear Mayor Strimling and members of the City Council,

Thank you for considering our liquor license application for the street level space located at 480 Congress Street. We feel that this location is quickly becoming one of the epicenters of the Portland food scene and are excited and honored to be the custodians of such a great space on this section of Congress Street.

Our goal would be to deliver a food and beverage experience that is unique to the area and of a quality at the level of our James Beard Award-winning neighbors in the city. We have vast experience operating in multiple cities with diverse populations and feel confident that we can operate this restaurant while still providing quiet enjoyment to all who call the area home.

Ciaran & David founded Rí Rá in 1996. The Rí Rá Group of Companies (RRGOC) now has 22 years’ experience operating different concepts in several US markets - including Portland since 1999 - and in Ireland. Our Barbecue restaurant will bring authentic East North Carolina Style barbecue to Portland. We will base the menu around barbecue traditions handed down through five generations of Eastern North Carolina pig cooking dating back hundreds of years.

Spencer, the most senior and experienced General Manager in the company, has worked with Ciaran and David for 18 years in a variety of different roles and locations. Spencer is now the Managing Partner for the company in Portland and is spearheading the exciting North Carolina BBQ concept. Spencer was born, raised and lived in North Carolina prior to moving to Portland and Ciaran currently lives in Raleigh, NC.

Please do not hesitate to contact us if you have any additional questions for us. Thank you for your consideration and we look forward to the possibility of receiving your approval to proceed.

Sincerely Yours

Ciarán Sheehan, David Kelly & Spencer Brantley

Whole Hog LLC, P.O. Box 1750, Briarcliff Manor, NY 10510
Application for Food Service Establishment with Alcoholic Beverages License

<table>
<thead>
<tr>
<th>Business Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
</tr>
<tr>
<td>Location Address:</td>
</tr>
<tr>
<td>If new, what was previously at this location:</td>
</tr>
<tr>
<td>Mailing Address:</td>
</tr>
<tr>
<td>Contact Person:</td>
</tr>
<tr>
<td>Contact Person Email:</td>
</tr>
<tr>
<td>Manager of Establishment:</td>
</tr>
<tr>
<td>Owner of Premises (Landlord):</td>
</tr>
<tr>
<td>Address of Premises Owner:</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>See Attached</td>
<td></td>
<td></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>
</tr>
</thead>
<tbody>
<tr>
<td>WHOLE HOG, LLC.</td>
<td>P.O. BOX 1750, BRIARCLIFF MANOR, NY 10510</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>CIARAN SHEEHAN</td>
</tr>
</tbody>
</table>

Principal Officers

<table>
<thead>
<tr>
<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Attached</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
About Your Establishment

Class of Liquor License: Class I
Type of food served: Beer Wine Liquor

Please circle all that will be served: Beer Wine Liquor

Projected percentage of sales: Generated from Food: 60 Generated from Alcohol: 40

Hours & days of operation: M. - SU 9 AM - 1 AM

QUESTIONS

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

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 or 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?

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

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

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

Signature: Title: Manager Date: 6/25/18


REVISED 3/18/15
Permitting and Inspections Department
Michael A. Russell, MS, Director
389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

Supplemental Application for Dancing and Entertainment License
License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Alcohol license.

| Entertainment without Dancing: $281 | Entertainment with Dancing: $504 | After-Hours (1 a.m. to 3 a.m.): $567 |

<table>
<thead>
<tr>
<th>Business Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Name (d/b/a):</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>Zip:</td>
</tr>
<tr>
<td>Location Address:</td>
</tr>
</tbody>
</table>

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:
BAR & RESTAURANT w/OCCASIONAL MUSIC

Will music be electric, acoustical, or both? (Circle) [ ]

Will amplification be used? [ ]

If yes, where and at what level? [ ]

LOW LEVEL INSIDE THE RESTAURANT

Will music be played (Circle all that apply): [ ]

INSIDE [ ] 

OUTSIDE [ ]

Will you permit dancing on the premises? [ ]

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

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place?
MORE THAN 500 FEET

What is your targeted opening date?
[ ]

AUG - YOU ENTER

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):
N/A

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

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

If we hereby authorize the release of any criminal history record information to the City Clerk’s Office or licensing authority. If we hereby waive any rights to privacy with respect thereto.

Signature [ ]

Title: MANAGER

Date: 6/13/19

For more Information, refer to the City Code of Ordinances: Chapter 4 Amusements, at www.portlandmaine.gov
Outdoor Dining Permit on Public Property
Supplemental Application
License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License
Valid April 1-November 15

<table>
<thead>
<tr>
<th>Legal Advertisement Deposit $100.00</th>
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| Outdoor Dining on Public Property $80.00 plus $2.00 per Square foot $2.00 X 350 SF = 700 + 
  8 $708 |
| Outdoor Dining on Public Property in a City Park $80.00 plus $6.00 per Square foot $6.00 X ___ SF = |

### Business Information

<table>
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<th>Phone:</th>
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<tr>
<td>Whole Hota, LLC</td>
<td>914</td>
<td>2113</td>
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<table>
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<tr>
<th>Location Address:</th>
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<tr>
<td>460 Congress ST. PORTLAND, ME 04101</td>
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<table>
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<tr>
<th>Mailing Address:</th>
<th>Zip:</th>
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<tbody>
<tr>
<td>P.O. Box 1750 BRIARCLIFF MANOR, NY 10510</td>
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</table>

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Phone:</th>
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</thead>
<tbody>
<tr>
<td>CIARAN SHEEHAN</td>
<td>914</td>
</tr>
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<table>
<thead>
<tr>
<th>Contact Person Email:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIARAN SHEEHAN @ RIPA.COM</td>
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</table>

Owner Information

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<tr>
<th>Corporate Name:</th>
<th>Corporate Mailing Address:</th>
<th>Zip:</th>
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<tbody>
<tr>
<td>Whole Hota, LLC</td>
<td>P.O. Box 1750 BRIARCLIFF MANOR, NY 10510</td>
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<tr>
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<th>Phone:</th>
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<tbody>
<tr>
<td>CIARAN SHEEHAN</td>
<td>914</td>
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Principal Officers

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<th>Title</th>
<th>Date of Birth</th>
<th>Residence Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

Instructions for completing application:

- Fill in all required fields.
- Attach all necessary documents.
- Sign and date application.
- Submit application to Permitting and Inspections Department.
About Your Establishment

<table>
<thead>
<tr>
<th>Class of License:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Type of food served:</td>
<td>Beer</td>
</tr>
<tr>
<td>Please circle all that will be served:</td>
<td></td>
</tr>
<tr>
<td>Hours &amp; days of operation:</td>
<td>M - Su</td>
</tr>
<tr>
<td>Number of Tables</td>
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</tr>
<tr>
<td>Number of Chairs</td>
<td>20</td>
</tr>
</tbody>
</table>

Design and Construction

<table>
<thead>
<tr>
<th>Existing Sidewalk Width (property line to curb)</th>
<th>Sidewalk Dining Allowed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 8'-0&quot;</td>
<td>No</td>
</tr>
<tr>
<td>≥ 8'-0&quot;</td>
<td>Yes – up to 60% of sidewalk</td>
</tr>
</tbody>
</table>

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

Barriers

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

Example barrier types that meet regulation

- [Image of barrier types]
Maintenance and Operations

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

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property caused 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 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 ________

For Administrative Use Only

| Amount: | ______________ | Date Paid: | ______________ |
| CC | CA | CK |
| FD: | ______________ | Request Date / Approval | ______________ |
| Health: | ______________ | Notes: | ______________ |
| PD: | ______________ | | ______________ |
| Treasury: | ______________ | | ______________ |
| Zoning: | ______________ | | ______________ |
| Amount: | ______________ | Date Paid: | ______________ |
| CC | CA | CK |
NEW application:  Yes □ No

PRESENT LICENSE EXPIRES

INDICATE TYPE OF PRIVILEGE: □ MALT □ VINOUS □ SPIRITUOUS

INDICATE TYPE OF LICENSE:

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

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

<table>
<thead>
<tr>
<th>Corporation Name:</th>
<th>Business Name (D/B/A):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whole Hug, LLC</td>
<td>Whole Hug, LLC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPLICANT(S) (Code Proprietor):</th>
<th>DOB:</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEE ATTACHMENTS</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Physical Location:</th>
</tr>
</thead>
<tbody>
<tr>
<td>80 Congress St.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City/Town</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portland</td>
<td>ME</td>
<td>04101</td>
</tr>
</tbody>
</table>

Address:
P.O. Box 1750

<table>
<thead>
<tr>
<th>Telephone Number</th>
<th>Fax Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>314 579 2113</td>
<td></td>
</tr>
</tbody>
</table>

Email Address: Please Print CARLANSHEEHAN@RBA.COM

If business is NEW or under new ownership, indicate starting date: Nov 1, 18

Requested inspection date: ☐ Business hours: 9 AM - 1 AM

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: CARL ANN SHEEHAN

9. Business records are located at: MAILING ADDRESS ABOVE

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></td>
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</tbody>
</table>

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

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 ______________ 20__

Signature of Applicant or Corporate Officer(s)

Print Name

Signature of Applicant or Corporate Officer(s)

Print Name

Please sign in blue ink
NOTICE - SPECIAL ATTENTION

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

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

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

Class I Spirituous, Vinous and Malt ......................................................................................................................... $ 900.00

CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.

Class I-A Spirituous, Vinous and Malt, Optional Food (Hotels Only) ........................................................................ $1,100.00

CLASS I-A: Hotels only that do not serve three meals a day.

Class II Spirituous Only ........................................................................................................................................... $ 550.00

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

Class III Vinous Only .................................................................................................................................................. $ 220.00

CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.

Class IV Malt Liquor Only ......................................................................................................................................... $ 220.00

CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.

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

CLASS V: Clubs without catering privileges.

Class X Spirituous, Vinous and Malt - Class A Lounge .............................................................................................. $2,200.00

CLASS X: Class A Lounge

Class XI Spirituous, Vinous and Malt - Restaurant Lounge ......................................................................................... $1,500.00

CLASS XI: Restaurant/Lounge; and OTB.

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

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

2. Doing Business As, if any: ________________________________

3. Date of filing with Secretary of State: ____________ State in which you are formed: ME

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

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

<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></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>See Attached</td>
<td></td>
<td></td>
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</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 with the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?
   Yes □ No ☑ (Signature)

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

Signature: ________________________

Signature of Duly Authorized Person

Date 6/25/18

Print Name of Duly Authorized Person

Ciaran Shea

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
### Whole Hog, LLC

**Federal Tax ID#: 83-0923280**

<table>
<thead>
<tr>
<th>Name and address of Members</th>
<th>Date of inception/maturity</th>
<th>Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pub Concepts, LLC</td>
<td>May 18, 2018</td>
<td>80.00%</td>
</tr>
<tr>
<td>P.O. Box 1750</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Briarcliff Manor, NY 10510</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spencer Brantley</td>
<td>November 16, 1973</td>
<td>20.00%</td>
</tr>
<tr>
<td>53 Joy Valley Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buxton, ME 04093</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whole Hog, LLC is a wholly-owned subsidiary of Ri Ra Group IP, LLC, a Delaware limited liability company, which in turn is a wholly-owned subsidiary of Ri Ra Group of Companies, LLC, a Delaware limited liability company which is owned as follows:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Claran Sheehan**  
3312 White Oak Rd.  
Raleigh, NC 27609  
DOB: 03/14/1963  
PH: 919-787-7727  
Percent Owned: 25.00

**Irish Restaurant Services, LLC**  
Woodcreek Lodge  
Halfway House  
County Waterford Ireland  
DOB: 02/08/1965  
PH: 011 353 51 820351  
Percent Owned: 25.00

**John W. Luther III**  
29 Maple Street,  
New Canaan, CT 06840  
DOB: 03/01/1963  
PH: 203-858-0860  
Percent Owned: 25.00

**Daniel J. McMorrow**  
119 Towne Street, Apt. #663  
Stamford, CT 06902  
DOB: 08/19/1956  
PH: 203-273-1211  
Percent Owned: 12.50

**Timothy Patrick Glennon**  
491 Highway 24  
Morehead City, NC 28557  
DOB: 03/13/1957  
PH: 252-240-3388  
Percent Owned: 12.50
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):
Inquiries Name(s) JOHN LUTHER (1963-03-01)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):
Inquiries Name(s) CIARAN SHEEHAN (1963-03-14)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s)  DANIEL MCMORROW (1956-08-19)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s)  SPENCER BRANTLEY (1973-11-16)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2018-06-25):

Inquiries Name(s) TIMOTHY GLENNON (1957-03-13)

NO MATCH WAS FOUND FOR YOUR REQUEST.
Kevin Cashman <kevindc@portlandmaine.gov>  
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>  
Cc: Benjamin Pearson <brp@portlandmaine.gov>, David Petruccelli <petruccellid@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>, Zoning <zoning@portlandmaine.gov>

PD has no objections. Should be noted that it is directly behind the glass bus stop which has had some issues when people congregate there.

Kevin C.

On Mon, Jun 25, 2018 at 3:05 PM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached application for Whole Hog for a Class I FSE with Entertainment without Dancing and Outdoor Dining on Public Property. Please advise. 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) 207-776-8294
kevindc@portlandmaine.gov.
Hours - Saturday thru Tuesday (4pm-2am)
June 26, 2018

Whole Hog LLC
PO Box 1750
Briarcliff Manor NY 10510

Re: Whole Hog LLC dba Whole Hog LLC. Application for a Class I FSE and Entertainment without Dance with Outdoor Dining on Public Property at 480 Congress Street.

Dear Ciaran Sheehan

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday July 16, 2018 at 4:00 p.m., for the review of application for a Class I FSE and Entertainment without Dance with Outdoor Dining on Public Property at 480 Congress 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 July 16, 2018 at 4:00 P.M., in City Council Chambers, 389 Congress St., Whole Hog LLC dba Whole Hog LLC. Application for a Class I FSE and Entertainment without Dance with Outdoor Dining on Public Property at 480 Congress Street. Sponsored by Michael Russell, Director of Permitting and Inspections.
MEMORANDUM
City Council Agenda Item

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

FROM: Benjamin Pearson, P.E., Compliance Coordinator, Water Resources Division, Department of Public Works

DATE: June 28th, 2018

SUBJECT: Communication to City Council: Revisions to the Rules and Regulations for Use of the Sewer System

SPONSOR: Corporation Counsel

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

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

PRESENTATION: (List the presenter(s), type and length of presentation)
None

I. ONE SENTENCE SUMMARY

This communication is to inform the City Council of revisions made to the Rules and Regulations for Use of the Sewer System to allow for the Portland Water District to administer the Industrial Pretreatment Program and to update discharge limits related to equipment upgrades at the East End Wastewater Treatment Facility.

II. AGENDA DESCRIPTION

The Rules and Regulations for Use of the Sewer System are being revised to effectuate a transfer of responsibility for the administration and management of the Industrial Pretreatment Program from the City to the Portland Water District (PWD). This transfer of responsibility is in line with the arrangement that PWD has with Westbrook and Gorham. The program and regulatory authority is being transferred to reduce the amount of redundant efforts and to allow the PWD to manage and directly collect the information required from Industrial Users in order to meet requirements of the Maine Pollutant Discharge Elimination Permit (MEPDES) for the East End Wastewater Treatment Facility. The Industrial Pretreatment Program Owner’s Manual has been updated to reflect shift of responsibilities.

Additionally, discharge limits for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) are being revised as required by the Maine Department of Environmental
Protection MEPDES permit. A mass limit will be implemented rather than a concentration limit to better regulate the amount of BOD and TSS being sent to the East End Wastewater Treatment Facility. The discharge limit for arsenic is also being redistributed to allow for industrial users to have more flexibility.

III. BACKGROUND

The Rules and Regulations for Use of the Sewer System is comprised of seven sections.

Section 1 – General Provisions
Section 2 – Regulations of Wastewater Discharges
Section 3 – Control Mechanism
Section 4 – Reporting Requirements, Monitoring and Inspections
Section 5 – Enforcement
Section 6 – Sub-Meter Program
Section 7 – Fats, Oils, and Grease Program
Schedule A
Intermunicipal Agreement Exhibits

The first five sections pertain to the types of wastewater discharges allowed into the sanitary sewer system. These sections also detail the Industrial Pretreatment Program (IPP), a federally mandated program for any Publicly Owned Treatment Plant, and other limitations that are based on the Portland Water District’s (PWD) East End Treatment Facility’s ability to treat wastewater. These sections are being updated with the following changes:

- Throughout: Added “or their designee” after references to “The City” in many sections to allow the PWD to enforce provisions within the Rules and Regulations for Use of the Sewer System related to the Industrial Pretreatment Program.
- 1.1b Purpose and Scope: Language added to reference the Memorandum of Understanding formalizing the transfer of the Industrial Pretreatment Program to the PWD and language specifying the PWD as the City’s designee.
- 1.2 Definitions: Added term ‘designee’
- Chapter 3: Added the term “issuer” in place of “the City.”
- 5.3: Added specific language with regards to the appeal process for written notice of violations issued by the PWD.

Section 6 codifies the sub-meter Program. A sub-meter allows sewer users to pay charges for water and not sewer for certain water uses that will not end up in the sewer. The most common use of a sub-meter in a residential setting is for outside water use. For commercial settings, utilizing water in product and large scale irrigation is most common. No changes are being made to this section.

Section 7 details the Fats, Oils, and Grease Program, passed in July 2015 as required by the Environmental Protection Agency’s Consent Decree. Minor changes to punctuation and spelling were made.
Schedule A lists the concentration limits of wastewater pollutant parameters that are allowed to be discharged into the sewer system. This section is being updated with the following changes:

- Once the aeration upgrade was completed at the East End Wastewater Treatment Facility, the Department of Environmental Protection required the Portland Water District to create technical limits for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS). This change will allow each industrial user to be permitted a set mass amount of BOD and TSS based on several years of results and flow data. For users with low BOD (<250 mg/L) and TSS (<300 mg/L) results, the permit may not include a requirement to sample for either parameter. Schedule A will now have the following language for BOD and TSS:

  "Industrial users permitted in the Industrial Pretreatment Program and discharging effluent which exceeds a de minimis level of Biochemical Oxygen Demand (BOD) and/or Total Suspended Solids (TSS) are individually allocated a pounds per day limit for these parameters. The de minimis levels are 250 mg/L and/or 2,275 lbs/day for BOD and 300 mg/L and/or 1,925 lbs/day for TSS for Portland; and 250 mg/L and/or 375 lbs/day for BOD and 300mg/L and/or 425 lbs/day for TSS for Westbrook Intermunicipal Area. The Control Authority reserves the right to permit users based on their potential to discharge high strength BOD/TSS waste. Industrial Users permitted for BOD and TSS must report a certified discharge flow number with each monitoring event."

Additionally, the limit for arsenic is being revised changed to two tiers instead of three. Currently, the three tier arsenic limit is as follows:

- Seafood Processors: 0.228 mg/L
- Landfills and ecoMaine Incinerator = 0.055 mg/L
- All others = 0.02 mg/L

The proposed two tier limit is:

- Seafood Processors = 0.22 mg/L
- All Others = 0.092 mg/L

This change is being made to allow for all other industrial users to have more flexibility for arsenic. Most industrial users are not required to sample for arsenic but some were exceeding the limits when the City sampled for it. By removing the 0.008 from seafood processors, all other industrial users should be able to meet the limit.

Intermunicipal Agreement Exhibits show the areas under agreement with the Portland Water District and City of Westbrook.

These changes, along with the changes to Chapter 24: Sewers, will allow for a transition of responsibilities and regulatory authority of the IPP to the PWD. The City will remain responsible
for the rest of the articles within Chapter 24 and the Rules and Regulations for Use of the Sewer System.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is to update the Rules and Regulations for Use of the Sewer System to reflect a recently signed Memorandum of Understanding allowing the transfer of the administration, management, and regulatory authority of the Industrial Pretreatment Program (IPP) from the City of Portland to the Portland Water District (PWD). This will allow the PWD to meet the permit requirements for the Maine Pollutant Discharge Elimination Permit (MEPDES) which they hold and allow City of Portland Water Resources Division Compliance staff to focus more on the regulatory requirements associated with the permits and administrative order that the City is responsible for. The changes to Schedule A and discharge limits are intended to meet Department of Environmental Protection Agency requirements of the creation of a technical based limit.

V. FINANCIAL IMPACT

By shifting the responsibility and administration of the Industrial Pretreatment Program, the annual assessment for wastewater services from the Portland Water District will increase. This increase was included in the most recent assessment and amounted to an 8.2% in the Environmental Services line based on a $21,041 increase due to the creation of an Industrial Pretreatment Program Supervisor. This amount accounted for 5% of the $406,452 increase in the assessment from 2017 and an overall increase of 0.17% of the 2018 Wastewater Assessment of $12,248,424.

Due to the changes, items from the sewer administration operating budget will be removed including the purchase of additional wastewater sampling equipment and maintenance ($5,750 in Fiscal Year 2018) and associated management program license fees ($5,355 annually). Additionally, the City will no longer collect a $300 permit fee upon the issuance of a permit which currently amounts to $7,200 each permit cycle of three years, or a loss of an annual average revenue of $2,400.

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

These changes will have an impact on Industrial sewer users in that they will no longer report data to the City but rather directly to the Portland Water District as they assume the regulatory authority associated with the Industrial Pretreatment Program (IPP). The Portland Water District (PWD) currently manage the IPP for both Gorham and Westbrook and have the ability and resources to efficiently manage the program for Portland. Water Resources Division Compliance staff will help PWD staff to ensure that the transition is smooth over the next year. This includes showing PWD staff wastewater sampling locations and industrial facility inspections. This transition and transfer has been a part of each industrial facility inspection and has been communicated several times to industrial users.
By having the PWD administer the IPP, City of Portland Water Resources Compliance Division staff can focus more on the permits and compliance requirements that the City is responsible for including the Municipal Separated Storm Sewer System (to be reissued with more resource intensive requirements in 2018), the Combined Sewer Overflow permit, and Administrative Order requirements as part of the Consent Decree levied against the City by the Environmental Protection Agency.

The City will still remain responsible for making any revisions to Chapter 24 and the Rules and Regulations for Use of the Sewer System and all aspects related to sewer revenue, including sewer billing and surcharges associated with Industrial Sewer users. The PWD will remain as the billing agent for the City of Portland but cannot make any changes to sewer fees or issue any credits without a request or approval from the City. The City may also be required to provide legal counsel for issues related to the wastewater collection system that stem from Industrial users. An Industrial Pretreatment Manual, referenced in the MOU, highlights the responsibilities and requirements of the Industrial Pretreatment Program. Coordination meetings with the PWD will continue to be held to ensure a clear channel of communication regarding any issues or items that need to be addressed.

These changes are being made in tandem with revisions to Chapter 24: Sewers.

City Council is not required to take any action for revisions to the Rules and Regulations for Use of the Sewer System unless there are any objections, in which a stay may be requested within 5 days of this meeting. If there is no stay requested, the revisions are considered in effect twenty days after a public hearing is held. A public hearing was held on June 29th, 2018 so the changes could be in effect beginning on July 19th. The changes will actually be put into effect on August 14th to coincide with the second read of the Chapter 24: Sewers.

VII. RECOMMENDATION

It is recommended that City Council allow these changes to go into effect.

VIII. LIST ATTACHMENTS

Communication: Revision of Chapter 24: Sewers and the Rules and Regulations for Use of the Sewer System
Rules and Regulations for Use of the Sewer System – Red Line Version
Memorandum of Understanding with Portland Water District
Industrial Pretreatment Owner’s Manual

Prepared by: Benjamin Pearson
Date: June 28th, 2018
PUBLIC WORKS DEPARTMENT

RULES AND REGULATIONS
FOR USE OF THE SEWER SYSTEM

EFFECTIVE AUGUST 14
2018

OCTOBER 22, 2016
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1. GENERAL PROVISIONS

1.1 Purpose and Scope

a. It is the purpose of these Rules & Regulations to set forth uniform requirements for Users of the City of Portland Wastewater Collection & Treatment System (System). It is intended that these Rules & Regulations conform with and supplement the City of Portland Sewer Use Ordinance, the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) and its amendments, State of Maine Statutes, and Section 16 of the Portland Water District Charter.

b. It is the intent of these Rules & Regulations to establish requirements for compliance with the City of Portland’s Industrial Pretreatment Program. As agreed upon in a Memorandum of Understanding, the City has designated the Portland Water District to manage and administer the Industrial Pretreatment Program, henceforth referenced as “designee”. These rules set forth uniform requirements for Users of the System and enables the City and the Portland Water District to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403 and 06-096 CMR Chapter 528). The objectives of these rules are:

1. Prevent the introduction of pollutants to the System which would interfere with its operation;
2. Prevent the introduction of pollutants to the System that will pass through, inadequately treated, into the receiving waters, or be otherwise incompatible with the System;
3. Protect both the System personnel who may be affected by wastewater and sludge in the course of their employment, and the general public;
4. Promote reuse and recycling of industrial wastewater and sludge from the System;
5. Provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the System; and
6. Enable the Portland Water District to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal, and any other Federal or State laws to which the System is subject.

c. These rules shall apply to all Users of the System. The rules authorize the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

d. The provisions of these Rules and Regulations shall apply to all Users of the System and govern the types of wastes and wastewaters prohibited from the System, the strength and pollutant concentrations of wastewaters allowed in the System, and control the quantity and characteristics of wastes and wastewaters received by the System.

1.2 Definitions

Unless the context specifically indicates otherwise, the following terms and phrases, as used in these Rules and Regulations, shall have the meanings hereinafter designated:

Act - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C @1251 et seq., 86 Stat. 816, PL 92-500 and the regulations promulgated thereunder, as amended from time to time.

Approval Authority - State of Maine Department of Environmental Protection.
Authorized Representative -

(1) If the User is a corporation:
   a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal
      business function, or any other person who performs similar policy or decision-making functions for
      the corporation; or
   b. The manager of one or more manufacturing, production, or operating facilities, provided the manager
      is authorized to make management decisions that govern the operation of the regulated facility
      including having the explicit or implicit duty of making major capital investment recommendations,
      and initiate and direct other comprehensive measures to assure long-term environmental compliance
      with environmental laws and regulations; can ensure that the necessary systems are established or
      actions taken to gather complete and accurate information for individual wastewater discharge permit
      requirements; and where authority to sign documents has been assigned or delegated to the manager in
      accordance with corporate procedures.

(2) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or
    designated to oversee the operation and performance of the activities of the government facility, or their
    designee.

(4) The individuals described in paragraphs 1 through 3 above, may designate a Duly Authorized
    Representative if the authorization is in writing, the authorization specifies the individual or position
    responsible for the overall operation of the facility from which the discharge originates or having overall
    responsibility for environmental matters for the company, and the written authorization is submitted to the
    City or its designee.

Best Management Practices or BMPs - Schedules of activities, prohibitions of practices, maintenance
procedures, and other management practices to implement the prohibitions listed in §403.5(a)(1) and (b). BMPs
also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or
leaks, sludge or waste disposal, or drainage from raw materials storage.

Biochemical Oxygen Demand ("BOD") - The quantity of oxygen utilized in the biochemical oxidation of
organic matter, under standard laboratory procedures in five (5) days at 20°C (twenty degrees) centigrade,
expressed in terms of milligrams per liter (mg/l).

Bypass - The diversion of wastewater from any portion of an Industrial User's treatment facility.

Categorical Industrial User - An Industrial User subject to National Categorical Pretreatment Standards.

Caustic Alkalinity (Hydroxide alkalinity) - A measure of the capacity of wastewater, which exhibits a
pH of greater than or equal to 8.3, to neutralize acids.

Categorical standards - Any regulation containing pollutant discharge limits promulgated by EPA in accordance
with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and
that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

Chemical Oxygen Demand (COD) - A measure of the oxygen required to oxidize all compounds, both organic
and inorganic, in water.

City - City of Portland, Maine.

Collector Sewer - A sewer which transmits wastewater from one or more individual service lines to a trunk or
interceptor sewer and has no other common sewers tributary to it.
Cooling Water - The water discharged from any use, such as air conditioning, cooling, or refrigeration.

DEP - The Maine Department of Environmental Protection.

Department - The City of Portland Department of Public Works.

Daily Maximum - The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

Daily Maximum Limit - The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Designee - The person or organization selected to manage and administer the Industrial Pretreatment Program. As of May 14, 2018, the Portland Water District is the City of Portland’s designee.

Direct Discharge - The discharge of treated or untreated wastewater directly to the Waters of the State.

District - The Portland Water District, a quasi-municipal corporation organized under Maine law, and located at 225 Douglass Street, Portland, Maine 04104. Whenever approval of or correspondence with the District is referred to, it shall mean the General Manager of the District, or a duly designated representative, unless otherwise specified.

District Charter - Chapter 84 of the Private and Special Laws of the State of Maine of 1975, an “Act to Codify the Charter of the Portland Water District,” as from time to time amended.

Domestic Source - Any residence, building, structure, facility, or installation from which only sanitary sewage will normally be discharged to the Facility.

Enforcing Officer - The Department or the Portland Water District as agent-designee for the City and at the request of the Department shall administer and enforce the provisions of this article.

EPA - United States Environmental Protection Agency.

Existing Source - Any source of discharge that is not a “New Source.”

Facility - See POTW - Publicly Owned Treatment Works.

Garbage - Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and produce, and from the handling, storage and sale of food and produce.

Grab Sample - A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

Hauler - Persons, firms, or corporations transporting wastewater, septage, holding water, or Industrial Waste to the Facility POTW for disposal.

Holding Tank Waste - Any waste derived from the temporary storage of sanitary waste including those derived from sinks and sanitary plumbing fixtures. Holding Tank Wastes are expected to exhibit pollutant concentrations similar to that of typical domestic wastewater.

Incompatible Pollutant - Any pollutant other than biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria or additional pollutants identified in the POTW’s NPDES permit to discharge, which the wastewater treatment facility was not designed to treat, does not remove to a substantial degree.
or may be toxic to the POTW or receiving waters.

Indirect Discharge or "Discharge" - The discharge or the introduction into the Facility of pollutants from any source, other than a Domestic Source, regulated under section 307(b), (c) or (d) of the Act.

Industrial User - A source of Indirect Discharge or any source which discharges Industrial Waste to the Facility.

-Industrial Waste - Any liquid, gaseous, or solid waste substance, or a combination thereof, results from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

Interference - A discharge which, alone or in conjunction with discharges from other sources, inhibits or disrupts the Facility, its treatment processes or operations, or its sludge processes, use or disposal; and therefore, is a cause of a violation of the District's MPDES Permit(s) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Local Limit - Specific discharge limits developed and enforced by City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

MEPDES - Maine Pollution Discharge Elimination System or permit issued by the State of Maine for discharges from a wastewater treatment facility.

Medical Waste - Isolation wastes, infections agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

mg/L - milligrams per liter.

Monthly Average - The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Monthly Average Limit - The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Municipal Sewer or Collector System - A sewer or system of sewers directly controlled by or which is the responsibility of the Municipality.

NAICS - The North American Industry Classification System. A system of classifying industries by the nature of their process. Replaced the Standard Industrial Classification system.

(National) Categorical Pretreatment Standard - Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307 (b) and (c) of the Act (33 U.S.C. section 1317), that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.

New Source - Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are
substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

d. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

e. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has begun, or caused to begin, as part of a continuous onsite construction program:

i. any placement, assembly, or installation of facilities or equipment; or

ii. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

iii. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Noncontact Cooling Water - Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Non-Categorical Significant Industry - An industry which meets the definition of a Significant Industrial User, but is not a categorical industry.

Non-Significant Industry - An industry which does not meet the definition of a Significant Industrial User, but may be permitted by the City or its delegate because it has a possibility of discharging incompatible pollutants in excess of local discharge limits or is required to have a spill control plan.

Pass Through - The discharge of pollutants through the Facility into Waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the District's NPDES Permit (including an increase in the magnitude or duration of a violation).

Person - Any individual, firm, company, association, corporation, trust or government authority, partnership, public or private corporation or authority, trust, estate, governmental entity, agency or political subdivision of a municipality, the State of Maine, or the United States, or any other legal entity, or their legal representative, agent, or assign. The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

pH - The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in a solution expressed as standard units.

Pollutant - Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or non-point source, which is or may be discharged, drained, or otherwise introduced into the Facility, or Waters of the State.

These may be but are not limited to: Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pollution - The man-made or man induced alteration of the chemical, physical, biological and radiological integrity of water.
POTW (Publicly Owned Treatment Works) ("Facility") - The treatment works, as defined by Section 212 of the Act, operated by the District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater and sewage consisting of domestic, commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, pump stations, and other conveyances which convey wastewater to the Facility. For the purposes of these Rules and Regulations, POTW shall also include any sewers that convey wastewaters to the treatment works from Persons who are, by permit, contract, or agreement with the City, Users of the Facility.

POTW Treatment Plant - That portion of the Facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal sewage, industrial waste, septage and holding water.

Pretreatment - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the Facility. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes, or other means, except as prohibited by 40 CFR @403.6(d).

Pretreatment Requirements - Any substantive or procedural requirement related to pretreatment, other than a National Categorical Pretreatment Standard, imposed on a User by the City through its permit process as defined in Section 3 of these Rules and Regulations.

Pretreatment Standards or (Standards) - Pretreatment Standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.


Sanitary Sewage - Liquid and water-carried human and domestic wastes from residences, commercial buildings, industrial plants and institutions, exclusive of ground, storm and surface water and exclusive of industrial wastes.

Sanitary Sewer - A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

Septage - Any waste, refuse, effluent, sludge or other material derived from a septic tank, cesspool, vault, or similar source which concentrates wastes or to which chemical have been added. Per this definition, portables are considered to be septage.

Septic Tank Pumpage “Septage” - Any solid or liquid wastes removed from septic tanks, cesspools, seepage pits, grease traps or privies.

Service Agreement - A contract between the City and a Person, as defined above for the handling and treatment of wastewater from such Person.

Sewage - Human excrement and gray water (household showers, dishwashing operations, etc.).

Sewer - A pipe or conduit that carries wastewater.

Sewerage system - Any device, equipment, or works used in the transportation, pumping, storage, treatment, recycling, reclamation, and disposal of sewage and industrial wastes.

Shall is mandatory; May is permissive.

Significant Industrial User - Except as provided in paragraph (3) below, a Significant Industrial User is:

1. An Industrial User subject to categorical Pretreatment Standards; or
2. An Industrial User that:
   (a) Discharges an average of twenty-five thousand (25,000) gallon per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
(b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(c) Is designated as such by the City or its designee on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirement.

3. Upon finding that a User meeting the criteria in paragraph (2) above has no reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirement, the City or its designee may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

Significant Noncompliance - A violation which meets one or more of the following criteria:

1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits;

2. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

3. Any other violation of a Pretreatment Standard or Requirement, Daily Maximum, long-term average, Instantaneous Limit, or narrative standard that the City or its designee determines has caused, alone or in combination with other discharges, Interference or Pass Through including endangering the health of POTW personnel or the general public;

4. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City or District's exercise of its emergency authority to halt or prevent such a discharge;

5. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

6. Failure to provide, within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

7. Failure to accurately report noncompliance;

8. Any other violation(s) which may include a violation of Best Management Practices, which the City or its designee determines will adversely affect the operation or implementation of the pretreatment program.

Sludge (Biosolids) - Waste containing varying amounts of solid contaminants removed from water, sanitary sewage, wastewater or industrial wastes by physical, chemical and biological treatment.

Slug Load or Slug Discharge - Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards of these rules. A Slug Discharge is any Discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill, non-customary batch discharge, which has a reasonable
potential to cause Interference or Pass Through, or in any other way violate the POTW’s regulations, Local Limits or Permit conditions.

Solids Disposal Operations - The method or methods the District employs to utilize or dispose of the hy-product solids sludge resulting from the treatment of wastewater.

Staff or City Staff - The staff of the Department.

Storm Water - Any flow occurring during or following any form of natural precipitation, including snowmelt, and resulting therefrom.

Suspended Solids - The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtration.

Toxic Pollutant - Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under section 307(a)(1) of the Act, or other statutes, regulations or ordinances.

User - Any Domestic Source, or Industrial User which discharges wastewater to the Facility.

Vehicle Registration - Document issued by the City or the District to Haulers for a specified vehicle. A certificate of liability insurance must be submitted and payment of fee made prior to issuance or approval of registration.

Wastewater - Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Wastewater Discharge Permit or Permit - The document issued by the City or its designee as set forth in Section 3 of these Rules and Regulations.

Wastewater Treatment Plant or Treatment Plant - That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

Waters of the State - All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, border upon or are within the jurisdiction of the State of Maine.

Westbrook Intermunicipal Sewer Service Area - The domestic and sanitary sewage and waste water from the Service Area as defined on the plan attached as Exhibit A. The service area includes the Riverside Street/Warren Avenue/Forest Avenue vicinity of Portland as defined on the plan attached as Exhibit B, and the Brighton Avenue vicinity of Portland as defined on the plan attached as Exhibit C. The Riverside Street/Warren Avenue/Forest Avenue area is intercepted by the District and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment. Reference: Council Order 54-02/03 @ An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook. The Brighton Avenue Area is intercepted by Westbrook and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment. Reference Council Order 50-16/17 @ An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook.

Other Waste - Any waste delivered by truck that does not satisfy the definition of Septage or Holding Tank Wastes. Other Wastes may include commercial wastes that include materials other than sanitary waste.

**2. REGULATION OF WASTEWATER DISCHARGES**
2.1 General Discharge Prohibitions

No Person may introduce into a POTW any pollutant(s) which may cause Pass Through or Interference. These general prohibitions and the specific prohibitions in Section 2.2 of these Rules and Regulations apply to each Person introducing pollutants into the Facility whether or not the Person is subject to other National Pretreatment Standards or any national, state, or local Pretreatment Requirements.

2.2 Specific Discharge Prohibitions

In addition to the Prohibitions described in Section 2.1 above, the following discharges to the Facility are specifically prohibited:

(a) Any gasoline, benzene, naphtha, fuel, oil, or other flammable or explosive liquid, solid, or gas, or any other pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

(b) Any wastewater containing toxic objectionable pollutants in sufficient quantity or concentration, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, to constitute a hazard to humans or animals, to create a toxic effect in the receiving waters of the Facility, or to exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40 CFR Chapter I, Subchapter N, Parts 405-471, the Local Discharge Limitations prescribed herein in Section 2.5, or an Industrial Discharge Permit issued pursuant to these Rules and Regulations. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 CFR Part 403, Appendix B.

Also prohibited are any wastewaters which may cause corrosive structural damage to the Facility including, but not limited to the following characteristics:

All wastewaters with a pH lower than 5.0 or greater than 10.3 **

** The City or its designee may authorize discharge of wastes with a pH greater than 10.3 provided that the caustic (hydroxide) alkalinity of the sample does not exceed 1000 mg/l. No wastewater with a pH equal to or greater than 12.5 will be authorized for discharge as it is considered hazardous waste.

(c) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, hair and fleshings, entrails, lime slurries, beer and distillery slops, grain processing wastes, grinding compounds, acetylene generation sludge, chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, unground garbage, paper dishes, cups, whole or ground milk containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.

(d) Any waste which, either singly or by interaction with other wastes may result in the presence of noxious or malodorous liquids, gases, vapors, fumes or solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair.

(e) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the Facility cause the Facility to be in noncompliance with sludge use or disposal criteria, guidelines, or
regulations developed under Section 405 of the Act; or with any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine DEP "Rules for Land Application of Sludge and Residues" - MRSA Title 38, Section 1304, Chapter 419.

(f) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference to the Facility or Pass Through to the Waters of the State.

(g) Any wastewater load (slug) having a flow rate or containing concentrations or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

(h) Any wastewaters with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

(i) Wastewater having a temperature greater than 140 degrees F (60 degrees C), or which will inhibit biological activity or cause damage in the Facility resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 40 degrees Centigrade (104 degrees Fahrenheit).

(j) Any wastewater containing any radioactive wastes or isotopes with such half-life or concentration as may exceed limits necessary to comply with applicable state or federal regulation.

(k) Any sludges or deposited solids resulting from an industrial pretreatment process.

(l) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.

(m) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(n) Any medical wastes, except as specifically authorized by the City or its designee in an individual wastewater discharge permit.

(o) Any wastewater causing, alone or in conjunction with other sources, the treatment plant’s effluent to fail toxicity test.

(p) Any detergents, surface-active agents, or other substances which might cause excessive foaming in the POTW.

(q) Any trucked or hauled pollutants, except at discharge points designated by the District in accordance with District rules.

(r) Any pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(s) Water from roof downspouts, foundation drains, or areaway drains, or other sources of surface runoff or groundwater; nor discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters, except into storm drains or the stormwater system where available.

2.3 Prohibition of Wastes.

The Department or its designee may, if deemed necessary in its judgment, impose the following limitations on discharges of the following described waters or wastes to any public sewer or any part thereof:

(1) Any aluminum exceeding a concentration of 500 milligrams per liter;

(2) Any iron exceeding a concentration of 10 milligrams per liter;

(3) Any tin exceeding a concentration of 2 milligrams per liter;
(4) Any fluorides exceeding a concentration of 100 milligrams per liter;
(5) Any phenols exceeding a concentration of 100 milligrams per liter;
(6) Any chlorides exceeding a concentration of 3,000 milligrams per liter;
(7) Any sulphates exceeding a concentration of 6,000 milligrams per liter;
(8)
   (a) Any waters or wastes containing animal or vegetable based fats, wax, grease or oils whether emulsified or not, in excess of 500 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
   (b) Any waters or wastes containing hydrocarbon (non-polar) based fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
   (c) In the Westbrook Intermunicipal Sewer Service Areas, any waters or wastes containing animal or vegetable based fats, wax, grease or oils, whether emulsified nor not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).

2.4 Specific Discharge Prohibitions in the Westbrook Intermunicipal Sewer Service Area

The following discharges to the Westbrook Intermunicipal Sewer Service Area are specifically prohibited:

   (a) Any gasoline, benzene, naphtha, fuel, oil, or other flammable or explosive liquid, solid, or gas, or any other pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flash point of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
   (b) Any wastewater containing toxic objectionable pollutants in sufficient quantity or concentration, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, to constitute a hazard to humans or animals, to create a toxic effect in the receiving waters of the Facility, or to exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40 CFR Chapter I, Subchapter N, Parts 405-471, the Local Discharge Limitations prescribed herein in Section 3.5, or a Wastewater Discharge Permit issued pursuant to these Rules and Regulations A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C.F.R Part 403, App. B.
   (c) Also, prohibited are any wastewaters which may cause corrosive structural damage to the Facility including, but not limited to the following characteristics:

          All wastewaters with a pH lower than 5.0 or greater than 10.3 **

** (The City or its designee may authorize discharge of wastes with a pH greater than 10.3 provided that the caustic (hydroxide) alkalinity of the sample does not exceed 1000 mg/l.)
   (d) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lini, feathers, tars, plastics, wood and sawdust, hair and fleshings, entrails, lime sturries, beer and distillery slops, grain processing wastes, grinding compounds, acetylene generation sludge, chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, unground garbage, paper dishes, cups, whole or ground milk
containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.

(e) Any waste which, either singly or by interaction with other wastes may result in the presence of noxious or malodorous liquids, gases, vapors, fumes or solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(f) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the Facility cause the Facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Act; or with any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine DEP “Rules for Agronomic Utilization of Residuals – MRSA Title 38, Section 1304, Chapter 419.

(g) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference to the Facility or Pass Through to the Waters of the State.

(h) Any wastewater load (slug) having a flow rate or containing concentrations or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

(g) Any wastewaters with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

(h) Any wastewater having a temperature which may inhibit biological activity in the Facility resulting in interference, but in no case wastewater which causes the temperature at the introduction to the treatment plant to exceed 40 degrees Centigrade (104 degrees Fahrenheit).

(i) Any wastewater containing any radioactive wastes or isotopes with such half-life or concentration as may exceed limits necessary to comply with applicable state or federal regulation.

(j) Any sludges or deposited solids resulting from an industrial pretreatment process.

(k) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.

(l) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

2.5 Prohibition of Wastes in the Westbrook Intermunicipal Sewer Service Area.

In addition to the wastes listed in Section 2.4, the following discharges to the Facility are specifically prohibited:

(a) Water from roof downspouts, foundation drains, or areaway drains, or other sources of surface runoff or groundwater; nor discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters, except into storm drains.

(b) Any gasoline, benzene, naphtha, fuel, flammable or explosive liquid, solid or gas.
(c) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.

(d) Any sludges or deposited solids resulting from an industrial pretreatment process.

(e) Any radioactive wastes greater than allowable releases as specified by state or federal regulation.

(f) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, as determined by the city engineer, either singularly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of any wastewater treatment plant now or in the future to be treating wastewater from the city, including, but not limited to those which exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471, the Local Discharge Permit issued pursuant to those as defined in standards issued from time to time under Section 307(a) of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C.F.R. Part 403, App. B.

(g) Any slug of wastes as defined in section 26-4 of the City of Westbrook Code of Ordinances.

(h) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tar, plastics, wood and sawdust, hair and fleshings, whole blood, manure, entrails, lime stearines, beer and distillery, slops, grain processing wastes, grinding compounds, acetylene generation sludge chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, underground garbage, paper dishes, supers, whole or ground mild containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.

(i) Any waste which, either singly or by interaction with other wastes may result in the presence of toxic vapors, gases, or fumes within the POTW in a quantity that may cause worker health or safety problems, or are sufficient to prevent entry into the sewers for maintenance and repair.

(j) Any substance which may cause the facility’s effluent or any other product of the facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the facility cause the facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine D.E.P. “Rules for Land Application of Sludge and Residuals” – M.R.S.A. Title 38, Section 1304, Chapter 567.

(k) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference to the facility or pass through to the waters of the state.

(l) The city engineer may also prohibit or limit any hexavalent chromium, aluminum, tin, fluorides, phenols, chlorides or sulfates.

(m) Any reducing substances having an immediate chlorine demand exceeding 30.0 mg/l.

(n) Any waters or wastes which cause corrosive structural damage to the sewers or treatment works including, but not limited to, any wastes having a concentration of caustic alkalinity exceeding 1000 mg/l, or all wastes with a pH lower than 5.0.

(o) Any liquid or vapor other than water having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 C).

(p) Any waste which may create a fire explosion hazard in the facility, including, but not limited to, waste streams with a closed cup flash point of less than one hundred forty (140) degrees Fahrenheit (60 degrees Centigrade) using the test methods specified in 40 CFR 261.21.
Any waters or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l, or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (0 and 65 C). (Ord. of 9-19-77; Ord. of 5-15-06)

2.6 National Categorical Pretreatment Standards

Upon the promulgation of National Categorical Pretreatment Standards for a particular industrial subcategory found in 40 CFR, Chapter I, Subchapter N, Parts 405-471 and hereby incorporated in these Rules and Regulations, the Pretreatment Standard, if more stringent than limitations imposed under these Rules and Regulations, shall immediately supersede, for Users in that subcategory, the limitations imposed under these Rules and Regulations. The City or its designee shall notify all affected Users of the applicable requirements under the Act; and subtitles C and D of the Resource Conservation and Recovery Act.

2.7 Modification of National Categorical Pretreatment Standards

Pursuant to 40 CFR §403.7, where the Facility achieves consistent removal of pollutants limited by a National Categorical Pretreatment Standard, the City or its designee may apply to the EPA for modification of the discharge limits for a specific pollutant covered in the relevant national Categorical Pretreatment Standards in order to reflect the Facility’s ability to remove said pollutant. The City or its designee may modify pollutant discharge limits contained in a National Categorical Pretreatment Standard only if the requirements of 40 CFR §403.7 are fulfilled and prior written approval from the EPA is obtained.

2.7.1 The City or its designee may develop Best Management Practices by rule for individual wastewater discharge permits to implement Local Limits and the requirements of Section 2.2.

2.8 Local Discharge Limitations

No person shall discharge wastewater containing any pollutant specified in Schedule A annexed hereto and incorporated herein by reference, in excess of the limitations for each of said pollutants as specified in said Schedule A (Portland POTW discharge limitations). Compliance with the provisions of this Section 2.6 shall be assessed on the basis of samples of the person’s wastewater discharge collected at each point of connection between the person’s building, structure, facility or installation and the Facility. If a National Categorical Pretreatment found in 40 CFR, Chapter I, Subchapter N, Parts 405-471 and hereby incorporated in these Rules and Regulations establishes limitations for Users in a particular industrial subcategory which are more stringent than the limitations specified in Schedule A, those more stringent limitations shall immediately apply to those Users subject the that National Categorical Pretreatment Standard. Compliance with National Categorical Pretreatment Standard limitations shall be determined in accordance with the requirements set forth in 40 CFR §403 12(b) (5).

2.9 State Requirements

Users must comply with State Pretreatment Standards codified at 06-096 CMR Chapter 528 Pretreatment Program.

2.10 City’s Right of Revision

The City or its designee reserves the right to establish by amendment to these Rules and Regulations more stringent limitations or requirements on discharges to the Facility if deemed necessary to comply with the objectives presented in Section 1.1 of these Rules and Regulations or as may be imposed by Federal or State authorities.

2.11 Dilution Prohibited in Absence of Treatment

No User shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance either with the limitations contained in any
National Categorical Pretreatment Standard or Pretreatment Requirement, or in any other pollutant-specific discharge limitation developed by the City, the District, or the EPA.

2.12 Pretreatment

Each user shall provide wastewater treatment as necessary to comply with these Rules and Regulations and shall achieve compliance with all categorical Pretreatment Standards, Local Discharge Limitations set forth in Schedule A hereto, and the prohibitions set out in Section 2.2 of these Rules within the time limitations specified by EPA, the State, or the City, or the District, whichever is more stringent. Any facilities required to pretreat wastewater to a level which will achieve compliance with these Rules and Regulations shall be provided, operated and maintained at the User’s expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City or its designee for review and shall be acceptable to the City or its designee before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent which complies with the provisions of these Rules and Regulations or from liability for non-compliance with Pretreatment Standards or Pretreatment Requirements and these Rules and Regulations. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City or its designee prior to the User’s initiation of the changes.

(a) Whenever deemed necessary, the City or its designee may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User’s compliance with the requirements of this ordinance.

(b) The City or its designee may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization.

(c) Grease, oil, and sand interceptors shall be provided when they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the City or its designee and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the User at their expense.

2.13 Records and Public Notification Procedures.

All records relating to compliance with applicable Pretreatment Standards and Pretreatment Requirements as defined in 40 CFR §403.3(j) and (r) shall be made available to officials of the EPA, DEP, or City, or District upon request. In addition, pursuant to the public participation requirements of 40 CFR Part 25, the City or its designee shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the City or its designee, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including
Instantaneous Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the City or its designee determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City’s or District’s exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the City or its designee determines will adversely affect the operation or implementation of the local pretreatment program.

2.14 Accidental Discharges.

(a) Plans and Procedures. Each Industrial User shall provide protection from accidental discharge of prohibited materials or other substances regulated by these Rules and Regulations. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Industrial User’s own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City or its designee for review and shall be approved by the City or its designee. No Industrial User shall be permitted to introduce pollutants into the Facility until accidental discharge procedures have been approved by the City or its designee. Review and approval of such plans and operating procedures shall not relieve the Industrial User from the responsibility to modify the Industrial User’s facility as necessary to meet the requirements of these Rules and Regulations, or from any other violation of these Rules and Regulations.

In the case of an accidental discharge, the Industrial User shall immediately notify the City or its designee of the Incident. The notification shall include location of discharge, type of waste, concentration and volume, and any and all corrective actions.

(b) Written Notice. Within five (5) days following an accidental discharge, the Industrial User shall submit to the City or its designee a detailed written report describing the cause of the discharge and the measures which have been and shall be taken by the User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the Facility, fish kills, or any other damage to person, animals or property; nor shall such notification relieve the Industrial User of any fines, civil penalties, or other liability which may be imposed by these Regulations or other applicable law.

(c) Notice to Employees. A notice shall be permanently posted on the Industrial User’s bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or suffer such a discharge to occur, or who may know or have reason to know thereof, are advised of the emergency notification procedures.
2.15 Slug Discharge.

At least once every two years, the City or its designee shall evaluate whether each Significant Industrial User needs a plan to control slug discharges. The Significant Industrial User shall comply with the provisions of any such slug control plan which the City or its designee determines to be necessary, including but not limited to:

(a) A description of discharge practices, including non-routine batch discharges;
(b) A description of stored chemicals;
(c) Procedures for immediately notifying the Facility of slug discharges, including any discharge that would violate a prohibition under 40 CFR §403.5(b), with procedures for follow-up written notification; and
(d) If necessary, procedures to prevent adverse impact from accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

2.16 Reports of Potential Problems.

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City or its designee of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

(b) Within five (5) days following such discharge, the User shall, unless waived by the City or its designee, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to these rules.

(c) A notice shall be permanently posted on the User’s bulletin board or other prominent place advising employees who to call in the event of a discharge described in Paragraph (a), above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

(d) Significant Industrial Users are required to notify the City or its designee immediately of any changes at its facility affecting the potential for a Slug Discharge.

3. CONTROL MECHANISM

3.1 Permit Requirements

(a) No Significant Industrial User shall discharge wastewater directly or indirectly into the Facility without first obtaining a Wastewater Discharge Permit from the City or its designee, except that a Significant Industrial User that has filed a timely application pursuant to Section 3.2 of these rules may continue to discharge for the time period specified therein.
(b) Any violation of the terms and conditions of the Permit shall be deemed a violation of these Rules and Regulations. Obtaining a Permit does not relieve the Industrial User of its obligation to obtain other permits required by Federal, State or local law.

(c) The City or its designee may require that any Industrial User obtain a Permit as necessary to carry out the purpose of these Rules and Regulations.

(d) New Industrial Users located beyond the City’s wastewater service area shall submit a permit application, in accordance with Section 3.2. below, to the City or its designee 60 days prior to discharging into the sewer collection system. Upon review and approval of such application, the City or its designee may issue a permit to the User which requires the User to abide by these Rules and Regulations, including all permitting, compliance monitoring, reporting, and enforcement provisions herein.

(e) Any Significant Industrial User proposing to begin or recommence discharging non-domestic wastes into the Facility must obtain a Permit prior to beginning or recommencing such discharge. An application for this Permit must be filed at least 60 days prior to the anticipated start-up date.

3.2 Permit Application

In order to be considered for a Permit, all Industrial Users required to have a Permit must submit the following information on an application form approved by the City or its designee:

1. Name, address and location (if different from the address), including the name of the operator and owner.

2. Standard Industrial Classification (SIC) code of both the industry as a whole and any processes for which National Categorical Standards have been promulgated.

3. Wastewater constituents and characteristics including any pollutants in the discharge which are limited by any Federal, State, or local standards. Sampling and analysis will be undertaken in accordance with 40 CFR Part 136.

4. Time and duration of the discharge.

5. Daily maximum, daily average, and monthly average wastewater flow rates identified separately by regulated discharge streams, including daily, monthly and seasonal variations, if any.

6. Description of activities, facilities and plant processes on the premises, including a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally be discharged.

7. The site plans, floor plans, mechanical plans, plumbing plans, and details to show all sewers, floor drains and appurtenances by size, location and elevation.

8. Each product produced by type, amount, process or processes, and rate of production where production based National Categorical Standards may apply.

9. Type and amount of raw materials processed (average and maximum per day) where production based National Categorical Pretreatment Standards may apply.

10. Number and type of employees and hours of operation, and proposed or actual hours of operation of the pretreatment system.

11. Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the Industrial User to meet all applicable Federal, State and local standards. If additional pretreatment and/or O&M will be required to meet the standards, then the Industrial User shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion
date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:

(a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction (as required) and operation of additional pretreatment required for the Industrial User to meet the applicable pretreatment standard (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation and conducting routine operation). No increment referred to shall exceed nine months, nor shall the total compliance period exceed eighteen months.

(b) No later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the City or its designee including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the User to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the City or its designee.

12. A list of any environmental control permits held by or for the Facility.

13. The location(s) for monitoring all waste streams covered by the permit.

14. Any other information as may be deemed by the City or its designee to be necessary to evaluate the Permit application.

3.3 Certification Statement for Permit Applications, User Reports and Initial Monitoring Waiver

The following certification statement is required to be signed and submitted by Users submitting the permit applications in accordance with Section 3.2; Users submitting baseline monitoring reports under 40 CFR 403.12(j); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under 40 CFR 403.12(d); Users submitting periodic compliance reports required by 40 CFR 403.12(e) and (h), and Users submitting an initial request to forego sampling of a pollutant on the basis of 40 CFR 403.12(e)(2)(iii). The following certification statement must be signed by an Authorized Representative as defined in Section 1.2:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Users that have an approved monitoring waiver based on Section 4.2(b) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the User.

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR____[specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of____[list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under the rules.

Application Signatories and Certifications

(a) All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 3.3.
(b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the City or its designee prior to or together with any reports to be signed by an Authorized Representative.

3.4 Wastewater Discharge Permit Approval.

The City or its designee will evaluate the data furnished by the Industrial User. The City or its designee may require additional information. Within forty-five (45) days of receipt of a complete permit application, the City or its designee will determine whether to issue an individual wastewater discharge permit. The City or its designee may deny any application for an individual wastewater discharge permit and may require additional information. After evaluation of the data furnished, the City or its designee may issue a Permit subject to terms and conditions provided herein.

3.5 Wastewater Discharge Permit Contents

Wastewater Discharge Permits shall include such conditions as are reasonably deemed necessary by the City or its designee to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plan effluent, protect worker health and safety, facilitate treatment plan sludge management and disposal, protect ambient air quality, and protect against damage to the Facility. Permits must contain, but need not be limited to, the following:

(a) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

(b) A statement that the wastewater discharge permit is nontransferable without prior notification to the City or its designee in accordance with Section 3.8 of these rules, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(c) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

(d) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

(e) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 4.2(b).

(f) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

(g) Requirements to control Slug Discharge, if determined by the City or its designee to be necessary.

(h) Any grant of the monitoring waiver by the City or its designee (4.2(b)) must be included as a condition in the User’s Permit.

Wastewater discharge permits may contain, but need not be limited to, the following conditions:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
(2) Requirements for installation of pretreatment technology, pollution control, or construction of appropriate containment devices, etc. designed to reduce, eliminate, or prevent the introduction of pollutants into the Facility.

(3) Requirements for the development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental unanticipated or nonroutine discharges.

(4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the Facility;

(5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the Facility.

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices.

(7) A statement that compliance with the individual wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit; and

(8) Other conditions as deemed appropriate by the City or its designee to ensure compliance with this ordinance, and State and Federal laws, rules and regulations.

3.6 Permit Issuance Process

(a) Permit Duration: Permits shall be issued for a specified time period, not to exceed three (3) years. A Permit may be issued for a period less than three (3) years at the discretion of the City or its designee.

(b) Public Notification: The City or its designee will publish [in an official government publication and/or newspaper(s) of general circulation that provides meaningful public notice within the City, or on a web page], a notice to issue a pretreatment permit, at least forty-five (45) days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.

(c) Permit Appeals: Upon receipt of the Permit, the Industrial User may petition to appeal the terms of the permit. Such petition shall be made in writing to the City Manager or permit issuer within Fourteen (14) days from receipt of the Permit.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the appeal.

(2) In its petition, the appealing party must indicate the Permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed in the Permit.

(3) The effectiveness of the Permit shall not be stayed pending reconsideration by the City issuer. If, after considering the petition and any arguments put for the by the User, the City issuer determines that reconsideration is proper, it shall remand the Permit back for reissuance. Those Permit provisions being reconsidered by the City issuer shall be stayed pending reissuance.

(4) City's Issuer's decision not to reconsider a final Permit shall be considered final administrative action for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final City issuer action must do so by filing a complaint with the City Manager or the issuer and then to the Superior Court for Cumberland County within thirty (30) days of the City's issuer's decision if necessary.
3.7 Permit Modification

The City or its designee may modify the Permit for good cause including, but not limited to, the following:

(a) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.

(b) Material or substantial alterations or additions to the Industrial User’s operation processes, or discharge volume or character which were not considered in drafting the original Permit.

(c) A change in any condition in either the Industrial User or the Facility that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(d) Information indicating that the permitted discharge poses a threat to the Facility, treatment plan personnel or the receiving waters.

(e) Violation of any terms or conditions of the Permit.

(f) Misrepresentation or failure to disclose fully all relevant facts in the Permit application or in any required reporting.

(g) Revision of or a grant of variance from National Categorical Standards pursuant to 40 CFR §403.13.

(h) To correct typographical or other errors in the Permit.

(i) To reflect transfer of the facility ownership and/or operation to a new User or;

(j) Upon a written request of the Industrial User, provided such request does not create a violation of any applicable requirements, standards, laws or rules and regulations.

The filing of a request by the Industrial User for a Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Permit condition.

3.8 Permit Transfer

Permits may be reassigned or transferred to a new owner and/or operator whether by merger, sale of assets or otherwise, with prior written approval of the City or its designee with the following stipulations:

(a) The Industrial User must give at least forty-five (45) days advance notice of the proposed transfer to the City or its designee.

(b) The notice must include a written certification by the new owner which:

(1) States that the new owner has no immediate intent to change the facility’s operations and processes.

(2) Identifies the specific date on which the transfer is to occur.

(3) Acknowledges full responsibility for complying with the existing permit.

(4) Describes the new User, and gives the same information about the User as prescribed in Section 3.2.

3.9 Permit Termination

Permits may be terminated in accordance with the City Code of Ordinance for any of the following reasons:
(a) Failure to notify the City or its designee of significant changes to the wastewater prior to the changed discharge.

(b) Falsifying self-monitoring reports.

(c) Tampering with monitoring equipment.

(d) Refusing to allow timely access to the facility premises and records.

(e) Failure to meet effluent limitations.

(f) Failure to pay fines.

(g) Failure to pay sewer charges.

(h) Failure to meet compliance schedules.

(i) Any Pass-Through or Interference.

(j) Any other activity which may threaten the Facility, the City or District's employees or the public.

Individual wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All individual wastewater discharge permits issued to a User are void upon the issuance of a new individual wastewater discharge permit to that User.

3.10 Permit Reissuance

The User shall apply for Permit reissuance by submitting a complete Permit application a minimum of sixty (60) days prior to the expiration of the User's existing Permit.

3.11 Continuation of Expired Permits

An expired Permit will continue to be effective and enforceable until the Permit is reissued if:

(a) The Industrial User has submitted a complete Permit application at least sixty (60) days prior to the expiration date of the Industrial User's existing Permit.

(b) The failure to reissue the Permit prior to expiration of the previous Permit is not due to any act or failure to act on the part of the Industrial User.

3.12 Special Agreements

Nothing in these Rules and Regulations shall be construed as preventing any special agreement or arrangement between the City or its designee and any Industrial User whereby wastewater of unusual strength or character is accepted into the Facility and specially treated and subject to any payments or user charges as may be applicable or specially arranged. However, no discharge which violates these Rules and Regulations will be allowed under the terms of such special agreements. If, in the opinion of the City or its designee, the wastewater may have the potential to cause or result in any of the following circumstances, no such special agreement will be authorized:

(a) Pass-Through or Interference.

(b) Threaten the Facility, the City or District employees, or the public.
4. REPORTING REQUIREMENTS, MONITORING AND INSPECTIONS

4.1 Reporting Requirements

(a) Baseline Report: Within 180 days following the effective date of a National Categorical Pretreatment Standard, an existing Industrial User subject to said Standard and currently discharging to or scheduled to discharge to the Facility shall submit to the City or its designee a report as prescribed under 40 CFR §403.12(b), which shall include the information required under Section 3.2.1., 2., 3., 5., 6., 11 and 12 of these Regulations. This report shall be signed by an Authorized Representative of the User and contain the certification statement in Section 3.3. of these Rules and Regulations. The report shall also contain a statement indicating whether Pretreatment Standards are being met on a consistent basis and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements.

At least ninety (90) days prior to commencement of discharge, New Sources and sources that become Industrial Users subsequent to the promulgation of an applicable National Categorical Standard, shall be required to submit to the City or its designee a report which contains the information required in these Rules and Regulations. Reports by New Sources shall include information on the method of pretreatment the new Source intends to use to meet applicable Pretreatment Standards. The report shall be signed by an Authorized Representative of the User and shall contain the certification statement in Section 3.3 of these Rules and Regulations. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Compliance Certification: A statement, reviewed by the User’s Authorized Representative as defined in Section 1.2 and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

(c) Compliance Schedule Progress Reports: If the report described above states that additional pretreatment and/or Operation and Maintenance (O&M) will be required to meet the Pretreatment Standards and Requirements, the Industrial User shall submit to the City or its designee a compliance schedule as described in these rules. Not later than fourteen (14) calendar days following each date in the compliance schedule and the final date for compliance, the Industrial User shall submit a progress report to the City or its designee as prescribed under 40 CFR §403.12(c) in writing stating, at a minimum, whether or not the Industrial User complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the City or its designee. The reports shall be signed by an Authorized Representative of the User and shall contain the certification statement in Section 3.3 of these Rules and Regulations.

(d) Compliance Deadline Report: Within ninety (90) days following the date for final compliance with an applicable Pretreatment Standard or Requirement or, in the case of a New Source, following commencement of the introduction of wastewater into the Facility, any User subject to Pretreatment Standards or Requirements shall submit to the City or its designee a report in writing as prescribed under 40 CFR §403.12(d) indicating the nature and concentration of all pollutants in the discharge which are limited by Pretreatment Standards or Requirements, and the average and maximum daily flow of the wastewater containing such pollutants. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the User into compliance with the applicable Pretreatment Standards or Requirements. The report shall also contain the certification statement in Section 3.3 of these Rules and Regulations.

(e) Periodic Continued Compliance Reports: Any User subject to a Pretreatment Standard or Requirement, after the compliance date for such Pretreatment Standard or Requirement, or, in the case of a New Source, after
commencement of the discharge into the Facility, shall submit to the City or its designee during the months of June and December, unless required more frequently in the applicable Pretreatment Standard or Requirement or by the City or its designee, a report in writing as prescribed under 40 CFR §403.12(c) containing the results of sampling and analysis of the discharge, indicating the average and maximum daily flows and nature and concentration of pollutants in the effluent which are limited by such Pretreatment Standard or Pretreatment Requirement. At the discretion of the City or its designee and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the City or its designee may agree to alter the months during which the above reports are to be submitted. The reports required under this Section 4.1 shall be signed by an Authorized Representative of the Industrial User, and shall contain the certification described in Section 3.3 of these Rules and Regulations.

(f) All Significant Industrial Users (Categorical and non-Categorical) must, at a frequency determined by the City or its designee submit no less than twice per year (June and December, or on dates specified) reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or its designee or the Pretreatment Standard necessary to determine the compliance status of the User.

(g) All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

(h) Non-Significant Industries (N-S-I): Reporting of self-monitoring results shall be at a frequency determined by the City or its designee and designated in the N-S-I's Industrial Discharge Permit.

(i) Elimination or change of Discharge: The Industrial User shall notify the City or its designee in writing 45 days prior to the permanent elimination of a discharge or any modification in the waste collection, treatment and disposal facilities, changes in operation al procedures, or other significant activities which alter the volume, nature or frequency of the discharge as specified in the Users Permit application.

(j) Notifications of Potential Problems: All Industrial Users shall notify the City or its designee immediately of all discharges that could cause problems to the Facility, including any slug loadings by an Industrial User.

(k) Notification of Hazardous Waste Discharge:

(1) An Industrial User shall notify the City or its designee, the EPA Regional Waste Management Division Director and the Director of DEP's Division of Solid and Hazardous Waste, in writing, of any discharge into the Facility of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification shall include the name of the hazardous waste as set forth in 40 CFR Part 261, or 38 MRSA, Section 1301 et seq., the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the Facility, the notification shall also contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during the calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve months.

All existing Industrial Users must file such notifications by February 19, 1991. All Industrial Users who commence discharging after August 23, 1990 shall file the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic waste. Any notification under this Section need be submitted only once for each hazardous waste discharged. However, all Industrial Users must notify the City or its designee in advance, in accordance with these Rules and Regulations, of any change
in their wastewater discharge. The notification requirement set forth herein does not apply to any pollutants already reported under the self-monitoring requirements set forth in these rules. Any such notification shall in no way remove the liability of the User for any damages caused by introduction of such hazardous waste.

(2) Industrial Users are exempt from the requirements above during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR §261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous waste as specified in 40 CFR §261.30(d) and 261.33(e) requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the Industrial User must notify the City or its designee, the EPA Regional Waste Management Division Director, and the Director of DEP’s Division of Solid and Hazardous Waste of the discharge of such substance within ninety (90) days of the effective date of such regulation.

(4) In the case of any notification made under this Section an Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

This provision does not create a right to discharge any substance not otherwise permitted to be discharged by these rules, a permit issued thereunder, or any applicable Federal or State law.

4.2 Monitoring and Analysis

(a) The reports required in Section 4.1 and such other reports as the City or its designee may require under these Rules and Regulations, shall contain the results of all sampling and analysis of the Industrial User’s discharge, whether or not conducted more frequently than required by the City or its designee, including the flow and the nature and concentration of pollutants contained therein which are limited by applicable Pretreatment Standards and Requirements. The sampling and analysis may be performed by the City or its designee in lieu of the Industrial User, in which event the Industrial User will not be required to submit the compliance certification set forth in Section 3.3 above. In addition, where the City or its designee collects all of the information required for the report, including analytical results and flow data, the Industrial User is not required to submit the report or compliance certification required therein.

If the Industrial User’s sampling indicates a violation, the User must notify the City or its designee within 24 hours of becoming aware of such violation. The User must also repeat the sampling and analysis and submit the results of the repeat analysis to the City or its designee within thirty (30) days after becoming aware of the violation. The Industrial User may not be required to resample, however, if the City or its designee performs sampling and analysis at the Industrial User for the parameter in violation between the time when the Industrial User performs its initial sampling and the time when said User receives the results of sampling, or if the City or its designee has performed the sampling & analysis in lieu of the Industrial User.

The frequency of monitoring shall be prescribed in the Wastewater Discharge Permit and, for Industrial Users subject to National Categorical Pretreatment Standards, shall not be less frequent than prescribed in Section 4.1. All analyses shall be performed in accordance with procedures established by the EPA pursuant to section 304(h) of the Act and contained in 40 CFR Part 136 and amendments thereto, or with any other test procedures approved by the EPA. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the City or other parties, approved by the EPA.

(b) The City or its designee may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by categorical a Pretreatment Standard if the Industrial User has
demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User [sec 40 CFR 403.12(e)(2)]. This authorization is subject to the following conditions:

1. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

2. The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.

3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility’s process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

4. The request for a monitoring waiver must be signed in accordance with Section 3.3., and include the certification statement in 3.3 (40 CFR 403.6(a)(2)(ii)).

5. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

6. Any grant of the monitoring waiver by the City or its designee must be included as a condition in the User’s permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the City or its designee for 3 years after expiration of the waiver.

7. Upon approval of the monitoring waiver and revision of the User’s permit by the City or its designee, the Industrial User must certify on each report with the statement in Section 3.3, that there has been no increase in the pollutant in its waste stream due to the activities of the Industrial User.

8. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User’s operations, the User must immediately: Comply with the monitoring requirements of Section 4.2, or other more frequent monitoring requirements imposed by the City or its designee and notify the City or its designee.

9. This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

4.2.1 Reports of Changed Conditions

Each User must notify the City or its designee of any significant changes to the User’s operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change.

(a) The City or its designee may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 3.5 of these Rules.

(b) The City or its designee may issue an individual wastewater discharge permit under Section 3.10 of these Rules or modify an existing wastewater discharge permit under Section 3.7 of these Rules in response to changed conditions or anticipated changed conditions.

4.2.2 Reports of Potential Problems
In the case of any discharge, including but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City or its designee of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

Within five (5) days following such discharge, the User shall, unless waived by the City or its designee, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to these Rules.

A notice shall be permanently posted on the User’s bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a) above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

Significant Industrial Users are required to notify the City or its designee immediately of any changes at its facility affecting the potential for a Slug Discharge.

4.3 Record Keeping Requirements

(a) An Industrial User subject to the reporting requirements set forth in Section 4.1 shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these Rules, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices. Such records shall include, for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

2. The dates analyses were performed;

3. Who performed the analyses;

4. The analytical techniques/methods used;

5. The results of such analyses; and

6. The results of any quality control procedures which may be required by the City or its designee.

(b) The Industrial User shall keep copies of all such records and reports of monitoring activities and results for a minimum of three (3) years, and shall make such records available for inspection and copying by EPA, DEP, District, and the City with or without notice. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the Facility pretreatment program, or when requested by the City, District, DEP or EPA.

4.4 Monitoring Facilities.

(a) The City or its designee may require each Industrial User to provide and operate, at the Industrial User’s own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the Industrial User’s premises, but the City or its designee may, when such a location would be impractical or
cause undue hardship on the User, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

(b) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition by and at the expense of the Industrial User.

(c) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City’s Requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification to the Industrial User by the City or its designee.

4.5 Inspection and Sampling

The City or its designee shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of these Rules and any individual wastewater discharge permit or order issued hereunder. Users shall allow the City or its designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(a) Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City or its designee shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(b) The City or its designee shall have the right to set up on the User’s property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User’s operations.

(c) The City or its designee may require the User to install monitoring equipment as necessary. The facility’s sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at a frequency determined by the City or its designee to ensure accuracy.

(d) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the City or its designee and shall not be replaced. The costs of clearing such access shall be borne by the User.

(e) Unreasonable delays in allowing the Superintendent access to the User’s premises shall be a violation of these Rules.

Search Warrants

If the City or its designee has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of these Rules, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City or its designee designed to verify compliance with these Rules or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the City or its designee may seek issuance of a search warrant from the Maine State Court.

4.6 Confidentiality of Information

(a) In accordance with 40 CFR §403.14 and MRSA §401 et seq., any information and data concerning an Industrial User which is contained in or obtained from reports, questionnaires, Permit applications, Permits, monitoring programs, and inspections shall be available to the public and governmental agencies without restriction, unless the User specifically claims, and is able to demonstrate to the satisfaction of the City or its designee, that the release of such information would divulge information, processes or methods of
production entitled to protection as trade secrets of the User in accordance with applicable law. Any such claim of confidentiality must be asserted at the time of submission in the manner prescribed on the application form or instructions and the words “CONFIDENTIAL BUSINESS INFORMATION” must be stamped or written on each page containing such information. If no claim is made, the City or its designee may make the information available to the public without further notice.

(b) Notwithstanding any claim of confidentiality, any information and data provided to the City or its designee which is effluent data, as defined at 40 CFR §2.302 (including, but not limited to, wastewater constituents and characteristics), shall be available to the public without restriction. All other information and data shall be available to the public at least to the extent provided by 40 CFR §2.302.

(c) Information accepted by the City or its designee as confidential shall not be made available for inspection by the public, except as provided by 40 CFR §2.302 and MRSA §401 et seq., but shall be made available upon written request to governmental agencies for uses related to these Rules and Regulations, the National Pollutant Discharge Elimination System (NPDES) Permit, DEP permit, and the industrial pretreatment program, provided, however, that such portions of a report shall be available for use by the State or any state agency, the City, the District, or by the United States or EPA in criminal or civil judicial or administrative enforcement proceedings involving the user.

5. ENFORCEMENT

5.1 Notice of Violation

(a) When the City or its designee finds that a User has violated, or continues to violate, any provision of these Rules and Regulations, an Industrial Discharge Permit condition or order issued hereunder, the City or its designee may serve upon that User a written Notice of Violation. Within 10 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the City or its designee.

(b) When the City or its designee finds that a User has violated the discharge limitations as set forth in the User’s permit, the City or its designee will serve upon that User a written Notice of Violation. Within 5 days of the receipt of this notice, the User shall submit to the City or its designee a written report with corrective and preventive action taken to prevent recurrence.

(c) Nothing in this section shall limit the authority of the City or its designee to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. Submission of this plan or report in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation.

(d) If the User fails to respond to the Notice of Violation within the specified times noted above, or fails to provide the required information specified in the Notice of Violation, the City or its designee will take whatever measures necessary to correct or alleviate the violation. The District staff will be made available to assist in developing or implementing corrective measures, if requested by the City or its designee.

(e) If the City fails to act within a reasonable period of time such deleterious acts, or otherwise fails to act responsibly in protecting the Facility, the District may directly impose requirements to correct deleterious acts or violations of these Rules and Regulations on persons, firms, or corporations causing or contributing to such violations. In such cases any action required by the District such as, but not limited to, pretreatment of prohibited wastes or flow equalization facilities, will be done entirely at the cost of the Industrial User and subject to review and approval of the City.

5.2 Penalties
Any person failing to comply with or violating any provision of these Rules shall be served by the Department with written notice stating the nature of the failure or violation and providing a reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated in such notice, permanently cease or correct all such failures or violations. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this section shall be guilty of an offense. Any person violating any of the provisions of these Rules shall be liable to the City or its designee and shall be assessed a civil penalty of a minimum of one thousand dollars ($1000.00) per day for each violation of industrial pretreatment standards and requirements, and in addition, shall be liable for any expense, loss, or damage occasioned by the City or its designee by reason of such violation. The City or its designee may seek injunctive relief for the purposes of enforcing these Rules.

5.3 Appeals Process

Whenever the person receiving written notice shall deem himself aggrieved by an order made by the City, that person may file an appeal to the City Manager within ten (10) days of the date of the written notice, and the person shall be afforded a hearing on the matter before the City Manager or their designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by this person.

Whenever the person receiving written notice of violation issued by the Portland Water District under this Article, the notice shall be subject to review by issuer's manager and then the superior court under Rule 80B of the Maine Rules of Procedure within thirty (30) days of the decision if necessary.

5.4 Enforcement Response Plan

The City or its designee shall maintain and enforce an Enforcement Response Plan (ERP) to specify detailed procedures which the representatives of the City or its designee will follow to adequately investigate and respond to instances of Industrial User non-compliance with the City of Portland/Portland Water District Industrial Pretreatment Program. A copy of this ERP shall be available from the Department.

6. SUB-METER PROGRAM

6.1 Purpose and Scope

It is the purpose of these Rules & Regulations to set forth uniform requirements for users of the City of Portland Sewer System in regard to volumetric measurement of sewer discharge. The Portland City Council on January 7, 2013 authorized an Amendment to Sewer User Charge Collection Agreement between the City of Portland and the Portland Water District under Council Order 138-12/13. In March 2013, modifications to Chapter 24 - Sewers of the City of Portland’s Code of Ordinances were made to reflect the requirements of the Agreement which documents procedures and processes for billing Portland sewer users including the development of a revised sub-meter program that is managed by the Department of Public Works, specifically Section 24.75 Volume Measurements.

The program is optional and the customer will be required to bear all costs associated with the installation and maintenance of the sub-meter. Under the City’s program the following two types of sub-meters can be installed:

1. Deductive/Subtractive Sub-meter in which your wastewater bill is reduced by usage that flows through this sub-meter and does not discharge to the sewer. This sub-meter is used to measure the water not entering the sanitary sewer system and is normally associated with irrigation of lawns and gardens, cooling towers on buildings and pool filling. By installing this sub-meter, you will be able to water your lawn and fill your pool without paying a sewer charge for the water used. This is the typical sub-meter for most residential applications.
2. Sewer/Reverse Mode Sub-Meter in which your wastewater bill is calculated on usage that flows through this sub-meter and discharges into the sewer. This sub-meter is used to measure water that is being discharged to the sanitary sewer system and is normally associated with post process wastewater, cooling tower blow down or industrial wastewater discharge. By installing this sub-meter, your wastewater bill will be calculated by the volume that discharges through this sub-meter. This is a sub-meter that may be used in some commercial/industrial applications. Sewer/Reverse mode sub-meters will be required to receive an annual calibration by a certified technician/plumber with documentation of such submitted to the City.

It is intended that these Rules & Regulations provide guidance and requirements for compliance with the City of Portland's Sub-meter Program. It is also intended that these Rules & Regulations conform with and supplement the City of Portland Sewer Use Ordinance, the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.) as amended, State of Maine Statutes, and Section 16 of the Portland Water District Charter.

6.2 Definitions

For the purposes of these Rules, all words shall have their normal meanings and such meanings as may be in common use in the field when installing or reading certain types of meters. Certain words are more particularly defined as follows:

Blow-down – Water discharged from a cooling tower system to control concentration of salts or other impurities in the circulating water.

Cooling Tower – a heat rejection device; common applications for cooling towers are providing cooled water for air-conditioning, manufacturing and electric power generation

Customer - means an owner or operator of a property receiving wastewater charges from the Portland Water District Utilities on a Combined Utility Billing Statement, “Water Charges and Wastewater Charges” by direct invoice.

Deductive/Subtractive Sub-Meter - Wastewater bill is reduced by usage that flows through this sub-meter and does not discharge to the sewer. This sub-meter is used to measure the water not entering the sanitary sewer system and is normally associated with irrigation of lawns and gardens, cooling towers on buildings and pool filling. By installing this sub-meter, you will be able to water your lawn and fill your pool without paying a sewer charge for the water used. This is the typical sub-meter for most residential applications.

DPW - Department of Public Works located at 55 Portland Street Portland Maine 04101

Evaporation Loss - water evaporated from the circulating water into the atmosphere by the cooling process

HCF = Hundred Cubic Feet = 748 gallons = 1 HCF.

Irrigation - means water used exclusively for watering lawns and gardens.

Make-up Water - Water added to the circulating water system to replace water lost from the system by evaporation, drift, blow-down, and leakage

Metered Water Consumption - means water measured through public utility meters or meters owned and installed by the customer and approved by the Director of Portland Public Works.

Multiple Use Facility - means commercial or industrial parks, office complexes, marinas, and others specifically identified in commission rules with five or more units.

Owner - means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.
PRIMARY WATER METER – Single meter measuring the volume of water in HCF for Residential, Commercial, Governmental and Industrial customers within the City of Portland limits. This water is supplied and billed by PWD.

PWD – Portland Water District located at 225 Douglass Street Portland Maine 04102

Sewer Rate Impact - means the dollar charge per HCF of wastewater measured in accordance with Chapter 24: Sewer Ordinance.

Sewer Main - means an artificial conduit to carry off sewage and sometimes surface water (as from rainfall).

Sewer / Reverse Mode Meter - Wastewater bill is calculated on usage that flows through this sub-meter and discharges into the sewer. This sub-meter is used to measure water that is being discharged to the sanitary sewer system and is normally associated with post process wastewater, cooling tower blow down or industrial wastewater discharge. By installing this sub-meter, your wastewater bill will be calculated by the volume that discharges through this sub-meter. This is a sub-meter that may be used in some commercial/ industrial applications. Sewer/Reverse mode sub-meters will be required to receive an annual calibration by a certified technician/plumber with documentation of such submitted to the City.

Single-Family Residence - means an individual dwelling unit with no commercial use and one (1) water meter.

Sub-meter - means a meter installed down the line from a Primary water meter, measuring a portion of the total amount of water delivered through the Primary water meter.

Treatment Plant- means the removal and disposal of sewage and surface water by sewers, or a system of sewers.

Wastewater - means refuse liquids or waste matter carried off by sewers; a synonym for sewage.

Wastewater Volume Charge (WWVC) - means the dollar charge equal to the wastewater volume rate multiplied by the measured volume of water from all sources consumed on the premises plus any applicable franchise fees, in accordance with Chapter 24: Sewer Ordinance.

6.3 Use of Sub-meters

(a) The sub-meter program allows City of Portland sewer system customers to use data from private water sub-meters in the calculation of their wastewater volume charge (WWVC).

(b) A DPW staff member will assist in determining whether the applicant needs a Deductive/Subtractive Sub-meter or Sewer/Reverse Mode Sub-Meter application.

(c) Each sub-meter must be installed and configured to separate the water distribution lines on the customer’s property which drain to the sanitary sewer (“tributary lines”) from those which do not drain to a sanitary sewer (“non-tributary lines”).

(d) The applicant will be responsible for all costs associated with the installation and maintenance of the private sub-meter. The private sub-meter belongs to you.

(e) The cost of the installation for the sub-meter by a third party plumbing contractor is the responsibility of the applicant.

(f) Since the sub-meter will be private, the applicant will be required to maintain it in good operating condition per manufacturer’s specifications.

(g) Sub-meters measuring wastewater volumes returning to the sewer system will be required to under an annual calibration by a certified technician/plumber with documentation of such submitted to DPW.
Direct discharge of wastewater or industrial waste to salt or fresh water or to points other than the City sewer system shall not be cause for adjustment or reduction of the wastewater volume charge or rate unless measure through a sub-meter.

### 6.3.1 Deductive/Subtractive Sub-meter

(a) In the residential situation, tributary lines serve interior (domestic) uses, and non-tributary lines serve exterior (primarily irrigation/pool) uses.

(b) The customer or their hired contractor shall install the private sub-meter on the non-tributary line.

(c) Additional hose bibs (faucets and spigots) may remain attached to the tributary line, but no credit against the WWVC will be given.

(d) In the commercial situation, tributary lines may serve interior (domestic) uses as well as process water in the manufacture of goods or commodities, fire suppression service availability, delivery of water to ships, ice generation and water cooling towers (to name a few). The sub-meter will be installed to measure flows which are not being returned/discharged to the sewer system.

### 6.3.2 Sewer/Reverse Mode Sub-Meter

(a) In the commercial/industrial situation, tributary lines may serve interior uses which reduce the volume of water discharging into the sewer. Several examples include food or beverage production, cooling tower blow down, post production/process wastewater or industrial wastewater discharge. By installing this sub-meter, your wastewater bill will be calculated by the volume that discharges through this sub-meter.

(b) The use of such a meter will be investigated and coordinated with DPW during the application process.

(c) Sewer/Reverse mode sub-meters will be required to receive an annual calibration by a certified technician/plumber with documentation of such calibration submitted to the City.

### 6.4 Application and Installation of Sub-meter

The following steps are required for the purchase and activation of any sub-meter:

1. Applicant will consult with DPW staff to review purpose, size and location of sub-meter. (Appointments can be made by calling 874-8846.)
2. Applicant must prepare and submit an application (available at the Street Opening Desk of Public Works, 55 Portland Street).
3. Applicant must sign application certification statement.
4. Before a sub-meter can be installed DPW must review, approve and authorize any sub-meter application.
5. Applicant will be responsible for any and all costs associated with the sub-meter and shall pay for said sub-meter at the Street Opening desk at DPW.
6. DPW staff authorizes PWD to ship the sub-meter (or order for pickup if greater than 3”).
7. Applicant shall install sub-meter and notify DPW when ready for inspection.
8. DPW shall contact authorized plumbing contractor for inspection of the sub-meter.
9. Public Works will notify PWD to activate the sub-meter account once inspection is completed and approved by DPW staff.

### 6.5 Reading of Sub-meter by PWD
(a) PWD mobile meter reading vehicle must be able to read the sub-meter from the main road without entering the customer’s driveway. Factors such as: terrain surrounding your property; the distance from the property to the main road (under 300 feet is optimal); and the distance the sub-meter is to an outside wall could interfere with transmission of the reading. Disclaimer: PWD does not guarantee the sub-meter will be able to be read from the main road.

(b) If PWD’s mobile meter reading vehicle is unable to read the sub-meter from the main road on the first read date following installation, PWD will send a letter to the customer stating the sub-meter could not be read. No sub-meter credit will be given until PWD’s mobile meter reading vehicle can read the meter. Customers can contact the District to attempt to have the mobile meter reading vehicle pick up a sub-meter reading from their driveway. A successful driveway read indicates the equipment is working properly, but the meter and/or electronic reading device needs to be re-positioned to pick up a signal from the main road. There is a PWD Troubleshooting Fee of $19 per visit for this service that will be billed to your PWD account.

7. FATS, OILS, AND GREASE PROGRAM

7.1 Authority

(a) As allowed in Chapter 24; Section 47, part 8, of the City’s Code of Ordinances, and Chapter 2; Section 10, part C of the City’s Rules and Regulations for Use of the Sewer System, the following rules are addressing the City’s Fats, Oils, and Grease Program. City staff have right of entry for inspection and sampling as allowed by Chapter 24; Section 52.

(b) As allowed in Chapter 10 of Uniform Plumbing Code version 2009 in Section 1014.0.

7.2 Purpose

(a) The intent of this policy is to establish transparent design standards and procedures in order to regulate Food Service Establishments relative to wastewater discharges containing animal based fats, oils, and greases. The City of Portland’s goal with this program is to prevent excessive introduction of oil and grease into the sewer system and wastewater treatment plants. Oil and Grease have the potential for creating sanitary sewer overflows, hazardous conditions in the collection system, treatment plant inhibitions, increased treatment cost, fines and other cost for the City.

7.3 Definitions

25% Rule - The “25 Percent Rule” is a benchmark for interceptor servicing when the interceptor is 25% filled with fats, oils, greases and solids.

Additives - Include but are not limited to products that contain solvents, emulsifiers, surfactants, caustics, acids, and enzymes.
Automatic Grease Recovery Unit (AGRU) - An electro-mechanical grease control device that separates and removes FOG and solid particles from the wastewater stream prior to discharging to the sewerage system. The AGRU is typically installed immediately downstream from a plumbing fixture’s point of discharge. Dishwashers cannot be plumbed into these devices.

Best Management Practices (BMP’s) - Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the introduction of FOG to the sewerage system.

Flow Control - device, either internal or external to grease control equipment, which controls the influent flow rate and must be present on the inlet side for equipment to work properly. Also referred to as a reducer.

F.O.G. - shall mean fats, wax, grease and oils (other than petroleum based materials).

Food Service Establishment (Food Service Establishment) - Any establishment, business, facility or user engaged in preparing, serving or making food available for consumption. Single family residences are not a Food Service Establishment.

Grease (Brown) - Fats, oils and grease that is discharged to the grease control equipment, or is from kitchen or food prep wastewater.

Grease (Yellow) - Fats, oils and grease that has not been in contact or contaminated from other sources (water, wastewater, solid waste, etc.) and can be recycled.

Grease Control Equipment (GCE) - Devices for separating and retaining Food Service Establishment’s wastewater FOG prior to entering the City of Portland sewer system. The grease control equipment is constructed to separate and trap or hold fats, oils and grease substances from entering the sewer system. Grease control equipment should only receive kitchen wastewater. Devices include grease interceptors or other devices approved by the City of Portland.

Grease Interceptor (GI) – the grease control equipment identified as a large multi-compartment tank, usually 1,000 gallon to 2,000 gallon capacity with proper venting, inlet and outlet T’s, and other necessary components, that provides FOG control for a Food Service Establishments. Only sinks, floor drains, and other waste lines from kitchen drainage shall be plumbed to the grease interceptor. No sanitary wastewater line should be connected to the grease interceptor. Grease interceptors will be located exterior to the Food Service Establishment. Any GI must be certified by the Plumbing and Drainage Institute and be approved by the City of Portland.

Interference – a discharge that, alone, or in conjunction with a discharge, or discharges, from other sources, both inhibits, or disrupts, the publicly owned treatment works, it’s treatment processes or operations, or sludge process, use, or disposal, and is a cause of a violation of any requirement of the City of Portland’s National Pollutant Discharge Elimination System.

Uniform Plumbing Code – A model code developed by the International Association of Plumbing and Mechanical Officials to govern the installation and inspection of plumbing systems as a means of promoting the public’s health, safety and welfare. The City of Portland enforces the Uniform Plumbing Code.

7.4 General Requirements

(a) All Food Service Establishments must have grease-handling equipment that work and are maintained. Establishments whose grease-handling facilities or methods are not adequately maintained to prevent floatable oils, fat or grease from entering the sewerage system shall be notified in writing of any noncompliance. (For example, a collapsed or deteriorated baffle wall, leaks, infiltration and inflow, improperly located components, and any other deficiencies that will prevent the grease interceptor from working properly.)

(b) Regularly scheduled maintenance of grease-handling facilities and equipment is required to ensure adequate operation. All grease interceptors must be cleaned, maintained and repaired as needed. All grease interceptors
must be pumped out completely. Outside interceptors should be pumped quarterly and small under the sink grease interceptors should be pumped monthly or more frequently based on size and grease production.

(c) All Food Service Establishments grease-handling facilities shall be subject to review, evaluation, and inspection by City of Portland staff during normal working hours. Results of inspections will be made available to facility owner, leaseholder or operator. City of Portland staff may lend assistance and make recommendations for correction and improvement.

(d) Food Service Establishments whose operations cause or allow excessive grease to discharge or accumulate in the City of Portland collection system may be liable for costs related to line blockages, line cleanings, and line and pump repairs, etc. including all labor, materials, and equipment.

(e) The introduction of emulsifying agents such as chemicals, solvents or enzymes directly or indirectly into the grease interceptor, other than what is considered typical business operational practices such as dishwashing or sanitation, is strictly prohibited. By approval from the Director of Public Works, products which reduce Fats, Oil and Grease (FOG), such as bacteria, may be used in addition to the regular grease interceptor maintenance program, but will not be a consideration in determining grease interceptor sizing or maintenance frequency.

(f) The user must maintain a file on site of the records and other documents pertaining to the facility's grease interceptor. The file contents shall include, but is not limited to, record of inspections, log of pumping activities and receipts, log of maintenance activities, hauler information, and disposal information. The file must be available at all times for inspection and review. Records must be maintained for a period of three (3) years.

7.5 Compliance

7.5.1 New or Remodeled Food Service Establishments

(a) Food Service Establishments may be allowed to continue current operations without significant modifications until such time as:

1. Significant remodeling is performed at the Food Service Establishment facility, and/or
2. Change in ownership, and/or
3. The facility's existing grease control equipment is deemed to be of substandard size and/or design, and/or
4. The Food Service Establishment is shown to be the cause of a FOG blockage in the City of Portland's sewer collection system and/or
5. Food Service Establishment has a change of operation that will increase the quantity and/or frequency of FOG discharge and/or
6. Any other reason deemed by City of Portland as appropriate for significant modifications including improperly installed equipment, equipment with missing flow controls, or non-functioning equipment

(b) New construction of Food Service Establishments shall conform to the Uniform Plumbing Code enforced by the City of Portland and have separate sanitary (restroom) and kitchen process lines. The kitchen process lines shall be plumbed to grease control equipment. Kitchen process lines and sanitary lines may combine prior to entering the public sewer, however the lines cannot be combined until after the grease control equipment. Sanitary wastewater, or black water, cannot be connected to grease control equipment.

Minimum acceptable size of grease control equipment for each Food Service Establishment classification will be as follows:
**Class 1** - Ice Cream shops, Coffee Shops, Beverage Bars (non-alcoholic and alcoholic), Bagel Shops—engaged in the sale of cold-cut and microwaved sandwiches with no frying or grilling on site—25 gallons per minute Automated Grease Removal Unit or approved alternative.

**Class 2** - Limited-Service Restaurants, Caterers, Supermarkets and other Grocery (except Convenience) Stores that engage in the on-site preparation of food, and both Convenience Stores and Gasoline Stations with Convenience Stores that engage in the on-site preparation of food—25 gallons per minute Automated Grease Removal Unit or approved alternative.

**Class 3** - Full service restaurant—1,000 gallon GI, Automatic Grease Removal Unit or approved alternative

**Class 4** - Buffet and Cafeteria Facilities—1,500 gallon GI, Automatic Grease Removal Unit or approved alternative

**Class 5** - Institutions (i.e. Schools, Hospitals, Prisons, etc.)—2,000 gallon GI-GI, Automatic Grease Removal Unit or approved alternative

Monthly or Quarterly service agreement for maintenance and full pump out is required based on capacity of grease control equipment and expected grease output. Records must be kept on site for a minimum of three years and will be inspected periodically by the Department of Public Health or Department of Public Works.

### 7.5.2 Variance

(a) **Automatic Grease Control Unit**

At the discretion of the City of Portland, in some instances where an AGRU is required, a Food Service Establishment may request a variance in lieu of the required installation where limited grease production is expected and a grease control plan which includes alternative equipment, best management practices, maintenance agreements, or other grease control measures.

(b) **1,000 Gallon Grease Interceptor**

At the discretion of the City of Portland, in some instances where a minimum 1,000 gallon capacity or equivalent grease interceptor is required, a Food Service Establishment may request a variance in lieu of the required installation of a 1,000 gallon capacity or equivalent grease interceptor where unusual circumstances, such as space constraints or in the interest of historical preservation, would render an otherwise typical grease interceptor installation impractical or unreasonable. A variance may be granted provided that there is a grease control plan which includes alternative equipment, best management practices, maintenance agreements, or other grease control measures.

Any variance request must be approved by the City of Portland. Final specifications for the capacity and type of all new grease control equipment for any given Food Service Establishment kitchen equipment/plumbing fixture configuration must be approved by City of Portland prior to installation.

### 7.6 Grease Control Equipment Specifications

(a) Grease Control Equipment must remove fats, oils, and grease to a level at or below that which is required by City of Portland Ordinance Section 24-47 Prohibited Wastes.

(b) Grease Control Equipment must meet requirements found in Uniform Plumbing Code Chapter 10, section 1014.1, 1014.1.1, and 1014.1.2.
(c) New or replacement grease interceptor installations shall be of the Automatic Grease Recovery Unit (AGRU) type unless a variance is approved.

(d) Grease Interceptors must be located so as to be readily accessible for cleaning, maintenance and inspections. They should be located exterior to the FOG point of discharge and/or in a location approved by the City of Portland. In the event that the GI will be located in the right-of-way, a license agreement must be obtained prior to the installation from the City of Portland Corporation Council.

(c) Grease interceptors must be protected against siphonage, back-pressure, and air circulation throughout all parts of the drainage system by means of a vent pipe installed in accordance to Chapter 10, Section 1014.0 of the Uniform Plumbing Code enforced by the City of Portland.

(f) 1,000 gallon grease interceptor specifications can be found in the City of Portland Technical Manual in Chapter 2, Section II-19.

7.7 Restrictions and Prohibitions

(a) Sink water temperatures will not exceed 140 degrees Fahrenheit if discharged into a grease interceptor or AGRU.

(b) Dishwashers are not allowed to be discharged through an internal grease interceptor, without prior approval of the enforcement authorities.

(c) Food Grinders are not allowed to be discharged through a grease interceptor.

(d) The use of emulsifying agents such as solvents, acids and caustics, and other toxic and or hazardous chemicals, and petroleum products known to have uses as a declogger or degreaser is prohibited. Biological enzymes are prohibited unless approved by the Director of Public Works.

7.8 Maintenance

7.8.1 Automatic Grease Control Unit or Passive Grease Interceptor

(a) The owner and/or operator of an establishment subject to these regulations shall check the grease storage container and empty collected grease into a leak proof container for storage prior to disposal daily. For passive grease interceptors, the lid should be removed daily for inspection and removal of collected FOG.

(b) The owner and/or operator of an establishment subject to these regulations shall open and inspect all Automatic Grease Control Units or passive grease interceptors on a weekly basis, at minimum.

(c) Passive interceptors shall be completely cleaned out as needed, but at minimum of once per month. Passive interceptors may need to be cleaned out more frequently based on grease production and capacity.

(d) The AGRU shall be completely cleaned out as needed, but at minimum on a quarterly basis. Inlet/outlet pipes and baffles shall be inspected, and maintained free of all caked on FOG and residual waste.

(e) The maintenance provider shall provide written documentation to the establishment on the services provided, date, quantity of material removed, and disposal facility. The owner or operator shall maintain this documentation on site and have it available for inspections.

7.8.2 Grease Interceptor

(a) The owner and/or operator of an establishment subject to these regulations shall open and inspect all Grease Interceptors on a monthly basis. Cleanouts shall be scheduled based on the 25% rule, or at minimum once
every three months, whichever is more frequent. Partial pump of interceptor contents or on-site pump &
treatment of interceptor contents will not be allowed due to reintroduction of fats, oils and grease to the
interceptor and pursuant to the Code Federal Regulation (CFR) § 403.5 (b) (8) and Section 24-47 of the City of
Portland Code of Ordinances.

(b) The unit shall be maintained in an efficient operating condition at all times. Cleanouts shall be performed by a
licensed hauler and shall include the complete removal of all the contents and cleaning of the unit. The hauler
shall provide written documentation to the establishment on the services provided, date, quantity of material
removed, and disposal facility. The owner or operator shall maintain this documentation on site and have it
available for inspections.

7.9 Waste Fats, Oils, & Grease Storage and Removal

(a) Waste grease and oil shall not be disposed of in the sanitary sewer. All waste fats, oil and grease must be
collected in an appropriate container provided by a waste management vendor, and stored in an accessible
but secure location on the premises. The container must be stored on an impervious surface such as
concrete or pavement. Efforts should be made to prevent any spilled liquid from entering into any nearby
drains. Containers must be capable of being sealed to prevent entry of precipitation, or stored in a
sheltered area. During storage, all grease containers and surrounding areas shall be maintained in a clean
and sanitary condition at all times.

7.10 Record Keeping

(a) All Food Service Establishments are required to have grease control equipment installed, maintained and
operating properly at all times and maintain records of cleaning and disposal of FOG.

(b) A record of all servicing of the grease interceptor shall be kept on file at the Food Service Establishment
and shall be accessible during normal business hours. Such records shall include the dates, quantities
pumped, condition, any repairs and the identity of the person or business that conducted the service. The
City of Portland may require such records to be submitted directly to the Health Department, or to the City
of Portland annually with a business license renewal. The Food Service Establishment shall maintain
grease control equipment maintenance records for three (3) years.

7.11 Enforcement

Enforcement action against the Food Service Establishment may be taken for various reasons including but
not limited to: failure to clean or pump out grease control equipment; failure to maintain grease control
equipment including inspection and installation of properly functioning effluent Tee and baffles; failure
to install grease control equipment; failure to control FOG discharge from the Food Service
Establishment; contributing to a sewer line blockage or obstruction; contributing to a Sanitary Sewer
Overflow; or use of additives.

Enforcement action and penalties for Food Service Establishment's that are not in compliance with the
Fats, Oils and Grease Management Policy are as follows:

Based on City of Portland Code of Ordinances Chapter 24 Section 47 the following apply:

Fats, Oils and Grease blockage in sewer line caused by a Food Service Establishment:

1. Any establishment failing to comply with or violating any provision of this article shall be served by the
public service authority with written notice stating the nature of the failure or violation and providing a
reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated
in such notice, permanently cease or correct all such failures or violations.
2. Any establishment which causes a blockage in a sewer line will be required to apply and receive an Industrial Discharge Permit through the Department of Public Works prior to discharging any wastewater to the sewer system. The establishment will be required to provide records of maintenance of grease control equipment, implement best management practices, and may be required to upgrade grease control equipment to prevent a future blockage.

3. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this section shall be guilty of an offense. Any person violating any of the provisions of this article shall be liable to the city and shall be assessed a civil penalty of a minimum of one thousand dollars ($1,000.00) per day for each violation.

Food Service Establishment failure to maintain grease control equipment after Notification:

1. Whenever it is determined that the frequency of pumping of a grease interceptor is inadequate, the City of Portland shall notify the establishment as being in non-compliance with the Fats, Oils, and Grease Program. If initial contact with the establishment is unsuccessful, a second attempt will be made within three days.

2. If no contact can be made, the intent of the department to have the grease interceptor pumped at a specified date, generally ten (10) working days from the notice (if not pumped by the Food Service Establishment prior to the specified date) will be made through Certified Letter.

3. Whenever the grease interceptor is pumped by the Department or its contractor, the customer shall be charged twice the actual cost of pumpage. Charges shall be added to the customer’s regular bill for sewer service or may be billed separately.
### PORTLAND POTW LIMITS

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Discharge Limits</th>
<th>INTERMUNICIPAL AGREEMENT LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Daily Maximum Discharge Limits (mg/L)</td>
<td>Daily Maximum Discharge Limits (mg/L)</td>
</tr>
<tr>
<td>BOD*</td>
<td>2,275 lbs/day</td>
<td>1.371 mg/L</td>
</tr>
<tr>
<td>TSS*</td>
<td>1,925 lbs/day</td>
<td>2.816 mg/L</td>
</tr>
<tr>
<td>Arsenic**</td>
<td>0.092 mg/L</td>
<td>0.094 mg/L</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.024 mg/L</td>
<td>0.0132 mg/L</td>
</tr>
<tr>
<td>Chromium</td>
<td>1.90 mg/L</td>
<td>2.35 mg/L</td>
</tr>
<tr>
<td>Copper</td>
<td>1.88 mg/L</td>
<td>0.69 mg/L</td>
</tr>
<tr>
<td>Cyanide</td>
<td>0.13 mg/L</td>
<td>0.52 mg/L</td>
</tr>
<tr>
<td>Hydrocarbon (NPM)</td>
<td>100 mg/L</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Lead</td>
<td>0.60 mg/L</td>
<td>0.33 mg/L</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.014 mg/L</td>
<td>0.0037 mg/L</td>
</tr>
<tr>
<td>Nickel***</td>
<td>0.76 mg/L</td>
<td>0.70 mg/L</td>
</tr>
<tr>
<td>Silver</td>
<td>0.42 mg/L</td>
<td>0.14 mg/L</td>
</tr>
<tr>
<td>Total Oil &amp; Grease</td>
<td>500 mg/L</td>
<td>100 mg/L</td>
</tr>
<tr>
<td>Zinc</td>
<td>2.57 mg/L</td>
<td>1.41 mg/L</td>
</tr>
</tbody>
</table>

** pH must be greater than 5.0 Standard Units (S.U.) and have a caustic alkalinity less than 1000 mg/L. Any pH result of over 10.3 S.U. must be accompanied by a result for caustic (hydroxide) alkalinity from the same sample. pH above 12.5 is prohibited and is considered hazardous waste.**

### INDUSTRIAL USER LIMIT VARIANCE FOR THE WESTBROOK INTERMUNICIPAL SEWER SERVICE AREA ONLY

The Control Authority may grant a variance to an industrial user discharging into the sewer system when the industrial user provides sufficient historical documentation to support such request. The Control Authority must determine that allowing such a variance will not:
a) result in an increase of the Maximum Allowable Industrial Headworks Loading
b) result in a non-permitted discharge from the POTW
c) adversely affect the treatment of wastewater
d) adversely impact the sanitary sewer system
e) be in violation of any applicable local, state or federal law or regulation

Should such variances be authorized, any industrial user receiving the variance will impact the total available loadings to other industrial facilities within the treatment system. The Control Authority will be required to assess the effectiveness of any variances. Modifications to local, state or federal requirements or wastewater characteristic changes within the wastewater system would also require the reevaluation of any variances.

A variance may be revoked at any time at the discretion of the Control Authority (Portland Water District)

As stated in Section 4.2(a), sampling and analysis will be undertaken in accordance with 40 CFR Part 136. Below is a partial list of accepted methods according to 40 CFR Part 136. For a complete list, consult Table IA and IB in 40 CFR 136.3

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOD</td>
<td>Standard Method: 5210-B</td>
</tr>
<tr>
<td></td>
<td>EPA: 206.5, 200.9, 200.5, 200.7</td>
</tr>
<tr>
<td>TSS</td>
<td>Standard Method: 2540 D</td>
</tr>
<tr>
<td>Arsenic</td>
<td>Standard Method: 3114 B, 3111 C, 3113 B, 3120 B, 3125 B</td>
</tr>
<tr>
<td>Cadmium</td>
<td>Standard Method: 3111 B, 3114 C, 3113 B, 3120 B, 3125 B</td>
</tr>
<tr>
<td>Chromium</td>
<td>Standard Method: 3111 B, 3114 C, 3113 B, 3120 B, 3125 B</td>
</tr>
<tr>
<td>Copper</td>
<td>Standard Method: 3111 B, 3114 C, 3113 B, 3120 B, 3125 B</td>
</tr>
<tr>
<td>Cyanide</td>
<td>EPA: 335.4</td>
</tr>
<tr>
<td></td>
<td>Standard Method: 4500-CN B 4500-CN C 4500-CN D 4500-CN E 4500-CN F</td>
</tr>
<tr>
<td>Hydrocarbon (NPM)</td>
<td>EPA: 1664 A HEM</td>
</tr>
<tr>
<td></td>
<td>Standard Method: 5520 B, 5520 F</td>
</tr>
<tr>
<td>Lead</td>
<td>EPA: 200.9, 200.5, 200.7, 200.8</td>
</tr>
<tr>
<td>Mercury</td>
<td>EPA: 200.9, 200.5, 200.7, 200.8</td>
</tr>
<tr>
<td></td>
<td>Standard Method: 3112 B</td>
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<tr>
<td>Nickel</td>
<td>EPA: 200.9, 200.5, 200.7, 200.8</td>
</tr>
<tr>
<td></td>
<td>Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B</td>
</tr>
<tr>
<td>Silver</td>
<td>EPA: 200.9, 200.5, 200.7, 200.8</td>
</tr>
<tr>
<td></td>
<td>Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B</td>
</tr>
<tr>
<td>Total Oil &amp; Grease</td>
<td>EPA: 1664 A SGT-HEM</td>
</tr>
<tr>
<td></td>
<td>Standard Method: 5520 B, 5520 F</td>
</tr>
<tr>
<td></td>
<td>EPA: 289.2, 200.5, 200.7, 200.8</td>
</tr>
<tr>
<td>Zinc</td>
<td>Standard Method: 3111 B, 3111 C, 3113 B, 3120 B, 3125 B</td>
</tr>
</tbody>
</table>
9. Exhibit A Locus Map of Portland-Westbrook Intermunicipal Sewer Service Areas

Map Prepared by the City of Portland's Department of Public Works February 2016
10. Exhibit B Map of Portland-Westbrook Intermunicipal Sewer Service Area
11. Exhibit C Map of Portland-Westbrook Intermunicipal Sewer Service Area
This summary is intended to provide concise information regarding the updates to Chapter 24: Sewers and revisions to the Rules and Regulations for Use of the Sewer System. The changes are being made to effectuate a recently signed Memorandum of Understanding allowing the transfer of the administration, management, and regulatory authority of the Industrial Pretreatment Program from the City of Portland to the Portland Water District (PWD). The program is being transferred to the Portland Water District to reduce the amount of redundant efforts and to allow the PWD to manage and directly collect the information required from Industrial Users in order to meet Maine Pollutant Discharge Elimination Permit (MEPDES) requirements for the East End Wastewater Treatment Facility. Additionally, discharge limits for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) are being revised as required by the Maine Department of Environmental Protection MEPDES permit. The discharge limit for arsenic is also being redistributed.

The specific changes to Chapter 24: Sewers are as follows:
- Section 24-50 Discharge Permit: Changed requirement to obtain a discharge permit from the Department of Public Works to the Portland Water District.
- Section 24-55 Written Notice Required: Added Portland Water District for written notice under certain scenarios.
- Section 24-57 Appeals: Added a section indicating that the appeals process does not apply to notices of violations or other determinations issued by the Portland Water District under their role as the City’s designee for the Industrial Pretreatment Program.

The specific changes to the Rules and Regulations for Use of the Sewer System are as follows:
- Throughout: Added “or their designee” after references to “The City” in many sections to allow the PWD to enforce provisions within the Rules and Regulations for Use of the Sewer System related to the Industrial Pretreatment Program.
- 1.1b Purpose and Scope: Language added to reference the Memorandum of Understanding formalizing the transfer of the Industrial Pretreatment Program to the PWD and language specifying the PWD as the City’s designee.
- 1.2 Definitions: Added term ‘designee’
- Chapter 3: Added the term “issuer” in place of “the City.”
- 5.3: Added specific language with regards to the appeal process for written notice of violations issued by the PWD.

- Schedule A: Once the aeration upgrade was completed at the East End Wastewater Treatment Facility, the Department of Environmental Protection required the Portland Water District to create technical limits for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS). This change will allow each industrial user to be permitted a set amount of BOD and TSS based on several years of results and flow data. For users with low BOD (<250 mg/L) and TSS (<300 mg/L) results, the permit may not include a requirement to sample for either parameter. Schedule A will now have the following language for BOD and TSS:

> **Industrial users permitted in the Industrial Pretreatment Program and discharging effluent which exceeds a de minimis level of Biochemical Oxygen Demand (BOD) and/or Total Suspended Solids (TSS) are individually allocated a pounds per day limit for these parameters. The de minimis levels are 250 mg/L and/or 2275 lbs/day for BOD and 300 mg/L and/or 1925 lbs/day for TSS for Portland; and 250 mg/L and/or 375 lbs/day for BOD and 300 mg/L and/or 425 lbs/day for TSS for Westbrook Intermunicipal Area. The Control Authority reserves the right to permit users based on their potential to discharge high strength BOD/TSS waste. Industrial Users permitted for BOD and TSS must report a certified discharge flow number with each monitoring event.”

Additionally, the limit for arsenic is being revised changed to two tiers instead of three. Currently, the three tier arsenic limit is as follows:

- Seafood Processors: 0.228 mg/L
- Landfills and ecoMaine Incinerator = 0.055 mg/L
- All others = 0.02 mg/L

The proposed two tier limit is:

- Seafood Processors = 0.22 mg/L
- All Others = 0.092 mg/L

This change is being made to allow for all other industrial users to have more flexibility for arsenic.

A public hearing was held on June 29th, 2018 at the Department of Public Works located at 250 Canco Road.

Should you have any questions, I can be reached at extension 8843 or bnp@portlandmaine.gov.

Thank you,

Benjamin Pearson, PE
Compliance Coordinator
Water Resources, Public Works
AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: STREET ACCESS

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

That Chapter 14, Section 14-403 is hereby amended to read as follows:

Sec. 14403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) In general. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14417, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to such street or any portion thereof; and (b) an agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land. Permanently paved and accepted streets or island streets. The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) an existing street on an
island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear built width shall be as follows:

1. For one- or two-family dwellings - 25’;
2. For all other buildings - 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) Streets to be upgraded in connection with development. The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

Exception. The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:

1. Dingley Court;
2. Morgan Court.

(c) Other exceptions. The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.
MEMORANDUM

City Council Agenda Item

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

FROM: Stuart O'Brien, Director, Planning Division

DATE: May 21, 2018

SUBJECT: Text Amendments to Section 14-403. Street Access

SPONSOR: Sean Dundon, Chair, Portland Planning Board

Public Hearing, May 17, 2018. Board unanimously recommended (6-0, Whited absent) to City Council the adoption of the revised Section 14-403. Street Access.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading June 4, 2018  Final Action June 18, 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)
Sean Dundon, Chair, Planning Board and Stuart O'Brien, Director, Planning Division- 5 to 10 minutes total

I. ONE SENTENCE SUMMARY
Proposed amendments to Section 14-403. Street Access applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits and the overriding goals of the text amendments are to increase the predictability and clarity while managing the competing needs of new housing construction, sustainability of infrastructure and public safety.

II. AGENDA DESCRIPTION
Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to increase the predictability and clarity of Section 14-403 while managing the competing needs of new housing construction, sustainability of infrastructure, and public safety. Maintenance of public roadways and related infrastructure is a significant expense for the City and one where our priority must be on addressing deferred maintenance and existing needs. As required by the Portland's Plan 2030, the city must try to find a balance between the sometimes competing needs of a sustainable, equitable, secure and connected community. The proposed amendments, unanimously recommended by the Planning Board, seek to achieve that balance by allowing development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

III. BACKGROUND
Section 14-403 was enacted over 30 years ago (A. Torregrossa memo, Attachment 1 of Planning Board Report). The section prohibited construction of residential building on streets of less than 35 feet and then
in 1984, the section was amended to require the street to be brought up to city standards. As stated in Anne Torregrossa’s memo, “The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process.” Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 “...in an attempt to streamline and clarify the requirements of the section....”

The basic elements of the proposal are as follows:
1- Simplifies and clarifies the language in Section 14-403;
2- Reduces the minimum width required for the construction of new dwelling units on permanently paved and accepted streets from 35’ to 25’ for one and two-unit structures and 28’ for other buildings;
3- Establishes a mechanism for a waiver from the developed street standards with the written approval of the Fire Chief and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired;
4- Continues to require unimproved streets subject to new development to build the street to city standards from where existing pavement ends and along the full extent of lot frontage;
5- Provides waivers for unimproved streets to be reviewed under the same criteria used for modifications contained in the subdivision ordinance; and
6- Exceptions have been modified to list only an accessory building or part of a planned residential unit development.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED
Portland 2030- Comprehensive Plan: The vision statement conveys the message of the City’s need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City’s goals for housing production be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.

V. FINANCIAL IMPACT

VI. PLANNING BOARD ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION
The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. Current standards call for 28 feet of minimum pavement width, but many of the existing built streets were constructed well before such standards were in place. The proposed amendments allow development on undersized built streets that meet minimum standards for public safety access, where appropriate. The amendments also continue to require undeveloped streets be improved to meet current city street standards.

Street extensions under 14-403 are reviewed administratively under the site plan ordinance and must meet the City’s engineering specifications for streets, sidewalks, public utility installations, and stormwater management. Over the past five years five (5) street extensions were approved and currently, there are two (2) pending applications. In that same time frame, four (4) single family subdivisions (with Stroudwater Preserve to be built in 3 phases) were approved that created new streets.
The Planning Board found that the comprehensive plan calls for the City to operate facilities and services in an efficient, transparent, and effective manner that is responsive to all residents. The policies and strategies support a fix-it first approach to the extensive infrastructure within Portland. One action states, “Develop long-range asset management plans for public facilities in order to ensure that our limited public funds are maintained and investing in strategically.” In addition, the plan for fiscal stability includes the actions:

- Keep tax rate increases manageable and provide predictability and stability in tax rate increases while supporting City services and a stable labor force.
- Make fiscal stability a factor in land use planning by considering both public investments and potential gains in the City’s tax base when planning for a sustainable future for the city, while recognizing that not all land use decisions will be driven by the fiscal impacts of the development produced.

Thus, creating new infrastructure within the city is intended to be carefully evaluated, so that investments are strategic, sustainable, and manageable for the long-term responsibility of the City. The proposed amendments to Section 14-403 are proposed to provide clear regulations for street access for private development that can be maintained effectively by the City without overburdening the Departments of Public Works and Fire.

The need for housing and affordable housing is clear in Portland. Again, the City is seeking to encourage housing where there are concentrations of services, transit and community facilities. Generally, the 14-403 road extensions support single family development in lower density neighborhoods. While this addresses the preferences for some Portland residents, the City is emphasizing more strategic investments that support higher levels of housing construction. Thus, the proposed amendments allow for private investments to occur for low density housing development that again can be served efficiently by the City without overburdening the tax base.

VII. PLANNING BOARD RECOMMENDATION
At the public hearing on May 17, 2018, the Planning Board unanimously (6-0, Whited absent) found that the proposed text amendments to Division 24, Use Regulations and Exceptions of the Land Use Code, Section 14-403, Street Access, are consistent with the Comprehensive Plan and recommend adoption of the proposed amendments to the City Council.

VIII. LIST ATTACHMENTS
Attachment A–Planning Board Report
Attachments to Report:
1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5, Attachments to the memo include:
   1. Joe Gray memo, 1984
   2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403

Public Comment
PC 1 Matt Power, 3-3-18
PC2 Victoria Morales with Attachment, 3-9-18
PC3 Liv Chase 3-11-18
PC4 Brent Adler 3-11-18
PC5 John McGovern 3-19-18
PC6 John McGovern 3-27-18
PC 7 Liv Chase 5-3-18
PC8 Brent Adler 5-3-18
PC9 Matt Power 5-8-18

Prepared by: Barbara Barhydt, Development Review Services Manager
Date: May 21, 2018
Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) **Permanently paved and accepted streets or island streets.** The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25’;
2. For all other buildings – 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) **Streets to be upgraded in connection with development.** The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

(c) **Other exceptions.** The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.
PLANNING BOARD REPORT

TO CITY COUNCIL
PORTLAND, MAINE

LAND USE CODE TEXT AMENDMENTS — SECTION 14-403. STREET ACCESS

City of Portland, Applicant

Submitted to: Mayor Strimling and City Council
From: Chair Dundon and Portland Planning Board
Public Hearing – June 18, 2018

Prepared by: Barbara Barhydt, Development Review Services Manager
Date: May 21, 2018

I. INTRODUCTION:

Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to increase the predictability and clarity of Section 14-403 while managing the competing needs of new housing construction, sustainability of infrastructure and public safety. Maintenance of public roadways and related infrastructure is a significant expense for the City and one where our priority must be on addressing deferred maintenance and existing needs. As required by the Portland’s Plan 2030, the city must try to find a balance between the sometimes competing needs of a sustainable, equitable, secure and connected community. The proposed amendments, unanimously recommended by the Planning Board, seek to achieve that balance by allowing development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

The legislative history and public purposes of the section are outlined in a memorandum prepared by Anne Torregrossa, Associate Corporation Counsel (Attachment 1). As stated in Anne Torregrossa’s memo, “The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process.” Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 “...in an attempt to streamline and clarify the requirements of the section....”

The basic elements of the proposal are as follows:

1- Simplifies and clarifies the language in Section 14-403
A workshop on the proposed text amendments was held with the Planning Board on March 22, 2018 and the material was presented at the Council’s Housing Committee on March 28, 2018. The Planning Board held a public hearing on May 17, 2018 and found the proposed amendments consistent with the Comprehensive Plan and unanimously recommends (6-0, Whited absent) to City Council the adoption of the proposed amendments.

II. NOTICE AND PUBLIC COMMENT

This item will be noticed for the Council public hearing. It was noticed in the Legal Ad that appeared in the Portland Press Herald on April 30 and May 1, 2018, posted on the City’s web page on April 26th and sent to interested citizens through Notify Me on that same date. The public comments received to date are included in the packet under public comment, PC1 – PC9.

III. PROPOSED TEXT AMENDMENTS

The proposal is to replace the existing Section 14-403, Street Access, with a rewritten section. Please refer to Attachment 1 (Torregrossa memo) for a summary of the amendments and Attachment 2 for the proposed ordinance text. A comparison of the existing and proposed language is below.

<table>
<thead>
<tr>
<th>Current Section 14-403 Language</th>
<th>Proposed Section 14-403 Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) In general. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.</td>
<td></td>
</tr>
<tr>
<td>(a) Permanently paved and accepted streets or island streets. The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:</td>
<td></td>
</tr>
<tr>
<td>1. For one- or two-family dwellings - 25';</td>
<td></td>
</tr>
</tbody>
</table>

Street: A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.
such street or any portion thereof; and (b) an agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land.

(b) **Minimum requirements for street improvements on unimproved and improved but unpaved streets.** For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the requirement of curbing under this section, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur: (1) A plan of the street improvements required by this section shall be submitted to the public works authority; and (2) upon determination by the public works authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth in section 14-501. Also as set forth in section 14-501, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (b) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.

### Exceptions

The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:

- Dingley Court;
- Morgan Court.

---

### Streets to be upgraded in connection with development

The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

### Other exceptions

The building or structure is one of the following:

1. An accessory building; or

2. Part of a Planned Residential Unit Development.
IV. HOUSING COMMITTEE COMMENTS

The Housing Committee met on March 28th to discuss the proposed amendments. The Committee is composed of Councilors Duson, Ali and Cook. Councilor Ray also attended the meeting. The Committee is seeking the Board’s recommendation to be submitted to the City Council and the Committee is not forwarding a separate recommendation. The Housing Committee did request additional information from the staff, which includes:

- a) Map of unaccepted streets and adjoining developable land
- b) Cost estimates if the City were to accept and improve those streets;
- c) Any projects in recent history that have not moved forward because of the requirements in 14-403; and
- d) Clarification of the projects in the chart of street extensions that are improved streets under 14-403 and those that are new subdivision streets.

Items a and b are considered to be part of a larger policy discussion about housing and infrastructure needs that will be studied as part of the Recode efforts in the future. A full evaluation of vacant land, infrastructure needs, and costs of development will be needed to update the city’s land use code and will be undertaken as part of the ReCode project. The requests of c and d are addressed below under the staff analysis.

The Housing Committee also made specific requests for the Planning Board’s consideration:

- a) With respect to unaccepted streets, specifically consider the fairness of requiring one lot owner to pave the entire street, benefiting the remaining lot owners; and
- b) With respect to accepted streets, consider the impact of the minimum width requirements.

As stated above, these important questions will be analyzed and addressed as part of the larger effort to revise the City’s Land Use Code to address the City’s goals in the Comprehensive Plan and to incorporate current best practices for development standards.

V. PLANNING BOARD ANALYSIS

A. Purpose of Section 14-403

The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access, which is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. The section applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. Ideally, all city streets would be built to the current standards of 28 feet of minimum pavement width, but many of the existing built streets were constructed well before such standards were in place. The proposed amendments address both developed and undeveloped streets by allowing development on undersized but improved streets that meet minimum standards for public safety access where appropriate. The amendments also continue to require undeveloped streets be improved to meet current city street standards. Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on updating Section 14-
403 to improve the clarity of the ordinance and retain the underlying public purposes of encouraging
development were adequate public safety access is available without imposing significant new City expenses
for street construction and maintenance. Again, the proposed text amendments seek to simplify and
clarify Section 14-403, while retaining the substance of the current public policy.

B. Built Streets That Do Not Meet Standards

In terms of the specific amendments, subsection (a) address development on existing streets that are built,
but do not meet today's standards. The current standards for a local street require a right-of-way width of
50 feet with a pavement width of 28 feet. There are streets, particularly on the peninsula and islands, that
do not meet current dimensional standards and in some cases are inaccessible for emergency and public
works vehicles. Recent development has occurred on some of these undersized streets, such as Tate and
Oak Streets. During those reviews, staff members sought to ensure public safety with careful
consideration of public safety access, parking regulations, and street improvements on a case by case basis.

The proposed text amendments are proposed to provide clearer and more transparent regulations for the
built streets. The proposed revisions establish a minimum clear street width between curbs as follows:

(d) The minimum clear width shall be as follows:
1. For one- or two-family dwellings – 25';
2. For all other buildings – 28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public
Works Director where, in their shared and final determination, the ability to provide City
services will not be unreasonably impaired.

The Planning Board concurred with the intent of the amendments to be transparent about the minimum
clear widths required for development to occur on such streets. Acting Fire Chief Keith Gautreau noted
that safe and adequate public safety access is vital to serve each new unit on a substandard street. The
proposed waiver is intended to allow for flexibility or fairness within the city's built infrastructure, where
both the Fire Chief and Public Works Director find that public services and public safety access are not
unreasonably impaired. The Board supported the transparency of setting minimum standards for
developed streets, so that there is clarity on the expectations for all future development. The Board also
recognized the need for flexibility in the ordinance due to the broad range of circumstances within the built
environment. Thus, they supported the provision requiring both the Fire Chief and DPW Director's
concurrence on waiver requests. As proposed, new development may occur on existing undersized
developed streets that meet minimum requirements or where services and access can be achieved without
being unreasonably impaired. However, the burden of meeting these criteria will be on the developer.
This approach should help to clarify the standards and avoid issues that had previously not always become
apparent until site plan review began on a project and substantial funds were expended by the applicant;
while at the same time, allowing for certain flexibility from the city.

C. Unimproved Streets for New Development

Subsection (b) addresses streets that are unimproved for new development. It requires the street to be
improved to current street standards by the applicant, which is consistent with the City's current policy.
The intent is to provide adequate access for city services, while not burdening the tax base with street
construction costs. This includes building streets within right-of-ways where no improvements have been
made or only dirt and gravel surfaces exist. Since the adoption of Sec 14-403 over 30 years ago, new
development along undeveloped streets requires an applicant to bring the road up to standards from where the existing street pavement ends and along the full extent of lot frontage.

Many, but not all, paper streets are located off-peninsula with numerous abutting lots (both vacant and developed lots). As noted earlier, an evaluation of the amount of vacant land and the total costs for building out these streets will need to be part of the more expansive analysis to as part of the ReCode project. Section 14-403 addresses unimproved streets or dedicated and undeveloped right-of-ways by requiring streets to be upgraded to city standards in order to construct a new home or add a dwelling unit.

In response to the Housing Committee's question as to the equity of the 14-403 as applied to unaccepted and improved streets, the staff would like to clarify that the only time an owner is required to build out the roadway is when they propose constructing a new dwelling or structure. There is also no prohibition on their collaborating with abutting owners who will benefit from the road. The requirement is only that the road be brought up to the legal standards before any additional housing units are brought online. The PB considered the impact of this on housing and did agree that this needed to be part of future conversations moving forward, but that the amendment, as proposed, is an appropriate step in the right direction - recognizing the ability to open up additional lots for development while still being conservative with City resources and safety needs. While the costs for a property owner are significant, without these standards the City could face potentially unsafe conditions and expensive infrastructure work that is not meeting targeted goals. There is no question there is substantial inconsistency with how service provision and residential constructions on unaccepted streets has been managed in Portland over the last century; however, the goals here is minimize the perpetuation of these practices not incentivize them.

D. Review Process
Street extensions under 14-403 are reviewed administratively under the site plan ordinance as either a Level I or Level II application. The level of review is based upon the amount of impervious surface area that is being added. The standards of review are the same for both applications. Briefly, the review process requires a survey stamped by a licensed surveyor and engineered plans for the street meeting the City's technical standards. Portland's Technical Manual contains the engineering specifications for streets, sidewalks, public utility installations, and stormwater management (http://www.portlandmaine.gov/756/City-Codes-Ordinances-Regulations-Maps). Over the past five years there have been five approved street extensions that are summarized in Table 1 below. Two applications are currently undergoing review and are also listed on the table 1. To address the Housing Committee's question of how many streets were vacant versus some level of improvement, this chart has been updated with this information.

Table 2 on the following page lists single family subdivisions approved over the past 5 years. Skylark is a subdivision that had paper streets, but the lots and streets were reconfigured to meet current standards. The other subdivisions created new street right-of-ways and lots. Under Portland's Subdivision Ordinance, recording plats cannot be recorded without posting a performance guarantee for the street infrastructure work to be completed.
Table 1: Approved & Pending Street Extensions within Dedicated Right of Ways under 14-403

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Street Length</th>
<th>Turn Around</th>
<th>Granite Curbs</th>
<th>Side-walks</th>
<th>Development</th>
<th>Initial Condition</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hingham</td>
<td>357</td>
<td>yes</td>
<td>seeking waiver</td>
<td>seeking waiver</td>
<td>5 lots with frontage and 2 side yards</td>
<td>gravel and vacant</td>
<td>Pending Review</td>
</tr>
<tr>
<td>Florida Ave</td>
<td>165</td>
<td>no-gravel road beyond</td>
<td>seeking waiver</td>
<td>seeking waiver</td>
<td>2 property owners for 2 sf lots</td>
<td>gravel</td>
<td>Pending Review</td>
</tr>
<tr>
<td>Pomeroy</td>
<td>200</td>
<td>yes</td>
<td>yes</td>
<td>Single Family</td>
<td>vacant</td>
<td>Built</td>
<td></td>
</tr>
<tr>
<td>Gertrude</td>
<td>93</td>
<td>no-gravel road beyond</td>
<td>yes</td>
<td>Single Family</td>
<td>gravel</td>
<td>Built</td>
<td></td>
</tr>
<tr>
<td>Hillcrest</td>
<td>200</td>
<td>no-gravel road beyond</td>
<td>no-open drainage</td>
<td>Single Family</td>
<td>gravel</td>
<td>Built</td>
<td></td>
</tr>
<tr>
<td>Pamela</td>
<td>585</td>
<td>not linked existing Pamela &amp; Alice St</td>
<td>yes</td>
<td>10 Single Family House Lots</td>
<td>vacant</td>
<td>Built</td>
<td></td>
</tr>
<tr>
<td>Motley</td>
<td>94</td>
<td>no-gravel road beyond</td>
<td>no-open drainage</td>
<td>2 Single Family House Lots</td>
<td>gravel</td>
<td>Built</td>
<td></td>
</tr>
<tr>
<td>Van Vechten</td>
<td>584</td>
<td>no-gravel road beyond</td>
<td>no-open drainage</td>
<td>4 House Lots</td>
<td>gravel</td>
<td>Approved</td>
<td></td>
</tr>
</tbody>
</table>

Table 2: Approved Subdivisions with New Streets or Street Extensions

<table>
<thead>
<tr>
<th>Subdivision Name</th>
<th>Street Name</th>
<th>Street Length</th>
<th>Turn Around</th>
<th>Granite Curbs</th>
<th>Side-walks</th>
<th>Development</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skylark Subdivision-Phase 1</td>
<td>Skylark Drive</td>
<td>530</td>
<td>yes</td>
<td>yes</td>
<td>one</td>
<td>Phase I: 7 sf lots &amp; 1 existing vacant lot, plus existing home</td>
<td>Phase I complete</td>
</tr>
<tr>
<td>Knight Farm</td>
<td>Abner Lane</td>
<td>445</td>
<td>yes</td>
<td>yes</td>
<td>one side</td>
<td>8 sf lots &amp; 1 existing house lot w/ house</td>
<td>Under Construction</td>
</tr>
<tr>
<td>Brandy Lane Subdivision</td>
<td>Brandy Lane</td>
<td>970</td>
<td>yes</td>
<td>yes</td>
<td>one side</td>
<td>46 sf lots</td>
<td>Approved</td>
</tr>
<tr>
<td>Stroudwater Preserve-Phase 1</td>
<td>(not named yet)</td>
<td>2,074</td>
<td>yes</td>
<td>yes</td>
<td>one side</td>
<td>47 lots</td>
<td>Under Construction</td>
</tr>
<tr>
<td>Stroudwater Preserve-Phase 2</td>
<td>(not named yet)</td>
<td>2,325</td>
<td>No connects to streets</td>
<td>yes</td>
<td>one side</td>
<td>48 lots</td>
<td>Approved</td>
</tr>
<tr>
<td>Stroudwater Preserve-Phase 3</td>
<td>private road- PRUD</td>
<td>800</td>
<td>cul-de-sac</td>
<td>no</td>
<td>one</td>
<td>25 townhouses</td>
<td>Approved</td>
</tr>
</tbody>
</table>

All approved applications had a 50 foot wide ROW and a 28 foot wide pavement width.
E. Waivers
Under the present version of Section 14-403, an applicant may seek to have the sidewalk waived, if the street is not a school walking route and the curbing may be waived by the Public Works Director. The proposed draft eliminates the waiver language within Section 14-403, and instead allows waivers to be considered using provisions already established under the City Code. In regard to sidewalks and curbs, Section 14-506 Modifications in the Subdivision Ordinance establishes waiver criteria applied during subdivision and site plan reviews. The waiver criteria for curbs and sidewalks are excerpted below.

<table>
<thead>
<tr>
<th>Sidewalks-</th>
<th>Curbing-</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.</td>
<td>1. The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost.</td>
</tr>
<tr>
<td>2. There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure.</td>
<td>2. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.</td>
</tr>
<tr>
<td>3. A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.</td>
<td>3. The street has been rehabilitated without curbing in the last 60 months.</td>
</tr>
<tr>
<td>4. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.</td>
<td>4. Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.</td>
</tr>
<tr>
<td>5. The street has been constructed or reconstructed without sidewalks within the last 24 months.</td>
<td>5. Runoff from the development site or within the street does not require curbing for stormwater management.</td>
</tr>
<tr>
<td>6. Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.</td>
<td></td>
</tr>
</tbody>
</table>

In no event shall the waiver have the effect of creating potentially hazardous vehicle and pedestrian conflict or nullifying the intent and purpose and policies of the land development plan relating to transportation and pedestrian infrastructure and the regulations of this article.

Lastly, the exceptions listed in subsection (c) of Section 14-403 for Morgan and Dingley Court. Both of these streets are improved and narrower than today's standards with development on the adjoining lots. The proposal is to remove these streets from the exception list and instead apply the new provisions for any further development on these streets. The proposed draft does exempt accessory buildings, such as garages and sheds, and Planned Residential Unit Developments (PRUD) from 14-403. PRUDs have separate requirements for the construction and maintenance of the private street network serving the development.

VI. COMPREHENSIVE PLAN

The central vision of Portland's Plan 2030 is represented by the venn diagram demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic,
attachment A- Planning Board Report to Council

authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for housing production be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.

Portland's Plan 2030 has three goals under the Facilities and Services section that are relevant to this policy initiative. The goals are:

- Use planning and fiscal management to sustainably maintain a high level of service for existing infrastructure and programs.
- Coordinate infrastructure planning and investments with areas of greatest anticipated growth.
- Provide public safety, emergency response, and emergency management facilities and services that can effectively meet the needs of all residents.

As support for these goals there are three strategies and accompany actions that address the proposed amendments:

- Provide services to all residents
  - Ensure transparency and access to City services and facilities for all residents.
  - Operate City facilities and services in an efficient and effective manner that is responsive to all segments of the community.
- Develop asset management plans
  - Develop long-range asset management plans for public facilities in order to ensure that our limited public funds are maintained and investing in strategically.
- Plan for Fiscal Stability
  - Keep tax rate increases manageable and provide predictability and stability in tax rate increases while supporting City services and a stable labor force.
  - Make fiscal stability a factor in land use planning by considering both public investments and potential gains in the City's tax base when planning for a sustainable future for the city, while recognizing that not all land use decisions will be driven by the fiscal impacts of the development produced.

The policies and strategies of the Comprehensive Plan support a fix-it first approach to the extensive infrastructure within Portland. Portland seeks to provide quality public services and public safety for all residents. Thus, creating new infrastructure within the city is intended to be carefully evaluated, so that investments are strategic, sustainable, and manageable for the long-term responsibility of the City. The proposed amendments to Section 14-403 are proposed to provide clear regulations for street access for
private development that can be maintained effectively by the City without overburdening the Departments of Public Works and Fire.

The comprehensive plan also contains goals to increase housing. Two of the goals state the following:

- 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 notes and corridors as a means of supporting complete neighborhoods.

The need for housing and affordable housing is clear in Portland. Again, the City is seeking to encourage housing where there are concentrations of services, transit and community facilities. Generally, the 14-403 road extensions support single family development in lower density neighborhoods. While this addresses the preferences for some Portland residents, the City is emphasizing more strategic investments that support higher levels of housing construction. Thus, the proposed amendments allow for private investments to occur for low density housing development that again can be served efficiently by the City without overburdening the tax base.

VII. PLANNING BOARD RECOMMENDATION
At the public hearing on May 17, 2018, the Planning Board unanimously (6-0, Whited absent) found that the proposed text amendments to Division 24, Use Regulations and Exceptions of the Land Use Code, Section 14-403, Street Access, are consistent with the Comprehensive Plan and recommend adoption of the proposed amendments to the City Council.

ATTACHMENTS:

1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5. Attachments to the memo include:
   1. Joe Gray memo, 1984
   2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403

Public Comment

PC 1 Matt Power, 3-3-18
PC2 Victoria Morales with Attachment, 3-9-18
PC3 Liv Chase 3-11-18
PC4 Brent Adler 3-11-18
PC5 John McGovern 3-19-18
PC6 John McGovern 3-27-18
PC 7 Liv Chase 5-3-18
PC8 Brent Adler 5-3-18
PC9 Matt Power 5-8-18
MEMORANDUM

TO: City of Portland Planning Board
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: March 5, 2018
RE: Proposed changes to § 14-403

Section 14-403 has been in place for more than thirty years. Initially, it prohibited the construction of residential buildings on streets less than 35’ in width. In 1984, however, the City Council added to § 14-403 to require that streets be brought up to standard before any building could be constructed. This included paving, curbing, sidewalks, and sewers. The 1984 changes were spurred by concerns about the significant costs to the City to upgrade these streets at taxpayer expense, and the danger that undersized or substandard streets posed to the provision of City services and the response of emergency vehicles. As described by the City’s then-Director of Planning & Urban Development, development on unimproved streets “tends to create incessant demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain.” A copy of that memorandum is attached.

Even as recently as 2012, the City Council reaffirmed its commitment to ensuring that streets are safe before they can be built upon, and that developers bear the cost of their development. In 2012, the Zoning Board of Appeals (“ZBA”) granted a hardship variance to a developer, exempting his project from the requirements of § 14-403. In response, the City Council amended § 14-473, which governs the ZBA’s authority over variances, to eliminate that possibility. In a memo to the Planning Board addressing the reasons for eliminating this loophole, then-Corporation Counsel wrote that, “the decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation.” That memo is also attached.

The City Manager and staff recognized that the requirements in § 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process. In an attempt to streamline and clarify the requirements of that section, staff from the Planning Department, Fire Department, Department of Public Works, Permitting and Inspections Department, and Corporation Counsel collaborated on the attached proposed revision. The revision accomplishes the following:

1. Reduces the minimum width for permanently paved and accepted City streets from 35' to 25' for one- and two-family dwellings, and to 28' for other buildings. These widths may be further reduced with the determination of DPW and the Fire Department that ability of the City to provide services will not be impaired. This change makes the minimum required widths consistent with those provided for elsewhere in the Code and also provides flexibility where
2. Requires that all streets that are not accepted and paved, be upgraded and dedicated to the City. This is consistent with the previous version of § 14-403 but does remove many of the details from the ordinance, as they are all captured elsewhere, including the site plan review requirements and the technical standards. DPW has the ability under the technical standards to waive certain requirements, as appropriate.

3. Removes certain exceptions, including for Dingley Court, Morgan Court, and single-family dwellings that have been owned since November 19, 1984. These exceptions have been removed because they defeat the intent of the section to protect individuals who might want to build under those circumstances. Additionally, Dingley Court and Morgan Court appear to have been fully built, and there are few undeveloped lots remaining that have been in one ownership since 1984. Additionally, that provision had been abused by certain developers who simply “flipped” the house, rather than living there, as contemplated by the ordinance.

4. Retains the exceptions for island streets.
CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Stephen T. Honey, City Manager
FROM: Joseph E. Gray, Jr., Director of Planning & Urban Development
SUBJECT: Development on Unaccepted/Unimproved Streets

DATE: 9/17/84

Please place the following item on the September 24th City Council Agenda:

Amendment to Portland City Code Chapter 14 (Land Use), Article III (Zoning) Section 14-403 (Street Access) Re: Required Street Improvements.

Statement of Fact

Planning and Public Works officials have been concerned for some time about the accelerating pace of development on unimproved streets and in legally grandfathered subdivisions. Such developments tend to create incessant demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain.

In a related development, the Corporation Counsel recently determined that accepted streets which were abandoned between 1946 and 1976, and unaccepted streets which were dedicated before 1946, do not meet the Zoning Ordinance's requirements that buildable lots have frontage on an accepted or dedicated street. A copy of Mr. Laurie's opinion is attached for your reference.

Against this backdrop, a task force consisting of Planning, Public Works and Corporation Counsel staff has recommended enactment of the attached amendment dealing with development on unimproved streets. A summary of the amendment follows:

Legal Status of Streets

The first part of the amendment deals with the issue of "lapsed" and "abandoned" streets. The amendments would expressly reincorporate "lapsed" and "abandoned" streets into the category of buildable streets, provided that the property owner first gives to the City (1) a release and indemnification from and against all claims for damages in the event the City should decide to take the street by eminent domain, and (2) a release deed to any property rights he may have in the street.
Required Street Improvements

The remainder of the amendment deals with the issue of unimproved streets. The amendment would require that certain improvements be made in the following two instances as a condition precedent to development:

Improved but unpaved streets: For lots abutting an improved (i.e., in common and ordinary use) but unpaved portion of street, that portion which abuts the lot must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

Unimproved streets: For lots abutting an unimproved (i.e., not in common and ordinary use) portion of street, that portion which abuts the lot, and any portion between that portion and the nearest improved portion which is the principal access to the lot, must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

These Amendments were approved by the City Council Housing Committee at their meeting on September 12, 1984 by a vote of 3-0. The items are being sponsored by Councilor Abromson, Chairman of the Housing Committee.
CITY OF PORTLAND
MEMORANDUM

TO: Mayor and Council
FROM: Gary Wood
DATE: August 21, 2012
RE: Amendment to Portland City Code Chapter 14, Section 14-473 (Variances)

This amendment contains two components. The first component amends Section 14-473 so that the limitation on the Board of Appeals authority to grant variances references the specific limitations already articulated in subparagraph (c)(4), as well as referencing subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight. The reference to Paragraph (c)(3) in the current ordinance should be retained because there are some subsections contained within (c)(3) that make it clear that practical difficulty variances cannot be used in certain circumstances in the City’s Shoreland Zone.

The second component of the amendment prohibits the Board of Appeals from granting variances from the standards set forth Section 14-403 by adding that section to subparagraph (c)(4).

"Paper" streets are rights of way designated on approved subdivision plans but never built to city standards or accepted by the City as city streets. The City has over 407 paper streets at this time that are shown on subdivisions recorded prior to September 29, 1987. Under state law the City has until September 29, 2017 to decide whether to continue the City’s right to accept one or more of these streets or vacate the potential public rights in them. Current law also allows the Council to extend the deadline another 20 years.

Section 14-403 was created many years ago (see attached memo) to prevent individuals who own lots on paper streets from developing substandard access ways or driveway along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards.

The section avoids that result by imposing a requirement on property owners who wish to build residential units along a paper street to build the road to city standards for the entire length of the individual’s property abutting the paper street.

The requirement that the road be built along the entire length of the abutting property prevents a property owner from stopping the construction of a road built to city standards at that
point along his property where he has established enough road frontage to meet city road frontage requirements thus leaving a potential gap for the next abutting property owner to also build a residential unit on their lot.

Although the City's Board of Appeals has for the most part refused to grant variances from Section 14-403 nothing in the current ordinance prevents them from doing that and on June 21, 2012 the Board did grant a variance from Section 14-403 requirements.

In granting that variance, the Board acted within its current authority in the ordinance and also in a situation in which a large number of residential units could not be built along the roadway because of its short length. However, this decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation.

In order to prevent developers or other property owners from taking advantage of the current authority in the ordinance to grant variances from Section 14-403 the proposed amendment has a retroactive date to the date upon which the Board of Appeals issued its decision. No additional applications have been filed since that decision seeking a variance from the Section 14-403 requirements although, there is one pending application that may be amended to do so.

Because the proposed amendment is to Chapter 14, it should be referred to the Planning Board for a recommendation back to the Council before the Council can act on it.
Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) **Permanently paved and accepted streets or island streets.** The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings - 25';
2. For all other buildings - 28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) **Streets to be upgraded in connection with development.** The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

(c) **Other exceptions.** The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.
Hello my name is Brent Adler, 47/49 Chapel Street. I attended the workshop meeting on March 22nd 2018.

I would like to thank staff for taking the time to improve this section of the land use code. I hope my comments and questions will help in determining that there is no need for Section A of this text amendment.

For your information Boston MA has a population of 687,584 people. Portland has a population of 67,067. I spoke with Michael Rooney of the Boston City Planning department and according to him there is no Code in the City of Boston that restricts the addition or development of any unit on a street that is narrow. Instead, the issue of safety is addressed by zoning ordinances that would allow for a deeper set back of a new building for better access of emergency vehicles. Boston has narrow streets like Portland and is a City in the United States.

Boston Fire department has the same fire truck as engine 31 of the Munjoy Hill Station, a Pierce Enforcer 1250/750. Training for the fire department to work on small accepted paved streets should be the solution to service urban infill and development on small accepted City streets, this would be a worthwhile investment for the future.

According to the discussion at the workshop on March 22 the amendment language clarifies our 35’ ROW and adds individualized review on a case by case basis by experts in DPW and Fire for any submission of a unit or development on a street less than 25’. Adding units, whether its one 400 square foot or a 30 unit apartment building adds risk and stress onto emergency vehicles and Staff. It was also determined that City accepted streets are the responsibility of the City to maintain.

Up until now we favored the interpretation of 14-403 that the 35’ rule did not apply to accepted City streets. I have given many examples, here are a couple more.

9 Romasco Lane- Planning board approved 4 unit in 2015 with a recent permit extension
Joy Place on the west end- condominium project approved in April 2018

It would be important to know how many permits have been denied based on 14-403 for City accepted Streets, this information would help to determine the current interpretation. Moving forward under the amendment we have clearly defined the paved width creating a moratorium
on streets less than 25' and slowing urban infill and housing stock in the City. Blacklisting these streets as we develop the 2030 plan.

During the workshop, Chris Branch stated that accepted City streets are the responsibility of the City unlike unimproved non accepted City Street. How will DPW review an exception for a permit on a street less than 25'? Will he be basing his decision on the condition of the street, and if so wouldn't this be the responsibility of the City and not a condition of issuing an exception?

During the workshop Chief Gautreau stated that a fire trucks width is roughly 10' wide but would need 16' for the outriggers on a ladder truck. Does the fire department use a ladder truck on every call, and if not, what is the working room around a smaller pump truck used for single level access?

If we are going to leave these decision to the experts as Ms Torregrossa stated, why are we not giving them tools to make the decisions with. We have tools for staff during site plan and zoning review. Can we not make this more transparent and in the amendment start to clearly define what an exception would be? Let me give you an example of how my denial letter will read based on the current language of the amendment. My permit for Chapel street is ready for the expert review of the fire department and DPW. It has passed site plan review, design review, code review and zoning. This is what I'm expecting back from the DPW and the Fire chief when the amendment before you passes

Dear Mr. Adler,

Thank you for your request for an exception of 14-403 section A. Unfortunately at this time we do not have the equipment, training, or resources to tend to emergencies at your proposed single family dwelling. This lot is serving the City just fine as a vacant non buildable lot.

Sincerely

DPW and Fire Chief

Ms Torregrossa stated that for each 2 bedroom unit there is up to 4 occupants that are added. And each one of these occupants add risk to the equation for emergency vehicles. Under this logic, in the India Street neighborhood where in a 2 block radius over the past 5 years over 200 2-3 bedroom units have been added, increasing the City occupants load at least 1000 people we should carefully consider if our current emergency response is satisfactory for all these new individuals. At what point will a new fire station be needed under the current logic of risk assessment? I do not see the risk on small City approved streets if the occupancy is managed, we know the stock and paved width of all our adopted streets here on the peninsula, this can be gathered through GIS. Why not take the smallest street, drive a fire truck down it and run a drill? I do not see the need to individualize review on small scale development. Can we not work
from the problem and see if it's possible to service the small streets first rather than declaring 25' as the minimum. I am more optimistic about the abilities of our public services than declaring that it's impossible to drive down and put out a fire on a narrow street. There are rural roads in northern Maine that pose more of a problem than an urban City that is littered with Sprinkler Systems, building codes, Fire Hydrants and many fire stations. Can we not get some facts about our current equipment, how long are hoses, how many firefighters does it take to respond and extinguish a 400 square foot residential house that is sprinkled?

Finally, if it is the opinion of staff that its too risky to add occupants and services to city approved streets than there should be no reason why we cant add an exception for structures that do not require these level of services. I'm thinking structures such as garages, storage areas, green houses and beehives. Neither of which would need DPW. Thank you for your time.

Brent Adler
Fwd: Public Comments for March 13th Planning Meeting

Barbara Barhydt <bab@portlandmaine.gov>
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

Public comment for 14-403.

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov

---------- Forwarded message ----------
From: Matt Power <power.matt@yahoo.com>  
Date: Sat, Mar 3, 2018 at 9:40 AM  
Subject: Public Comments for March 13th Planning Meeting  
To: "bab@portlandmaine.gov" <bab@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>

3-2-2018

Hello Barbara,

I've been corresponding with Kim Cook over the last week about the Portland ordinance that the planning board is taking up for comment on March 13th, section 14-403. I'm submitting my comments in writing below, because I am away on business on the 13th, and can't be there in person. Kim has been very kind to assist me and follow up on this matter.

Here are my public comments.

An Argument for Preventing "Ghost Lots" with 14-403

My partner and I own a parcel on Tarbell Ave in the Riverton neighborhood, one of many so called paper streets in Portland. It's .6 acre lot on an unpaved road. Tarbell Ave has several homes on it, including one that is pas: us, on the end of the street, and another, at 119 Tarbell, that was built after the restrictive language in 14-403 was adopted in 1987 (see attached document). Many outbuildings have also been added after the ordinance. The street is plowed by the city, trash and recycling are picked up, street lights are serviced, electric, sewer and water are already at the street. To my understanding, on a paper street, none of these are supposed to be provided by the city (per the notes sent to the 119 Tarbell property). This rule is apparently not followed, and I'm glad—as are the many residents of Tarbell Ave.

We would like to be able to build a small home and garden-related outbuildings on our property, but we have been blocked by 14-403, because as it's written, we would have to widen, pave and add curbs to the entire dirt street, a huge expense we could not afford. This restrictive ordinance as its written makes no sense for streets like ours. A new home on the street would add little or no infrastructure burden, and bring in new taxes.

Under 14-403, public works can waive the curb requirement, but not the other street upgrades. This means the only recourse for property owners on paper roads wanting to build a home or even an outbuilding is to appeal the interpretation of the ordinance, with slim chance of success.

As you know, last year, Maine ordered municipalities to declare paper streets as city streets or revert them to abutting owners, but left a loophole that Portland took, buying them 20 more years of procrastination on paper streets. I understand why the city did it--paving all those streets would cost a fortune. But at the same time, the combination of this choice, and strict interpretation of 14-403, have effectively "locked out" properties like ours, which are ideally situated for small scale new construction.

As written, 14-403 is outdated. I assume the initial intent was to push the cost of street upgrades onto large scale developers, but unfortunately it has caught small landowners in its net, at a time when Portland needs new ways of adding housing. The ordinance needs to be relaxed to allow for common sense development. A street that is already serviced and occupied should not have "ghost lots" created by a heavy-handed ordinance.
Possible Solutions

1. **Make street exceptions easier.** There is currently one mechanism for building on a paper street. The street can be declared an exception. A few streets are on this short list, but my understanding is that adding a street requires a full council vote. Why not add some codified, basic criteria that supports an exception? If the street is occupied and serviced by the city already, for example, the exception process should be easier. Perhaps a simple appeal can redefine the street as a "De Facto City Street." In other words, it's a city street in all but name, not subject to the same high level of upgrades, but much more flexible for landowners looking to build homes or outbuildings.

   I  **Exceptions.** The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:

   1. Dingley Court;
   2. Morgan Court.


2. **Allow for individual parcel appeals.** Add language that allows for smaller residential projects to appeal the restrictive road requirements for paper streets. An appeal would not challenge the interpretation of this ordinance. It would challenge the application of the ordinance to specific lots on a street, based on the level of additional infrastructure costs.

3. **Give public works more waivership options.** At present, they can only waive the curb requirement. Give them the ability to waive road widening, storm drains, sidewalks, paving and other requirements if they don't see them as essential to current maintenance of a paper street. –excerpt from 14-403 below:

   (b) Minimum requirements for street improvements on unimproved and improved but unpaved streets. For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the

4. **Add off-grid and tiny house options.** Landowners who are willing to build a home that is low impact, supplies its own water, electricity and so on should be held to a less stringent infrastructure standard. Tiny homes are included in the Maine state building code now. They are also talked about on the now outdated City faq page about tiny homes:

   "The city is actively looking at the issue of tiny houses and what role they might play in helping address our housing needs. The biggest challenge appears to be the state building code, which the city is required to utilize."

   That challenge is no longer an issue. It's a good time to add some language opening the door to eco-friendly housing options that would allow Portland to live up to its goals of being a "green" place to live.

   Please consider these suggestions as you modify 14-403. Building in the city limits is the most sustainable kind of new development. Without changes to 14-403, the options for adding new housing stock over the next 20 years will be extremely limited, and the residents will be poorly served.

   Thank you,

   Matt Power
March 13th PB workshop RE: proposed changes to 14-403

1 message

Victoria Morales <victoria@moralesslaw.me> Fri, Mar 9, 2018 at 2:29 PM
To: Barbara Barhydt <bab@portlandmaine.gov>, "sgo@portlandmaine.gov" <sgo@portlandmaine.gov>

Dear Planning Board Members and Planning Staff,

Please accept this email and attachment with additional suggestions to the proposed amendments to section 14-403 of the land use code.

I represent MTR, LLC, a small residential construction company interested in building homes that are between 1,400 and 1,600 square feet and are affordable for working middle class families. To further that goal, my client is looking at lots in Portland near schools and green space, and with frontage on streets acceptable to the City. Many undeveloped lots in the City are on gravel roads that have been dedicated for public travel many years ago through the recording of a subdivision plan (paper streets). The barrier to creating housing on many of these lots is the cost of building the road, including the subsurface infrastructure, drainage, and lighting that is currently required. Larger scale developers can often absorb these costs and role them into the return on the higher end product. That is not the same for smaller developers.

My goal in submitting these suggestions is to request that the Planning Board take a good look at the street and infrastructure standards in Chapter 25 and the Technical Manual, which present significant barriers to building residential housing in the City, particularly for building one single family home on a gravel road that already has other residential homes on it. Admittedly, the amendments I offer do not go far enough to unlock the potential for creating more housing on the many undeveloped lots in the City. However, my hope is that the Planning Board, staff, and DPW can gather and examine the data regarding the existing list of unaccepted roads, unpaved roads, and available lots to remove the barriers that exist today to meeting the goals of the Comprehensive Plan to create more much needed housing in the City.

Very truly yours,

Victoria

Victoria Morales, Esq.
Moraless Law
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207.216.0643
https://www.linkedin.com/in/victoria-morales-a69b7550

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prohibited. If you have received this correspondence in error, please immediately notify me by replying to this message and permanently delete the original, all copies, and all printouts of this message. Thank you.

Edits to proposed changes 14-403 v.11(1).docx
20K
Further suggested changes to the proposed amendments to 14-403 in red.

Sec. 14-403. Street access.
A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a)  *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25’;
2. For all other buildings – 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b)  *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street between the lot and the nearest permanently paved and accepted City street by paving the existing travel way or the minimum clear width measurement as described above, as determined by the Public Works Authority, and meeting the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
   
   i. The widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

2. Take all necessary steps under Chapter 25, Article III, Section 47 of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

(c)  *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.
Sec. 25-47.

Acceptance of streets and ways dedicated for public travel prior to July 7, 1948. A street or way dedicated for public travel prior to July 7, 1948, including paper streets, shall be laid out and accepted as a public street or way by the city only upon the following conditions:

(a) Minimum width. Such street or way shall have a minimum width of fifty (50) feet unless the owners of property adjoining the street or way shall convey to the city sufficient land to lay out a fifty (50) foot street; provided, however, that the Public Works and Planning Authority may allow the minimum clear width or less, as described in 14-403 when a fifty (50) foot street is impracticable.

Provided further that any such street or way located on any of the islands in Casco Bay, which is not considered to be a collector street in the opinion of the public works authority and the planning board, may have a minimum width of thirty-two (32) (change to: the minimum clear width standard in 14-403) feet.

(b) Recorded plan. A plan of the street or way shall have been recorded in the county registry of deeds prior to July 7, 1948.

(c) Petition by abutters. A majority of the abutters upon the street or way shall in writing, on a form to be prescribed by the public works authority, petition the city council to improve the street by grading, curbing, gravelling, macadamizing, paving, or in any other way making a permanent street of the same, or any part thereof; and in said petition shall waive any damages resulting from the laying out and acceptance of said street or way, or any necessary changes in the grade thereof; and shall agree to pay their just proportion of one-third of the cost thereof. For purposes of this article, a majority of the abutters shall mean those abutters who own more than fifty (50) percent of the frontage, both in front-feet and in assessed value.

(d) Assessment of costs. When the street or way shall have been laid out and accepted as a public street or way, and such improvements have been made, one-third of the cost thereof shall be assessed on the property adjacent to and bounded on the street or way in the manner, and with the same right of appeal, provided in 23 M.R.S.A §§ 3601–3605.1 (Code 1968, § 707.2) Cross reference(s)—Uniform procedure for collecting assessments,

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1 23 M.R.S. §3601. Apportionment of damages or benefits
Whenever the city government lays out any new street or public way, or widens or otherwise alters or discontinues any street or way in a city, and decides that any persons or corporations are entitled to damage therefor, and estimates the amount thereof to each in the manner provided by law, it may apportion the damages so estimated and allowed, or such part thereof as to it seems just, upon the lots adjacent to and bounded on such street or way,
other than those for which damages are allowed, in such proportions as in its opinion such lots are benefited or made
more valuable by such laying out or widening, alteration or discontinuance, not exceeding in case of any lot the
amount of such benefit, but the whole assessment shall not exceed the damages so allowed. Before such assessment
is made, notice shall be given to all persons interested of a hearing before said city government, at a time and place
specified, which notice shall be published in some newspaper in said city at least one week before said hearing.
Dear Planning Board Members and Planning Staff,

Thank you for your time and attention in addressing section 14-403 of the City's land use code. This amendment directly effects me because I own 2 properties on accepted city streets that have a width less than 25'. Based on the history of 14-403 and the enforcement of this ordinance, the intention of this code is to address unaccepted city streets, i.e. paper streets. It is my understanding, no permit application or plan for development on an accepted city street was ever denied on the basis of street width, until recently.

The attached comments, attachments, and suggested amendment to 14-403 are to address 14-403 (a) for accepted city streets. Regardless of the prior interpretation, I hope you will agree that accepted city streets which already have city services and established widths, should not be part of this ordinance.

Regards,
Liv Chase
livchase@yahoo.com
207-522-4345
Section 14-403 was written and adopted in 1968. The interpretation of this code has always been that it applies to non-accepted city streets i.e. paper streets. This section of the land use code has had no bearing on accepted city streets in the past. The City of Portland zoning department has approved many projects on the Portland peninsula on streets which are less than 35’ in width (Attachment D). Only recently has section 14-403 been read literally and enforced to deny permit applications on accepted city streets that are less than 35’ in width. One of these permit applications is an application submitted in May 2017 to build a small 499sf single family house located at 47 Chapel Street. If the true intention of clarifying this code is related to the impact it will have on city services, please consider the following:

**Why are we defining street access?**
We are defining street access because it is relevant to fire and life safety.

**Why would street width need to be defined for accepted city streets that are already built?**

**City Services**
Accepted city streets already have city services, i.e. water/ sewer, plowing, general upkeep, ect. As property owned by the city, the city already holds the responsibility/cost for maintaining these streets.

Adding additional buildings to a street with city services does not unreasonably impair these services because these services are already in place.

**Fire and Life Safety**
Accepted city streets are wide enough to allow for the access of fire trucks and ambulances in the event of an emergency. Currently, all accepted city streets are wide enough for a fire truck to drive down (a fire truck is just under 10’ in width). A brief conversation with the fire department revealed that the narrowest street for the fire truck is Oak Street. Even though the street width is 24.5 feet wide, cars are allowed to park on both sides of the street. This equals a clear width of 10.5 for the fire truck. Clear width for a fire truck to pass should take into account parked cars on the street (Attachment C)

**City staff has expressed the need to simplify and clarify section 14-403. The clarification is that 14-403 is not intended for accepted city streets.**

**Other Points to Consider:**

Accepted city streets on the peninsula have been streets since the 1800’s. The peninsula is home to the highest density of building infrastructure in Portland. If there truly was a problem in regards to city services and life safety on accepted city streets, this would have been addressed 30 years ago when the code was revised.

This proposed text amendment will take away property owners rights. There are 53 streets on the peninsula that would be affected by this amendment (Attachment A and B)
It is understood that there is a need to regulate the creation of new city streets (Section 14-403 (b)) and adopt standards for these streets. NFPA 1 fire code determines a minimum clear width of 20 feet for a emergency access in the creation of new streets.

The proposed text amendment establishes an arbitrary street width that is not based on anything pertaining to fire and life safety. Additionally, it allows for this width to be reduced by approval of the fire chief and public works director. This makes the proposed text discretionary and vague. This opinion based flexibility would prove to be beneficial in connection with the development of new streets, but it adds no value to streets which are already defined as to width. Accepted city streets are already developed and most times, they can not be widened because existing infrastructure is built to the right of way.

The proposed text amendment adds more restrictions to 14-403

<table>
<thead>
<tr>
<th>Current</th>
<th>Proposed</th>
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</thead>
<tbody>
<tr>
<td>Streets with ROW less than 35**</td>
<td>Streets less than 25’ not including sidewalk*</td>
</tr>
<tr>
<td>Only for residential dwellings</td>
<td>All building regardless of use</td>
</tr>
<tr>
<td>Exception for frontage on another street</td>
<td>No exception</td>
</tr>
<tr>
<td>Only for new construction</td>
<td>Not specified (adding a unit could be within existing infrastructure)</td>
</tr>
</tbody>
</table>

*See Attachment E

14-403 is in direct conflict with the City’s comprehensive plan. Vacant lots, that meet the minimum required lot size, have the potential to add more dwelling units and create higher densities. Further restriction of these vacant lots is not in line with the comprehensive plan.
Sec. 14-403. Street access.

A building or structure, intended for use as habitation, may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) Permanently paved and accepted streets or island streets. The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or

(ii) an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings—25';
2. For all other buildings—28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(a) Accepted city streets appearing on the official map of the city are exempt from this section of the land use code.

(b) Unaccepted city streets to be upgraded in connection with development. The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street between the lot and the nearest permanently paved and accepted City street by paving the existing travel way or the minimum clear width measurement as described above, as determined by the Public Works Authority, and meeting the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

   i. The widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

   Exception: The above guidelines may be

(c) Other exceptions. The building or structure is one of the following:

1. An accessory building; or

2. Part of a Planned Residential Unit Development.
street widths as measured from curb to curb

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<thead>
<tr>
<th>street name</th>
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<td>bramhall place</td>
<td>21</td>
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<td>horton place</td>
<td>11.7</td>
<td>myrtle street</td>
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<td>hammond street</td>
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*There are 41 streets that are less than 25' in width*
MAP OF THE PORTLAND PENINSULA

- Streets that are 28' or less in width
- Streets that are 25' or less in width
Fire and Life Safety

Parking on both sides of the street

Parking on one side of the street

No parking on either side of the street

7 feet is the minimum width necessary for parallel parking space. The measurement was based on average vehicle widths and design standards for on-street (parallel) parking space in other municipalities, including the City of Chicago.
72 Oak Street
Year Built: 2011
Use: 37 Units
Street Width: 24.5 feet
Parking on 2 sides =
clear width for fire truck 10.5 feet

50 Myrtle Street
Year Built: 2014
Use: Single Family
Street Width: 21 feet
Parking on 1 side =
clear width for fire truck 14 feet

22 Tate Street
Year Built: 2016
Use: 8 Condominiums
Street Width: 13.8 feet
No on street parking =
clear width for fire truck 13.8 feet

5 Briggs Street
Year Built: 2016
Use: 3 units
Street Width: 19.4 feet
Parking on 1 side =
clear width for fire truck 12.4 feet

1 Joy Place
Year Built: Currently being reviewed for permit application
Proposed Use: 12 Condominiums
Street Width: 13 feet
Street Condition: Dirt Path
Fire truck access = ?
Current 14-403: "a street width less than 35"

Street width varies depending on sidewalk width
For a 7' wide sidewalk, the street width = 21'

Proposed 14-403: "minimum clear width as measured from the edge of the pavement, excluding sidewalks"

Street width = 25' or greater for 1 or 2 family
Street width = 28' for all other buildings

Width of ROW varies depending on sidewalk
For a 7' wide sidewalk, the ROW must be 39' for a 1-2 family and 42' for all other buildings
To: Planning Board  
3/11/2018  
From: Brent Adler  
47/49 Chapel Street  

RE: Planning Board workshop comments text amendment 14-403

I would like to thank the hard work of Corporation Council and Planning Staff for bringing this text amendment before the planning board. I am happy to see that the proposed text amendment seeks to simplify and clarify issues with the code. Unfortunately, the language in the proposed section will prevent development on small city adopted streets and will allow for discretionary decisions by the Fire Chief and Public Works Director.

Subsection (a) will remove small scale development opportunities on functioning legally non-conforming streets that currently have existing public services. 72 Oak Street and 22 Tate Street have working street widths of less than 13'. These two projects were large scale and prove to be a success (72 Oak is a 37 unit apartment building and 22 Tate is a 8 Unit condominium building), approved by the planning board with the support of Public Works and the Fire Department. I would like to provide these as examples of how peninsula streets that are narrow can still be functioning contributing streets to our city that deserve special attention, not to be treated as non-buildable streets unable to provide new housing stock as the city grows and we adopt a new comprehensive plan. Public Works has the ability to service narrow streets today the same way they have been servicing their residents over the past 100 years. We have tools available in zoning to allow safe housing on narrow streets that will not negatively contribute to maintenance already provided under Public Works. As a City that has grown around these small streets why are we considering abandoning the potential they present for development? We can ask the following questions to help ease the challenges a narrow street presents to emergency and public works vehicles.

Square footage restrictions on the proposed development limited to 1000 sq feet  
A larger set back from neighboring buildings  
Limiting the height of the building to single level  
The proximity of a fire hydrant to the proposed dwelling  
Can a narrower street allow for higher density if the building is sprinkled according to NFPA  
Parking on both sides or none  
One way or two way  
The smallest fire engine currently used by the City and its working width, Engine 31?  
Do current structures exist on the street and have City Services

I would propose the following as an exception to subsection (a)

No Street width minimum on City approved adopted streets on the peninsula
I am in support of having 14-403 amended but I am not in support of the proposed changes. I am the owner of 47/49 Chapel Street, a lot with 3,450 square footage. A buildable lot with water, sewer, gas, and electric. On a street that is plowed during the winter and maintained by the city. This street is less than a block from the City Hall and services 6 existing houses. My application for a small 500 square foot single family is currently on hold for review with the City. My permit is awaiting denial based on the current interpretation of 14-403. If the proposed changes go through, my paved width being 12.4' excluding sidewalks, will kick my application for review and approval to the Fire Chief and Public Works Director. If I do not have approval by these two departments my lot will become non-buildable. Meaning, for me, a regulatory taking. I am unable to pursue an appeal because of 14-473 in the land use code Section (c)4h. Please consider this text amendment an opportunity to allow small development on small streets and not an exclusionary effort for property owners and developers in my position.

For your information Joseph Gray Jr. Director of Planning and urban development on 10/31/84 has already defined unimproved streets. These streets identified on the peninsula should be the only streets considered under the proposed subsection (a) for non development. Please see attached.
TO: Stephen T. Honey, City Manager
FROM: Joseph E. Gray, Jr., Dir., Planning & Urban Development
SUBJECT: Council Request for Material on Unaccepted Streets

DATE: 10/31/84

At the recent Council workshop on unaccepted streets, Council members asked that we prepare certain additional information for distribution to the Full Council. The material includes:

1) Building Permits

Sam Hoffses, Chief of Inspection Services, has reviewed our files and has determined that since January, 1981, 47 permits have been issued for housing on unaccepted streets. The Council should note that during 1984, 22 permits or almost half those issued, were during this year. This is an indication of the acceleration of development on these streets.

2) List of Unaccepted Streets/Neighborhood Breakdown

The Parks and Public Works Department has prepared a breakdown of unaccepted streets by neighborhoods. This list is enclosed.

3) Charts Used in Staff Presentation

At the request of the Council we have reduced to typing the charts used in staff presentation on unaccepted streets. There are four charts.

- A) Issues Chart
- B) Streets Glossary
- C) Lapsed/Abandoned Streets
- D) Unimproved Streets
"STREETS" GLOSSARY

DEDICATED: Offered to City as public street

ACCEPTED: Accepted by City as public street

LAPSED: Dedicated but not accepted within reasonable time (40+ years)

ABANDONED: Accepted but not maintained for 30 years (1946 - 1976)

IMPROVED: In actual existence (paved or unpaved)

UNIMPROVED: Not in actual existence ("paper")
Garden Lane
Park Street Court
Stratton Street
Tolman Place
Guilford Court
Hall Court
High Street Court
Nye Street
Fwd: Section 14-403

Barbara Barhydt <bab@portlandmaine.gov>
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

Public comment

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 755-8256
bab@portlandmaine.gov

---------- Forwarded message ----------
From: john mcgovern <jmcgovern1@gmail.com>
Date: Sat, Mar 17, 2018 at 9:30 PM
Subject: Section 14-403
To: bab@portlandmaine.gov

Hello Barbara.

My wife just brought to my attention that the city had a planned meeting on the thirteenth of March regarding changes to
the city code section 14-403 on paper streets in the city of Portland. I am pleased to know that the meeting had been
postponed do to inclement weather , as I would have missed it. As you know I have been working with the city on making
the improvements to Hingham street , I am hoping the timing of this meeting will only have a positive effect on what I have
been trying to accomplish on Hingham street. As you know we had a meeting at city hall with your self John Jennings
David Brenerman myself and others. I had requested the meeting because of a paragraph in the city code that allows a
resident of the city of Portland with a lot of record and being part of a subdivision recorded in the registry deeds , the
allows them to petition the city to bare part of the cost of bringing the road up to the standards of the city of Portland.
Although the meeting did not resolve the issue of who should bare the expense of these roads I moved forward on my
own to make the improvements at my expense. At this point I have invest over nine thousand dollars of my own money
in engineering cost and application fees and I am still waiting for the review process to be complete. In closing I would
like to say that the city has a enormous unempted revenue of property tax resources by not working with city residents to
improve these streets. If the city of Portland wants to be know as progressive pioneer in moving into the twenty first
century it is time to be more aggressive in allowing the development of this unempted revenue stream. I do not think it is
unreasonable for the city to take on some of the cost burden of these projects. I am strongly against any changes to 14-
403 that would have a negative impact on future development of these valuable pieces of property.

Respectfully ,

John McGovern

Sent from my iPad
Fwd: Section 14-403

Barbara Barhydt <bab@portlandmaine.gov>  
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

public comment for 14-403.  
Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov

---------- Forwarded message ----------
From: john mcgovern <jtmcgovern1@gmail.com>  
Date: Tue, Mar 27, 2018 at 7:47 PM  
Subject: Re: Section 14-403  
To: Barbara Barhydt <bab@portlandmaine.gov>

Hello Barbara.  

After careful thought for the amendment allowing street minimum width to be narrowed to 25' for certain streets I have to oppose. It is my understanding from the public works department that the minimum finished street width is twenty eight feet no exceptions.  
Allowing for some streets to be twenty five feet wide and yet forcing others to be twenty eight feet wide would put undo hardship on those that bear the extra expense.  
Any change to the code in 14-403 should apply to all streets within the city regardless of there status. We need to set a minimum guideline and enforce the code as set forth.

Respectfully.  
John McGovern  
Thank you.  
Sent from my iPad

On Mar 19, 2018, at 11:20 AM, john mcgovern <jtmcgovern1@gmail.com> wrote:

Thank you, Barbara.  
John

Sent from my iPhone

On Mar 19, 2018, at 8:07 AM, Barbara Barhydt <bab@portlandmaine.gov> wrote:

Hello Mr. McGovern:  
I am including you e-mail as public comment for the Board. Here is the link to the City's website where the memo for the Board is located. http://www.portlandmaine.gov/AgendaCenter/ViewFile/Agenda_03222018-2356?html=true
This is a workshop agenda item and that meeting starts at 4:30. This is the second agenda item, but we may need to move this forward to be the first item.

Thank you for your comments.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov

On Sat, Mar 17, 2018 at 9:30 PM, john mcgovern <jtmcgovern1@gmail.com> wrote:

Hello Barbara,

My wife just brought to my attention that the city had a planned meeting on the thirteenth of March regarding changes to the city code section 14-403 on paper streets in the city of Portland. I am pleased to know that the meeting had been postponed do to inclement weather, as I would have missed it. As you know I have been working with the city on making the improvements to Hingham street, I am hoping the timing of this meeting will only have a positive effect on what I have been trying to accomplish on Hingham street. As you know we had a meeting at city hall with your self John Jennings David Bronneman myself and others, I had requested the meeting because of a paragraph in the city code that allows a resident of the city of Portland with a lot of record and being part of a subdivision recorded in the registry deeds, the allows them to petition the city to bare part of the cost of bringing the road up to the standards of the city of Portland. Although the meeting did not resolve the issue of who should bare the expense of these roads I moved forward on my own to make the improvements at my expense. At this point I have invested over nine thousand dollars of my own money in engineering cost and application fees and I am still waiting for the review process to be complete. In closing I would like to say that the city has an enormous untapped revenue of property tax resources by not working with city residents to improve these streets. If the city of Portland wants to be know as progressive pioneer in moving into the twenty first century it is time to be more aggressive in allowing the development of this untapped revenue stream. I do not think it is unreasonable for the city to take on some of the cost burden of these projects. I am strongly against any changes to 14-403 that would have a negative impact on future development of these valuable pieces of property.

Respectfully,

John McGovern

Sent from my iPad

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.
Dear Planning Board Members and Planning Staff,
Please see the attached comments for the Planning Board Meeting for May 8th, 2018 in regards to the text amendment for 14-403.
Regards,
Liv Chase
livchase@yahoo.com
207-522-4345
Dear Planning Staff,

I attended the Planning Board Workshop on March 22, 2018. At the workshop there was much discussion over the street width. The current re-write of 14-403 determines a street width as measured from curb to curb. This street width is not clearly defined to reflect a clear width. The clear width is the only factor when determining if a fire truck or ambulance can pass.

Interim Fire Chief Keith Gautreau spoke at the Planning Board Workshop and in his professional opinion, he determined that a width of 25’ from curb to curb was wide enough regardless of parked cars on either side.

Parked cars can range in width, with the largest parked car 8.5 feet wide. Most vehicles are approximately 7 feet in width and this is the number that is most commonly used. A standard fire truck is just under 10’ wide.

1) If fire and life safety are the reasons behind the clarification of 14-403, doesn’t it make sense to clearly define the clear width in relationship to parked cars on the street? (the proposed added text does this- see attachment A and B)

2) Can planning staff and/or Mr. Gautreau explain how a street with width of 25’ curb to curb that has parking on both sides, is more safe than a street that has a width of 11’ with no parking on either side?

Thank you for your time.
Regards.
Liv Chase
ATTACHMENT A

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) Permanently paved and accepted streets or island streets. The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings — 25' for streets with parking on both sides; 18' for streets with parking on one side; 11' for streets with no parking on either side
2. For all other buildings — 28' for streets with parking on both sides; 21' for streets with parking on one side; 14' for streets with no parking on either side

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) Streets to be upgraded in connection with development. The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

(c) Other exceptions. The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.
Parking on both sides of the street

Parking on one side of the street

No parking on either side of the street

7 feet is the minimum width necessary for parallel parking space. The measurement was based on average vehicle widths and design standards for on-street (parallel) parking space in other municipalities, including the City of Chicago. 9.9 feet is the width of most standard fire trucks.
Planning Board Meeting Public Comment May 8th 2018

Text Amendment 14-403

Comments regarding Section A of this text amendment

Hello my name is Brent Adler, 47/49 Chapel Street. I attended the workshop meeting on March 22nd 2018.

I would like to thank staff for taking the time to improve this section of the land use code. I hope my comments and questions will help in determining that there is no need for Section A of this text amendment.

For your information Boston MA has a population of 687,584 people. Portland has a population of 67,067. I spoke with Michael Rooney of the Boston City Planning department and according to him there is no Code in the City of Boston that restricts the addition or development of any unit on a street that is narrow. Instead, the issue of safety is addressed by zoning ordinances that would allow for a deeper set back of a new building for better access of emergency vehicles. Boston has narrow streets like Portland and is a City in the United States.

Boston Fire department has the same fire truck as engine 31 of the Munjoy Hill Station, a Pierce Enforcer 1250/750. Training for the fire department to work on small accepted paved streets should be the solution to service urban infill and development on small accepted City streets, this would be a worthwhile investment for the future.

According to the discussion at the workshop on March 22 the amendment language clarifies our 35' ROW and adds individualized review on a case by case basis by experts in DPW and Fire for any submission of a unit or development on a street less than 25'. Adding units, whether its one 400 square foot or a 30 unit apartment building adds risk and stress onto emergency vehicles and Staff. It was also determined that City accepted streets are the responsibility of the City to maintain.

Up until now we favored the interpretation of 14-403 that the 35' rule did not apply to accepted City streets. I have given many examples, here are a couple more.

9 Romasco Lane- Planning board approved 4 unit in 2015 with a recent permit extension
Joy Place on the west end- condominium project approved in April 2018

It would be important to know how many permits have been denied based on 14-403 for City accepted Streets, this information would help to determine the current interpretation. Moving forward under the amendment we have clearly defined the paved width creating a moratorium
on streets less than 25' and slowing urban infill and housing stock in the City. Blacklisting these streets as we develop the 2030 plan.

During the workshop, Chris Branch stated that accepted City streets are the responsibility of the City unlike unimproved non accepted City Street. How will DPW review an exception for a permit on a street less than 25'? Will he be basing his decision on the condition of the street, and if so wouldn't this be the responsibility of the City and not a condition of issuing an exception?

During the workshop Chief Gautreau stated that a fire trucks width is roughly 10' wide but would need 16' for the outriggers on a ladder truck. Does the fire department use a ladder truck on every call, and if not, what is the working room around a smaller pump truck used for single level access?

If we are going to leave these decision to the experts as Ms Torregrossa stated, why are we not giving them tools to make the decisions with. We have tools for staff during site plan and zoning review. Can we not make this more transparent and in the amendment start to clearly define what an exception would be? Let me give you an example of how my denial letter will read based on the current language of the amendment. My permit for Chapel street is ready for the expert review of the fire department and DPW. It has passed site plan review, design review, code review and zoning. This is what im expecting back from the DPW and the Fire chief when the amendment before you passes

Dear Mr Adler,

Thank you for your request for an exception of 14-403 section A. Unfortunately at this time we do not have the equipment, training, or resources to tend to emergencies at your proposed single family dwelling. This lot is serving the City just fine as a vacant non buildable lot.

Sincerely
DPW and Fire Chief

Ms Torregrossa stated that for each 2 bedroom unit there is up to 4 occupants that are added. And each one of these occupants add risk to the equation for emergency vehicles. Under this logic, in the India Street neighborhood where in a 2 block radius over the past 5 years over 200 2-3 bedroom units have been added, increasing the City occupants load at least 1000 people we should carefully consider if our current emergency response is satisfactory for all these new individuals. At what point will a new fire station be needed under the current logic of risk assessment? I do not see the risk on small City approved streets if the occupancy is managed, we know the stock and paved width of all our adopted streets here on the peninsula, this can be gathered through GIS. Why not take the smallest street, drive a fire truck down it and run a drill? I do not see the need to individualize review on small scale development. Can we not work
from the problem and see if it's possible to service the small streets first rather than declaring 25' as the minimum. I am more optimistic about the abilities of our public services than declaring that it's impossible to drive down and put out a fire on a narrow street. There are rural roads in northern Maine that pose more of a problem than an urban city that is littered with Sprinkler Systems, building codes, Fire Hydrants and many fire stations. Can we not get some facts about our current equipment, how long are hoses, how many firefighters does it take to respond and extinguish a 400 square foot residential house that is sprinkled?

Finally, if it is the opinion of staff that it's too risky to add occupants and services to city approved streets than there should be no reason why we can't add an exception for structures that do not require these levels of services. I'm thinking structures such as garages, storage areas, green houses and beehives. Neither of which would need DPW. Thank you for your time.

Brent Adler
Fwd: Public Comments for Tonight's Planning Comment Session on 14-403

Good Afternoon,

I'm planning to attend the Planning Board public comment session tonight and present my notes below, but I thought it might be very helpful to include them online, so that people can use the live links to review documents and facts associated with it.

Thank you

Matt Power
Portland
207-619-2713
power.matt@yahoo.com

[Comment Follows]

Esteemed Councilors, Good Evening,

Over the past week, I've been doing my homework, researching some of the questions raised about the proposed text amendment to Section 14-403. I hope the information below is helpful in looking at this amendment from a more nuanced perspective that might encourage more, rather than less, housing development, based on sound economic analysis—if the conditions are right.

As a template to look more closely at the issue of Unaccepted Streets, I selected District 5. It's the section of Portland that seems to have the greatest concentration of unaccepted streets. By combining Google Maps data with Information from the 2017 Transportation and Sustainability Committee (https://www.portlandmaine.gov/586/Sustainability-Transportation-Committee) and GIS data, I was able to generate a visual representation of all of the unaccepted streets in that district. Here's what the color-coded map reveals.

300 Empty Lots. There are about 300 empty parcels on these streets (icons may represent multiple parcels). Certainly not all of these parcels are buildable, but many are.

Existing Homes. All of these parcels are located on streets that already include other, existing homes.

Streets with no homes on them are not included on the map. Nor are narrow or short streets unlikely to be built upon.

Infrastructure—Already in Place. Most of these properties appear to benefit from multiple levels of City maintenance and infrastructure. Public Works will need to confirm for each street.
**Fire Truck Access—Weight Litmus Test.** If trash service is provided to an unaccepted road, we know the road—whether paved or packed gravel—can support a 25-ton loaded garbage truck. A loaded Fire Truck typically weighs a similar amount—30 tons, fully loaded with water. [http://www.dot.state.pa.us/public/pdf/InfoBridge/Approximate%20Vehicle%20Weights.pdf](http://www.dot.state.pa.us/public/pdf/InfoBridge/Approximate%20Vehicle%20Weights.pdf)

**The Economic Arguments For and Against Allowing More Housing Development on Unaccepted Streets in Portland**

1. **PRO: Ready Made Infrastructure.** Building on open and empty parcels would have minimal costs with regard to city infrastructure, beyond the initial hookup of sewers and water, which could be borne by the owner. Most of the streets, we believe, are already maintained and serviced.

2. **CAVEAT: School Enrollment Must Be Below Capacity.** According to a Massachusetts Study from UMASS Dartmouth 2 years ago ([https://www.mhp.net/writable/resources/documents/Cost_Benefit_new_housing_3-15-16.pdf](https://www.mhp.net/writable/resources/documents/Cost_Benefit_new_housing_3-15-16.pdf)), the one factor that makes the difference in a district's ability to generate enough more revenue from new housing than the additional cost of educating new pupils was the *existing enrollment capacity of the local school*.

   Mass. spends $14,000 per student, about the same as Portland. They looked at the net economic costs and benefits of new residential development. Schools were inevitably the biggest concern at the local level. Research looked at 6 school districts. In half of the districts, new mixed use housing had a *net positive* on the City’s bottom line. The other three districts fell into the red economically.

   So what happened? The latter three schools were at or past enrollment capacity. That's the deal breaker. However....

3. **PRO: Empty Classroom Seats Put New Housing in the Black.** Researchers found that “The effect of school enrollment on district expenditures had a *statistically significant dependence* on whether or not the school district was operating at or above its enrollment capacity (pvalue= 0.02). In schools with available pupil capacity (i.e. no need to build a new school), new students only cost 61 percent as much per year. That’s enough to tip the scales so that new housing contributes more to local fees, taxes, impact fees, and so on than it withdraws.

*Suggested Case Study: Riverton Elementary School and District 5*

Before making 14-403 more restrictive toward new housing, as the current text amendment suggests, I urge the Board to look closely at just one District. In the light of the research I have linked to above, why not consider the positive implication of bringing hundreds of new families into the area, especially if schools are projected to continue losing students?

I have requested the enrollment history and forecast for Riverton Elementary School in Portland. I will forward it as an addendum to this comment when I get the response. I frankly don’t know if the enrollment numbers support my case at this time. From what I can gather from recent news reports, most Portland elementary schools are losing enrollment—other than Reiche. Charter schools are draining away students ([http://www.wmtw.com/article/maine-public-school-enrollment-on-the-decline/9641783](http://www.wmtw.com/article/maine-public-school-enrollment-on-the-decline/9641783)). It seems likely that the City will see an increasing number of empty seats in schools such as Riverton, without new housing options. This means no new facilities will need to be built, and new students can be added at much lower annual cost.

**A Future Pathways To Housing Growth.** Finally, If schools are at capacity, there’s one other way to make local new housing work, with changes to state policy. **The State Needs to Pay Its Fair Share.** The same Massachusetts new housing study notes that the State receives a huge economic boost from new housing, but often doesn’t share that bounty with towns in a way that helps schools. Simply by giving back 8 percent of what they make, they could tip the balance into the black for development and away from local property taxes.
Vacant Parcels on Unaccepted Streets in District 5, Portland
Data From May 7, 2018—From Google Maps and 2017 Transportation and Sustainability Committee Results

KEY
Vacant Parcels
(One icon may represent multiple parcels)
Street Status
Paved with Curbs
Paved only
Unpaved
Note: Unpaved unaccepted streets of 15' or less width are not indicated. Streets without existing structures also are not indicated.

Approximately 300 vacant parcels, in total, are located on unaccepted streets in District 5.

This map is available as an interactive Google Map that can easily be amended and updated. Data that is not yet embedded, but could be, is whether or not each street is maintained by Portland Public Works—in the way of trash and recycling service, sewer and water. All of these streets appear to have electrical service and snowplowing service.
ORDER APPROPRIATING $1,850,000 FOR IMPROVEMENTS TO THE PORTLAND INTERNATIONAL JETPORT PASSENGER TERMINAL

ORDERED, that $1,850,000 from the Portland International Jetport (Jetport) unrestricted fund balance is hereby appropriated for improvements at the Jetport passenger facility, as follows:

- Terminal Building Improvements $1,260,000
- Parking Facility Improvements $265,000
- Site Improvements:
  - Roadway, Sidewalk, and Directional Sign Renovations $50,000
  - Phase 1 funding for trail along Yellow Bird Road $50,000
- Ground Service Equipment Storage Structure $130,000
- Passenger Boarding Ramp $75,000

Total $1,850,000
MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council
FROM: Paul Bradbury, Airport Director
DATE: June 4, 2018

DISTRIBUTION: Jon Jennings, City Manager; Mayor Strimling; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: Request for appropriation from the Portland International Jetport’s unrestricted fund balance for improvements to Jetport infrastructure totaling $1.850 million.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 18, 2018 Final Action: July 16, 2018

Can action be taken at a later date: _X_ Yes _____ No (If no why not?)
Action can be taken at a later date, but staff recommends action as requested to meet the seasonal construction of some elements and a desire to have certain improvements in place and benefitting passengers in the 3rd quarter of 2018.

I. SUMMARY OF ISSUE (Agenda Description)

The Portland International Jetport is requesting an appropriation from its unrestricted fund balance to make further improvements as we respond to significant passenger growth this year. Outbound capacity is up 109,000 seats or 17% in the 2nd and 3rd quarters. The Jetport completed a significant expansion in 2012 which greatly improved the passenger experience; this was followed by a $3.975 million appropriation by the Council for passenger terminal improvements last year which are now currently underway. In 2017 the Jetport was awarded the best airport under 2 million passengers in North America for service under the Airport Council International’s Airport Service Quality program. In order to maintain this level of service with rising passenger counts it is critical that we continue our infrastructure investment at the Jetport. I am proposing this appropriation to fund the following infrastructure improvements.

- Terminal Building Improvements $1,260,000
- Parking Facility Improvements $265,000
- Site Improvements:
  - Roadway, Sidewalk, and Directional Sign Renovations $50,000
  - Phase 1 funding for trail along Yellow Bird Road $50,000
- Ground Service Equipment Storage Structure $130,000
- Passenger Boarding Ramp $75,000

Total $1,850,000
II. REASON FOR SUBMISSION (Summary of Issue/Background)

The Jetport has experienced record passenger volumes in 2016 and 2017 handling 1.787 and 1.862 million total passengers respectively. We are on track for another record year in 2018 with passengers up 3.5% in the 1st quarter and available outbound seat capacity up 17% in the 2nd and 3rd quarters. The investment being proposed under this appropriation will provide needed short term infrastructure improvements to meet the demands of these additional passengers. A summary of each of the improvements is outlined below.

1. Terminal Improvements: This is the largest portion of this appropriation request and continues the renovations commenced under the 2017 appropriation. This item includes the installation of terrazzo tile on the upper level from gates 1-6 to more closely match the 2012 terminal expansion. This same terrazzo will also be installed on the lower level to baggage claim, providing a high traffic finish appropriate for these areas. Additionally, the existing 15 year old seating at gates 1-6 will be replaced with new seating containing integrated power connections for personal electronics. The seating will match the seating in the terminal expansion gates 7-11 and will have a more efficient layout to accommodate more passengers in the same amount of space. Lastly, this item includes upgrades to the Jetport public address system to provide integrated visual paging of messages and certain boarding announcements.

2. Parking Facility Improvements: The additional passenger traffic has resulted in capacity constraints for parking from March – May of this year. This funding will rehabilitate the discount lot off District Road which has been in continual operation since March. This item also includes improvements to the car rental facility, which is in the sublevel of the Jetport parking garage. The car rental facility restrooms will be renovated. Additionally, this item includes funding for design of an elevator tower to move rental car return passengers up to level 3 of the garage allowing a convenient entrance to the terminal via the over road bridge with direct access to the security screening checkpoint. This will provide design funding only. The funding to construct the elevator tower would come under a future appropriation.

3. Site Improvements: Sections of the terminal loop roadway and all sidewalks are reaching 20 years of service and are in need of overlays. This funding will provide overlays to those areas most in need. It will also provide refinishing of directional signs along the roadway. Lastly, this item provides the first phase of funding for a proposed trail along Yellowbird Road. This trail was incorporated into the Jetport’s Sustainable Airport Master Plan and is supported by the Stroudwater Village Association and Portland Trails.

4. Ground Service Equipment Storage Structure: The increasing passenger volumes and larger aircraft require additional ground service equipment including larger push back tugs, more baggage carts, and lavatory carts. It is operationally beneficial to protect this equipment during the winter so it is immediately available for service. The airlines have requested additional space for this equipment so under this item we are proposing a 4,500 square foot tensioned membrane structure located on the terminal apron near the deicing processing facility.
5. Passenger Boarding Ramp: The busy summer passenger volumes require the flexibility to enplane and deplane passengers using manual boarding ramps when all standard passenger boarding bridges are in use. This item allows the purchase of one mobile passenger boarding ramp to match the two currently owned by the Jetport.

III. INTENDED RESULT

The approval of this appropriation will allow the Portland International Jetport to invest in the infrastructure and equipment needed to meet passenger growth and maintain its best in class airport service quality.

IV. COUNCIL GOAL ADDRESSED

The Portland International Jetport provides a robust connection for the region to the national air transportation system and in doing so plays an important role in supporting the City Council’s economic development goals. Approval of this project allows the Portland Jetport to make needed investment in Jetport infrastructure to better serve the nearly 1.9 million passengers using it annually.

V. FINANCIAL IMPACT

The Jetport’s unrestricted cash fund balance was $22,611,875 as of March 31, 2018 if $6.2 million of Airport Improvement Program funds currently ready for reimbursement are included. If approved, the Jetport will use $1.850 million of its unrestricted cash fund balance to complete these improvements. Airports, like many industries, have substantially increased their liquidity since 2008 in response to the recession. This has resulted in unrestricted cash holdings in excess of 500 days of operating expenses, a level that is high historically. The Jetport has followed this trend, as of March 31st the unrestricted cash fund balance amounts to 498 days of operating expenses on hand. At the last rating review with S&P and Moody’s I outlined the Jetport’s capital improvement program and noted it was our plan to maintain a more appropriate floor of 365 days of operating cash on hand. If this appropriation is approved the Jetport will remain well above this floor at 457 days of cash on hand.

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

VI. STAFF ANALYSIS

Approval of this appropriation will provide infrastructure improvements and equipment to meet growing passenger volumes. Staff recognizes our passengers have a choice on which airport to use. The Jetport’s ability to compete for passengers is directly tied to the convenience and
service it provides. The Jetport must provide a modern, efficient, convenient, and safe connection from ground to air transportation.

VII. RECOMMENDATION

Jetport staff recommends the City Council approve this request to appropriate $1.85 million from Jetport unrestricted cash fund balance to proceed with these infrastructure investments.

VIII. LIST ATTACHMENTS

None

Signature

June 4, 2018
Date
AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 6  
Re: Disorderly Houses

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

1. That Chapter 6, Article IX., Section 6-202 of the Portland City Code is hereby amended as follows:

ARTICLE IX. DISORDERLY HOUSES.

Sec. 6-202. Enforcement.

(a) Authority to Enforce. If the owner (a1) refuses to agree to take effective measures to address the disorderly house, (a2) takes ineffective measures to address the disorderly house as determined by the city, (a3) fails to implement the agreement reached with the city to address the disorderly house or (a4) if, in the discretion of the city, the disorderly house requires immediate posting, the city may condemn and post the building against occupancy, and/or may file a legal action against the owner seeking any and all damages and remedies to which it is entitled pursuant to state and local laws.

(b) Notice of Suit. If the City pursues legal action against an owner or landlord for a disorderly house violation, notice shall be provided to the tenants by the City. Notice shall be made within a reasonable time following the service of the complaint upon the property owner. If a tenant list has been previously provided by a landlord, notice shall be made by regular mail to all known tenants in the building. If no tenant list has been provided, notice shall be made by regular mail to all occupants in each unit of the building.

(c) Condemnation. In the event that condemnation is required to address one or more disorderly house violation(s), the City shall provide notice to tenants of the building. Notice shall be made within a reasonable time following the City’s election to condemn the building. Notice shall be made by: (1) regular mail to all known tenants or to all occupants in each unit in the building; and (2) by posting a copy of said notice at the premises.
MEMORANDUM
City Council Agenda Item

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

FROM: Richard Bianculli, Neighborhood Prosecutor (Police)

DATE: May 10, 2018

SUBJECT: Disorderly House Ordinance Amendment Request

SPONSOR: Housing Committee (3-0 vote, April 25, 2018, minutes attached)

COUNCIL MEETING DATE ACTION IS REQUESTED: NEXT AVAILABLE (6/4/18) 1st reading X Final Action

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

PRESENTATION: Brief presentation by Richard Bianculli, Neighborhood Prosecutor, regarding the proposed amendment.

I. ONE SENTENCE SUMMARY
The proposed amendment requires the City to provide notice to tenants when enforcement of the disorderly house ordinance against the landlord may impact the interests of the tenants.

II. AGENDA DESCRIPTION
The Police Department requests the amendment of the disorderly house ordinance (City Code of Ordinances, Section 6-202) to provide notice to tenants when the enforcement of the disorderly house ordinance against the landlord may impact the interests of the tenants. Providing notice will ensure transparency and accountability while affording due process protections to all parties involved.

The first amendment to the disorderly house ordinance requires the City to provide notice to tenants once a formal complaint (e.g. typically a Rule 80(k) action) is filed in court against the landlord/owner for enforcement of the ordinance. The tenants would receive notice of the complaint by posting at the premises or regular mail. Following receipt of said notice, tenants would be allowed to join in the matter as interested parties. This provision is important to protect the rights of all tenants, especially those tenants that may not have contributed to the incidents that gave rise to the designation of the property as a disorderly house but may be impacted by the relief granted by the Court.

The second amendment requires the City to provide all tenants of the building with “reasonable written notice of said condemnation or posting against occupancy.” With
regard to enforcement against disorderly houses involving an immediate threat to the health and safety of the tenants, the City may be required to move forward with condemnation of the property. The proposed amendment will allow tenants adequate time to seek alternate housing or retain counsel if additional relief is required.

III. BACKGROUND
The recent enforcement of the disorderly house ordinance against a landlord required the City to prohibit occupancy in a 3-family apartment building until the building can be transferred to a third party. The unprecedented relief raised due process concerns for the tenants that were impacted.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED
The proposed amendment will afford due process protections to tenants that may be impacted by the enforcement of the disorderly house ordinance. Providing such due process protections will provide transparency and accountability while protecting the City against liability in the form of due process claims.

V. FINANCIAL IMPACT
No negative financial impact.

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

VII. RECOMMENDATION
Staff recommends approval.

VIII. LIST ATTACHMENTS
(a) Proposed amendment language.

Prepared by: Richard Bianculli, Neighborhood Prosecutor
Date: May 10, 2018.
Housing Committee
Minutes of April 25, 2018 Meeting

A meeting of the Portland City Council’s Housing Committee (HC) was held on Wednesday, April 25, 2018 at 5:30 P.M. in Council Chambers at Portland’s City Hall. Councilors present at the meeting included Committee members Councilor Kimberly Cook, Councilor Pious Ali, Councilor Jill Duson, Chair of the Committee. City staff present included Jeff Levine, Planning and Urban Development Department Director, Mary Davis, Housing and Community Development Division Director, Victoria Volent, Housing Program Manager, and Richard Bianculli, Jr., Esq., Neighborhood Prosecutor.

**Item 1: Review and accept Minutes of previous meetings held on March 28, 2018**

Councilor Cook motioned to amend the minutes by removing the additional public comment appended at the end of the minutes and requesting that they be placed separately in the public record. Motion was seconded by Councilor Ali and the amended minutes unanimously approved 3-0.

**Item 2: Rental Markey Survey Presentation**

Councilor Cook asked if the committee specifically asked staff to contract for this report. Mary Davis responded that the Committee raised several questions and concerns with the rental data contained in the Housing Report from last October and asked staff to find a better resource for this information. Staff solicited a consultant to conduct a rental housing survey. Michael LeVert, the consultant selected, presented the report. He explained that the task he was given was a straightforward task to sample the rents; a brief survey was conducted which received a high response rate. In addition he worked directly with several large landlords to collect rental data. Mr. LeVert clarified that this was a landlord survey not a tenant survey, a survey of actual rents without consideration of whether it is subsidized unit or an income controlled unit.

Councilor Ali asked if landlords that participated included Avesta and Portland Housing. Mr. LeVert indicated that Avesta did respond.

Councilor Cook stated that it appears the increase in rents from the end of 2016 to end of 2017 shows a 2% increase; Mr. LeVert stated that the median change of $25 is a better analysis than looking at the average percentage; a better metric is the median. Councilor Cook indicated that trend data would be more helpful than point in time data. Mr. LeVert pointed out that the survey did ask for rent information from last year which does show short term trend detail and concludes that median rent has stabilized. Mr. LeVert also pointed out that the City now has a high quality data set that can be used as a base moving forward. He expressed his thanks to the landlords that provided private data and information for the report.

Councilor Duson asked if staff had any clarifying questions or comments; Mr. Levine indicated that this is the type of data set that the city may want to update every two or three years as it is the best data set
that the city has had in a while.

Councilor Duson indicates that this is an excellent report that provides a tool for tracking trends and a base line that is Portland specific. Councilor Duson expressed her appreciation for the report.

Mark Adelson of the Portland Housing Authority (PHA) stated that he was unaware information was requested from the PHA and that they did not respond. He indicates that public housing rent data would not have been helpful to this survey. PHA did a rental study in February.

Councilor Duson would like us to work with PHA when we do update this data to include the PHA comments.

**Item 3: Review and Vote to Recommend to the City Council Amendments to Chapter 6 re; Disorderly House Ordinance.**

Richard Bianculli, Jr Esq introduced the item. He explained that part of his role is to enforce the disorderly house ordinance and indicated that 95% of the time landlords are compliant. He indicated that the proposed changes are being recommended to avoid any due process issues in the future and explained that the changes would require notice to tenants in cases of disorderly house complaints and condemnation.

Councilor Duson acknowledged the collaborative work done with Pine Tree Legal in drafting the proposed changes.

No public comment was given.

Councilor Duson indicates that these changes confirms the approach the city has taken in ensuring housing safety.

On a motion made by Councilor Cook and seconded by Council Ali, the Committee vote unanimously 3-0 in favor recommending the changes to the City Council.

**Item 4: Housing Trust Fund Annual**

Jeff Levine and Mary Davis provided an overview of the annual plan. Councilor Duson asked for clarification regarding how much would be allocated this year – if the city maintains a $500,000 balance would the plan allocate only $413,000 this year? Mr. Levine explained that this is the premise but it flexibility is built in. Councilor Duson asked about the priority for the PHA implementation strategy if we are doing a competitive application process. Mr. Levine indicated that this priority does not rule out other developers but these are projects that are moving forward and we want to ensure that city meets its commitments to the neighborhoods.

Councilor Cook indicated that she could not find a copy of the 2017 plan online to use to make contextual comparisons.

Councilor Cook asked several clarifying questions and concerns:

1. Can the Committee vote on this tonight as it does appear that the Committee has a recommended
plan to act on; Councilor Cook suggested that the vote be delayed until the next meeting which would allow the Committee to discuss and suggest changes that can be brought back for action as a recommended plan.

(2) The $500,000 minimum balance seems like a large contingency and she would be more comfortable with a lower amount.

(3) Would like clarity as to the PHA priority, what does being a priority mean and why did staff make that recommendation? Would like more explanation of these things in the public document. Mr. Levine explained that staff wanted to focus on projects that are ready to move forward, are already in the implementation phase and have identified financing gaps; next year staff might recommend a different focus area. Councilor Cook would prefer to see report amended to provide some of that clarity.

(4) Note in plan that selection criteria and allocation of points are detailed in the application.

(5) Add a definition for adaptive reuse.

(6) Provided in the plan an explanation of how and when the city would provide to retain deed restrictions and how the right to cure defects would be documented. Define right of first refusal, when it applies and how it is secured.

(7) Explain the term "resource of last resort" in the plan.

(8) Include an explanation of how the maximum award per unit amount was determined; include background information as an addendum to the plan.

(9) Explain the reasons behind the income targeting.

Public Comment:

Mark Adelson - PHA is pleased to be recognized as a priority; the Front Street project is unique and not one that a normal developer would take on. He asked for clarification on how they might incorporate the 80-120% income targets; he also explained that Front Street will pursue the 4% tax credits and not the competitive 9% tax credits so they do have the constraints of the deadlines associated with the 9% application.

Tyler Norod of Avesta Housing; indicated that the focus of the plan should be on permanent uses which would be the best use of limited resources; it is difficult for Portland to score well in the tax credit allocation process and these types of resources make Portland developers more competitive. The city may want to defer restrictions or ongoing oversight to other funding sources that may be more restrictive.

Tom Watson states that if the fund has $900,000 the City should use as much as you can to get units on the market;

Brit Vitalius of the Southern Maine Landlord Association is confused about the priority for PHA projects and is happy that it is being clarified; he believes full disclosure will benefit everyone, particularly other applicants.

Steve Perazone of 47 Bolton Street asked that the reason for the $15,000 maximum award per unit be clarified.

Christine Grabowy of Falmouth, a Portland rental property owner asked that the equitable balance be explained, assuming that means single family homes.
Mr. Levine explained that equitable balance is explained in the implementing regulations for homeownership units. Mr. Levine also indicated that $280,000 of the current balance in the Housing Trust Fund has come from Inclusionary Zoning fee-in-lieu payments. He also explained that the maintaining a minimum balance is a national best practice and staff is proposing it as a policy not a requirement.

Councilor Duson indicated that she liked the idea of a minimum balance in theory but sees it as specific to this year only; suggested that a statement be added to the plan that the minimum balance is for 2018.

Councilor Cook asked how implementing regulations are created and do they come back to the Committee or Council for approval. Mr. Levine explained that generally regulations are approved by board implementing the policy (for example the Planning Board approved the Inclusionary Zoning (IZ) implementing regulations). He indicated that staff would use the IZ regulations as a starting point and would bring the proposed regulations back to the Committee for approval.

Councilor Cook indicated that she would need to better understand the gap facing the PHA projects in order to be okay with the PHA priority. Mark Adelson stated that they will know if there is gap at the Boyd Street project very soon. The current design for Front Street is over budget but they do not have an exact dollar amount yet.

Councilor Duson indicated that the Committee would like to see a revised draft next month; the Committee will take additional public comment and then make a recommendation to the City Council.

Councilor Cook indicated that it was worth noting in the plan that there is unknown timing with Front Street project so that other applications could be considered and the plan should clarify that mix income projects are eligible.

**Item 5: Tax Acquired and City-Owned Property Analysis**

Mr. Levine outlined the memo and gives brief background on this site; Victoria Volent gave more insight into the background analysis done that resulted in the staff recommendation not to pursue this site.

Councilor Cook asked if the current zoning (R1) was the determining factor. Mr. Levine stated that the current zoning is not the most significant challenge to the site.

Councilor Cook asked if a map of city owned land would be part of the item on the work plan for the end of June? Mr. Levine indicated that it would be included.

**Item 6: Committee Discussion re: 2018 Work Plan**

Councilor Duson asked staff to provide a copy of the 2018 Council Goals at the next meeting so that the Committee can review the goals and work plan together.

On a motion made and seconded (approved 3-0) the meeting was adjourned at 7:50 pm.

Respectfully submitted, Mary Davis
ORDER APPROVING MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF PORTLAND, MAINE AND
THE PORTLAND PARKS CONSERVANCY

ORDERED, that the attached Memorandum of Understanding with the Portland Parks Conservancy is hereby approved in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Memorandum of Understanding and whatever other documents are necessary to effect the intent and purpose of this order.
MEMORANDUM
City Council Agenda Item

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

FROM: Ethan Hipple, Deputy Director, Parks, Recreation and Facilities Department

DATE: 6/19/18

SUBJECT: Approval of Portland Parks Conservancy Memorandum of Understanding

SPONSOR: Parks, Recreation and Facilities Department
(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 ___ 7/16/18 _______ Final Action ___ 7/16/18 _______

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

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

I. ONE SENTENCE SUMMARY: City Staff and Portland Parks Conservancy Board Members have drafted an operating MOU for Council approval.

II. AGENDA DESCRIPTION: This order approves the Memorandum of Understanding between the Portland Parks Conservancy and the City of Portland. Upon approval and execution of the Memorandum of Understanding, the Portland Parks Conservancy will commence with fundraising efforts to support parks projects and programs that are priorities of the city.

III. BACKGROUND: The Portland Parks Conservancy was formed with the mission of raising funds to support the parks and park programs of Portland. The Portland Parks Conservancy (PPC) will serve as an independent entity with 501c(3) status. The PPC has formed a board of directors, a board executive leadership team, has approved by-laws, and is in the process of hiring an Executive Director to lead the organization and fundraising effort.

In order to operate successfully and efficiently, a Memorandum of Understanding has been drafted to outline the relationship between the PPC and the City of Portland. Portland Parks, Recreation and Facilities staff and Corporation Counsel have reviewed and edited the MOU in its current form, and the Board President of the PPC has signed the MOU. It now awaits council approval for full execution.
IV.  INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED  The city enters into an MOU with the PPC so that the PPC can commence fundraising to support city priority parks capital projects and park programs.

V.  FINANCIAL IMPACT  The mission of the PPC is to raise funds to donate to the city for park projects and programs that are priorities of the city. The city has offered to provide in-kind office space for the Executive Director of the PPC at 212 Canco Rd. The PPC will be providing all office equipment, furnishings, etc...

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

VII.  RECOMMENDATION  Staff recommends council approval of the Portland Parks Conservancy MOU.

VIII.  LIST ATTACHMENTS
   1.  City-ConservancyMOU 06.15.2018 - PPC signed

Prepared by:  Ethan Hipple
Date:  6/19/18
Bean/agendarequestmemo/rev 11/2015
Memorandum of Understanding between The City of Portland, Maine and
The Portland Parks Conservancy

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is entered into by and between the City of Portland, Maine (hereinafter the “City”) and the Portland Parks Conservancy (hereinafter the “Conservancy”) (the City and Conservancy may be referred to individually as a Party or collectively as the “Parties”).

I. RECITALS
WHEREAS, the City is a municipality in the State of Maine; and
WHEREAS, the City maintains and operates numerous parks, trails, open spaces, programs, and recreational facilities (hereinafter “Portland’s Parks and Programs”); and
WHEREAS, the Conservancy is a private non-profit corporation organized under Maine’s non-profit corporation statute for the express purpose of raising philanthropic support and encouraging civic engagement to enhance and sustain Portland’s Parks and Programs; and
WHEREAS, the Portland City Council adopted a certain Resolution, effective as of October 26, 2017, in which the Council expressed its support and enthusiasm for ongoing work to determine the structure of a partnership between the City and the Conservancy and the creation of the Conservancy to support the City’s local parks, trails and open spaces; and
WHEREAS, this MOU is in furtherance of the partnership contemplated by the Council’s Resolution;
WHEREAS, the Conservancy is presently seeking to attain tax exempt status from the Internal Revenue Service under Section 501(c)(3) of the United States Internal Revenue Code; and
WHEREAS, the Conservancy will operate as a fiscally-sponsored program of a non-profit with existing tax exemption until it achieves such status itself; and
WHEREAS, the Parties want to formalize their relationship by setting forth a series of mutual expectations;
NOW THEREFORE, in consideration of the mutual covenants, promises and commitments herein, the parties agree as follows:

II. PURPOSE
The purpose of this MOU is to establish a general framework for cooperation and collaboration between the City and the Conservancy. This MOU acknowledges the City’s authorization of the Conservancy acting in support of Portland’s Parks and Programs consistent with the terms set forth herein. This MOU is not intended to, and does not, create binding contractual obligations on either Party. It will assist in defining the relationship between the Parties in order to ensure that the goals of each are accomplished in a mutually supportive way.

III. GUIDING PRINCIPLES
The guiding principles and assumptions for this MOU are as follows:
A. The Conservancy exists to support and enhance Portland’s Parks and Programs by raising and expending philanthropic capital and encouraging civic engagement in support thereof.
B. The Parties are committed to promoting equitable access to Portland’s Parks and Programs, cognizant of geographic, socioeconomic, demographic, cultural, physical ability and population density realities.
C. The Conservancy agrees in the exercise of all its functions and activities that it will not discriminate in any manner on the basis of race, religion, color, national origin, gender, disability, age, sexual orientation, gender identity, or marital, parental, or veteran’s status in its programs and activities, and will comply with all non-discriminatory laws and policies that the City promulgates and to which the City is subject.

D. The City and the Conservancy will work collaboratively to develop mutual priorities for which the Conservancy will support the City, which priorities will be reviewed and updated at least annually.

E. The Parties acknowledge that the Conservancy will serve as an additive funder rather than supplanting appropriate City funding for Portland’s Parks and Programs.

F. To create a private donor base for Portland’s Parks and Programs, the Conservancy will seek to create connections among foundations, the City, private funders, businesses, and community members and organizations.

G. When the Parties collaborate on seeking additional funding for Portland’s Parks and Programs, they will attempt to avoid duplication of effort and competition for the same dollars, focusing instead on maximizing funding opportunities for shared priorities.

H. The Parties will strive for mutual transparency in their financial condition and issues, in order to inform the positions or priorities that each adopts.

I. The Parties will adopt procedures and enter into additional operating agreements with regard to specific projects, which shall assign clear responsibilities for each Party.

IV. RELATIONSHIP BETWEEN THE CITY AND THE CONSERVANCY

A. The Conservancy, although affiliated with the City of Portland by its purpose, is an independent corporate entity.

B. The Conservancy’s Board will include two ex-officio voting positions to be filled by the City: one by the City’s Director of Parks, Recreation & Facilities or their designee, and one by the Chair of the Portland Parks Commission or their designee. The City hereby authorizes these representatives to serve in that ex-officio capacity.

C. The Conservancy agrees to work with the City and its staff in support of mutual priorities and any operating agreement(s) between the Parties.

D. The Conservancy may also act as an independent advocate on behalf of Portland’s Parks and Programs, provided that the Conservancy shall not be an agent for the City and that any such actions shall not be binding upon the City.

E. The City agrees to seek and obtain any necessary permits or approvals for physical improvement projects that involve Conservancy funding, including but not limited to approvals under the City’s Historic Preservation Program.

F. The Parties agree that, as separate corporate entities, each is responsible for any liabilities and costs arising from its own action(s) and/or inaction(s), and for procuring its own policies of insurance(s) or self-insurance for such liabilities and costs in policy amounts as each deems prudent.

V. COLLABORATIVE FUNDRAISING EXPECTATIONS

A. The Conservancy’s fundraising and expenditures begin with a commitment it shares with the City of Portland: to sustain and enhance Portland’s Parks and Programs in order to enhance our quality of life, protect our environment, and promote the economic well-being of our city.

B. The Conservancy agrees to coordinate with City staff regarding funding goals, programs or campaigns and to
seek gifts that can benefit Portland’s Parks and Programs.

C. The Parties expect that the City will generally pursue and accept grants from state or federal agencies, scholarship funds, the City’s gift catalog, gifts of real estate or other property, and gifts in-kind of equipment and supplies intended for City use.

D. The Parties expect that the Conservancy will generally pursue and accept foundation grants and individual philanthropic financial donations including restricted and unrestricted gifts.

E. The Parties will work to streamline internal processes to ensure prompt and relevant support for each other’s fundraising efforts to further mutual effectiveness.

G. The Conservancy will honor the City’s vision, mission, strategic priorities, goals, policies and procedures when soliciting or accepting any funds.

H. The Parties will advise donors of the necessary approvals of either the Conservancy or the City.

I. The Conservancy agrees, before it begins to accept gifts for a particular collaborative fundraising effort, to confer with the Director of Parks, Recreation & Facilities or their designee.

J. Funds or gifts to the Conservancy will be owned by the Conservancy and maintained and/or distributed for the support of Portland’s Parks and Programs by agreement of the parties.

K. Funds received by the Conservancy will be maintained in accounts that are separate from City accounts, and although the Conservancy may transfer funds to the City, Conservancy and City funds will in no event be intermingled while those funds remain in the Conservancy’s control.

L. The Conservancy will provide the Director of Parks, Recreation & Facilities or their designee and City Council with a summary report of gifts received upon request.

VI. DIRECT FUNDING SUPPORT BY THE CONSERVANCY

A. The Parties acknowledge the general understanding that the Conservancy plans to fund discrete projects or programs that are priorities of the City, rather than funding general maintenance or operations expenses.

B. While there is an understanding that the Conservancy exists to partner with the City in support of Portland’s Parks and Programs, the City does not exercise the authority to obligate the Conservancy to fund any particular City priority nor is the City obligated to accept any funds offered by the Conservancy.

C. The Parties acknowledge the general understanding that the Conservancy will be an additive funder rather than supplanting appropriate City funding of Portland’s Parks and Programs, and that, if there is a time in the future when it appears that the City does not ensure that the Conservancy’s funding is additive, this would be grounds for the Conservancy to reconsider this agreement with the City.

D. The Parties acknowledge the general understanding that the Conservancy exists for the purpose of benefiting Portland’s Parks and programs and if there is a time when it appears that the Conservancy is not fulfilling that mission or contributing funds to Portland’s Parks programs with some regularity, that would be grounds for the City to reconsider this agreement and terminate any relationship or affiliation with the Conservancy.

E. The Parties understand that the Conservancy may transfer funds that are under its control to the City when there is agreement about the intention of how these funds are to be used. The City will use these funds in accordance with that understanding and provide the Conservancy timely reporting on the expenditure of these funds. If the City is unable to use all of the funds for the stated purposes, those agreements will provide that the City return the remaining funds to the Conservancy.

F. The Conservancy agrees to obtain consent from the City Department of Parks, Recreation and Facilities prior to applying for or accepting funds intended to be used toward physical improvements of City-owned
property. There is no obligation that the City accept funds offered by the Conservancy.

G. The Conservancy agrees to obtain consent from the City Department of Public Assembly prior to applying for or accepting funds intended to be used toward public gatherings on City property that are likely to involve 25 people or more. The Conservancy will obtain all necessary permits and approvals required under the Portland City Code for events held on City property.

H. Any project undertaken by the Conservancy on City property shall be subject to review and approval by the City and shall be designed and completed to the City’s satisfaction.

I. The Conservancy agrees not to make any payments to a City employee except with prior written approval from City.

J. Nothing outlined herein shall be construed to restrict in any way the City’s ability to undertake maintenance of or improvements to City property on its own initiative and in its sole discretion when Conservancy funds are not being used.

K. Nothing outlined herein shall be construed to obligate the City to undertake physical improvements of City-owned property.

L. The parties agree that notwithstanding anything to the contrary herein, nothing in this MOU requires the City to make, or to allow the Conservancy to make, any improvements or alterations to any City-owned property.

VII. FUNDING SUPPORT BY THE CITY

A. The Parties share the goal that the City will strive to appropriately fund Portland’s Parks and Programs, but this paragraph does not obligate the City to include any particular amount of funds in its budget for such purposes.

B. There is no obligation that the City provide financial or in-kind support to the Conservancy.

C. The City may provide limited and reasonable support to the Conservancy, at the discretion of the City.

VIII. GIFTS FUND MANAGEMENT

A. During the term of this MOU the Conservancy shall be responsible for overseeing the management of funds that originate with its activities or are entrusted to it by its donors. Conservancy fund management shall include the following:

1. The Conservancy is entitled to apply a certain portion of the gifts as an offset to its annual operating expenses.

2. The Conservancy is authorized to accept restricted gifts that are designed to benefit Portland Parks and Programs. Distribution of restricted funds will be made in accordance with donor intent and any operating agreements between the Parties.

3. The Conservancy shall follow Generally Accepted Accounting Principles for nonprofit corporations and shall enact prudent governance policies with regard to any invested funds.

IX. CONSERVANCY FILING, AUDITS AND REPORTING

A. The Conservancy will file all reports and other documents required by law in a timely and comprehensive manner, including but not limited to those required by the Maine Non-Profit Corporations Act, Maine Charitable Solicitations Act and the United States Internal Revenue Code and shall provide the City with copies of such reports upon request.

B. Upon request, the Conservancy will supply the City with an annual set of relevant summary financial
statements for the most recently ended fiscal year with a target date of the last business day in August.

C. Upon request, the Conservancy agrees to provide the City, annually:
   1. An annual report; and
   2. A list of Conservancy governing board, officers, and advisors.

X. CONFIDENTIALITY

The Parties agree that information about the Conservancy's donors and employees shall be kept confidential. To the extent permitted by law, neither the Conservancy nor the City shall disclose or use any private or confidential donor or employee information provided from one to the other except as required in and by the terms of this MOU. Notwithstanding the foregoing, the Conservancy acknowledges and agrees that the City is subject to Maine's Freedom of Access Act (FOAA) and that the City will disclose any information that it is required by law to disclose without liability to the Conservancy or any third party.

XI. NOTICES

A. Any notice to either party hereunder must be in writing signed by the party giving it, and, if mailed, shall be deemed given when mailed postage prepaid by the U.S. Postal Service first class, certified or express mail or other overnight mail service, or hand delivered, when addressed as follows:
   - To City: Director of Parks, Recreation & Facilities, 212 Canco Rd., Portland, ME 04103
   - With a copy to the City Manager at 389 Congress Street, Portland, ME 04101
   - To Conservancy: Attn: Portland Parks Conservancy, 769 Congress St., Portland, ME 04102

B. Other addressee(s) may also be hereafter designated by written notice. For any notice other than a Notice of Termination under Section XII, written notice may be given by other means acceptable to the receiving party, including by electronic mail. All such notices shall be effective only when received by the addressee.

XII. AMENDMENT AND TERMINATION

A. Unless earlier terminated as set forth below, this MOU will remain in effect until two years from the date set forth below, and is renewable for additional two year terms by mutual written agreement of the Parties.

B. This MOU may be amended only in writing signed by an authorized representative of both Parties.

C. This MOU may be terminated at the discretion of either Party, with or without cause, effective upon written notice to the other Party.

SIGNATURES

IN WITNESS WHEREOF, the City of Portland and the authorized representative(s) of the Portland Parks Conservancy have executed this MOU on this 4/20/18 day of 5 월, 2018, the effective date of this MOU. This MOU will expire two years from the date of signing.

CITY OF PORTLAND

By
(Signature)

Jon P. Jennings
MOU -- City of Portland and Portland Parks Conservancy 4/20/18

IIts: City Manager

PORTLAND PARKS CONSERVANCY

By

(Signature)

Andrew H. Magoun

(Printed Name)

IIts: President
ORDER APPROVING THE THIRD AMENDMENT TO THE 178 KENNEBEC STREET PURCHASE AND SALE AGREEMENT

ORDERED, that the attached Third Amendment to the Purchase and Sale Agreement for 178 Kennebec Street is hereby approved, substantially in the form attached hereto; and

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

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English
FROM: Greg Mitchell, Economic Development Director
DATE: June 28, 2018
SUBJECT: 178 Kennebec Street Purchase and Sale Agreement – Possible Amendments
SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair – Meeting held on 6/5/2018 and the Vote was Unanimous (3-0)

COUNCIL MEETING DATE ACTION IS REQUESTED: 1st reading and Final Action: July 16, 2018
Can action be taken at a later date: No, time-is-of-the-essence to move forward on the sale of this property.

PRESENTATION: Greg Mitchell/5 Minutes

I. One Sentence Summary

Ross Furman, the buyer for 178 Kennebec Street, and Nathan Szanton, his development partner, are requesting a change to the agreed upon residential portion of the Proposed Development Project from a mixed income affordable housing project to an elderly affordable housing project due to State of Maine Housing Authority Program funding selection criteria changes, and this change of Project scope requires an Amendment to the Purchase and Sale Agreement Section 12.

II. Background

Original Project Scope

On October 2, 2017, the City Council authorized a Purchase and Sale Agreement with Ross Furman. Mr. Furman’s proposal, with Nathan Szanton as a partner, included ground-level retail and/or artist studio space, and approximately 50 units of housing on the upper floors. The housing would be rental – a mix of studio, 1-, 2-, and 3-bedroom apartments, with an expected income mix targeted at 35% market rate, and 65% affordable (aimed at those at or below 60% of the area median income).
The subject property has been used for Public Works for parking purposes.

Revised Project Scope

The revised scope includes, as with the original scope, ground-level retail and/or artist studio space. The housing has been revised from 50 units of housing on the upper floor to 46 units of housing; from 1-, 2-, and 3-bedroom apartments to all 1-bedroom units set aside for households who head of household is aged 55+, with an income mix targeted for this development at 22% market rate and 78% affordable (aimed at those at or below 60% of the area median income).

III. Intended Result or Council Goal Addressed

The intended result would be the City Council voting to amend the Project scope in the Purchase and Sale Agreement to 46 units of housing, all 1-bedroom units set aside for households who head of household is aged 55+ with an income mix targeted at 22% market rate, and 78% affordable (aimed at those at or below 60% of the area median income).

IV. Financial Impact

Amending the Purchase and Sale Agreement does not have a financial impact, as the purchase price for the property remains the same at $250,000, in addition to future new taxes from the proposed development. Provisions are also included to ensure future payment of property taxes in the event of non-profit ownership. Buyer will provide the City with environmental indemnification and be responsible for any site environmental remediation costs.

V. Staff Analysis

Staff supports the revised Project scope and proposed Third Amendment to the Purchase and Sale Agreement, Section 12. It is noted that the First and Second Amendments to the Purchase and Sale Agreement were time extensions, with the Second Amendment extending the deadline to close as March 31, 2019, to coincide with the Buyer’s seeking Low Income Housing Tax Credits.

VI. Recommendation

The EDC, at its June 5, 2019 meeting, voted to forward to the City Council the proposed Third Amendment to Purchase and Sale Agreement with a recommendation of approval in substantial conformance as attached.

Attachments

Attached are the following documents for your information:

- Proposed Third Amendment to Purchase and Sale Agreement;
- Project Summary from Maine Workforce Housing, LLC;
- Purchase and Sale Agreement for 178 Kennebec Street dated October 10, 2017;
- First Amendment to the Purchase and Sale Agreement, dated March 13, 2018, extending the property closing deadline to April 13, 2018; and,
- Second Amendment to the Purchase and Sale Agreement, dated April 12, 2018, extending the property closing deadline to March 31, 2019.
THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT is made as of the ______________ day of ____________, 2018, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine ("Seller") and ROSS Y. FURMAN, an individual having a mailing address of Box Two, Portland, Maine 04112 (the "Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 10, 2017 as amended by a First Amendment to Purchase and Sale Agreement dated March 13, 2018, and a Second Amendment to Purchase and Sale Agreement dated April 12, 2018 (collectively, the "Agreement") with respect to certain real property located at 178 Kennebec Street, Portland, Maine;

WHEREAS, Seller and Buyer wish to amend the Agreement as provided herein:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting from section 3(a) of the Agreement the words "the day that is forty-five (45) days after the date of this Agreement" and replacing therefore the words "January 31, 2019," meaning and intended hereby to fix the Due Diligence deadline under the Agreement to on or before January 31, 2019.

2. The first sentence of section 12 of the Agreement is hereby deleted and replaced with the following:

   Within twelve months after closing, Buyer shall commence development of the project generally depicted and described in Exhibit B1 (which is attached hereto and incorporated herein by reference) as presented to the City's Economic Development Committee on June 5, 2018, and specifically including ground floor retail and/or artist studio space, and, on the upper levels, at least forty-six (46) one bedroom rental units for households whose head of household is at least 55 years of age, no less than 75% of which shall affordable to households at or below 60% of the area median income (the "Project").

3. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

1 Exhibit B attached hereto replaces the Exhibit B attached to the original Agreement.
IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: Jon P. Jennings
   Its City Manager

By: Ross Y. Furman

Approved as to Form:
City Corporation Counsel’s Office
Maine Workforce Housing, LLC
482 Congress Street, Suite 203
Portland, ME 04101

Project Summary

Maine Workforce Housing is applying for $400,000 in City of Portland HOME funding in this application, to fill a gap for a project at 178 Kennebec Street.

Project Team

The principals and staff of Maine Workforce Housing have successfully developed nine (9) mixed-income housing projects in Maine and New Hampshire over the last fourteen (14) years. These properties, the oldest of which has been open since 2004, have never had a single year of operating deficits. All of them are 100% leased with long waiting lists.

We are working with Ross Furman’s team to incorporate housing into their multi-phase development of the block. The first phase includes the area closest to Kennebec Street. It includes ground-level retail and/or artist studio space with 46-51 units of housing on the upper floors. The housing will be rental; all 1-bedroom units, set aside for households whose head of household is aged 55+. We’ve included a concept floor-plan of Phase 1.

The site has some unique advantages for residential development:

- The City has identified the Bayside neighborhood as a priority for redevelopment. Kennebec Street is a prominent street in Bayside, and street-level retail will dovetail well with surrounding buildings.

- A mixed-use residential/retail building will bring new residents to live, work, and shop in Bayside, reinforcing the urban fabric and adding new vitality to the core of the City.

- The site is within walking distance of a variety of services and destinations for daily living (e.g., banks, library, schools, etc.) as well as employers and public transportation.

- The site is within steps of a major park (Deering Oaks Park). Yet, it is also just a minute from an entrance to and exit from I-295, a highway that takes residents throughout Maine.

We expect the income mix targeted for this development will be 22% market rate, and 78% affordable (aimed at those at or below 60% of the area median income), creating economic diversity both in the building and in the neighborhood. Our attached proforma shows a mix of 22% market rate and 78% affordable. If construction costs come down from the conceptual estimate included in our application, this mix may shift slightly. As a business model, we find a more even mix of low-income and market-rate renters is more acceptable to renters and neighbors.

The residents will be a mix of people, incomes, and occupations in Portland. We expect the tenants in income-restricted units will include retired people on social security and also those with jobs at the lower end of the wage scale. The market-rate units are likely to also include retired people, and also professionals who are downsizing from larger homes.

This project, like all of our projects to date, will be completely non-smoking. Smoking will be prohibited both inside units and in the interior and exterior common areas of the project. This will be outlined both
as an addendum to each lease, and also stated in the House Rules. Our Resident Services Coordinator will have materials on tobacco cessation programs available to residents.

The project incorporates smart growth, affordable housing, green building design, brownfield redevelopment, downtown revitalization, urban outdoor recreation, and alternative transportation.

Amenities

We propose to provide our residents with the following amenities:

- Heat and hot water included in rent
- Community room with kitchen
- Coin-operated laundry facility
- Wireless internet throughout the building at no extra charge;
- Resident Services Coordinator on staff;
- Telemedicine room

Resident Services Coordination

Our RSC’s mission is to foster an environment in which elderly persons and people with disabilities can live independently and remain in their communities. As this project is proposed to be elderly, and with the Portland Shelter set-aside requirement, we are proposing to increase the number of hours an RSC is on the property. The Low Income Housing Tax Credit Program, as administered by MaineHousing, requires one (1) hour per week for every five (5) low-income units, or six (6) hours in this case. We would schedule an RSC for twelve (12) hours – double what is required. Our experience in other properties with a Homeless Preference has given us an appreciation for the staff levels needed onsite. This is reflected in our operating budget which is part of this application.

Transportation

The site is wonderfully located for service by public transportation. The METRO bus system, with scheduled service all over downtown Portland and connections to the neighboring cities, stops 2/10 of a mile from our site.

Photos and Renderings

We urge you to look at the set of photos of the site and “before” and “after” renderings, found immediately after this Executive Summary. They convey information about the project which simply cannot be expressed in narrative form. Thank you.
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 10th day of OCT 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and Ross Y. Furman, an individual having a mailing address of Box Two, Portland, ME 04112 (hereinafter referred to as “Buyer”).

RECITALS

WHEREAS, the CITY is the owner of approximately .22 acres of land at 178 Kennebec Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A (the “Premises”) and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer, subject to all easements of record and any other existing easements burdening the Premises;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. SALE. City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

2. CONSIDERATION. The purchase price for the Premises shall be the lesser (the “Purchase Price”) of: Two Hundred and Fifty Thousand Dollars ($250,000.00) and the product of Twenty-Five Dollars ($25.00) times the number of square feet comprising the Premises as shown in a pending and soon to be completed boundary survey of the Premises being done by or for the City (at its expense), subject to the following cost adjustments and conditions:

   a. Buyer shall deposit in the sum of Twenty-Five Thousand Dollars ($25,000.00) (the “Deposit”) within 3 business days after the full execution of this Agreement that the parties agree will be held in escrow as of the date of this Agreement, in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be refundable only in accordance with the terms of this Agreement, including without limitation, the provisions of sections 4(f), 6, 7 and 10; and

   b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.
3. **Title and Due Diligence.**

   a. **Due Diligence Period.** Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is forty-five (45) days after the date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations.

   b. **Property Description.** The property description contained in the deed will be a survey description based upon a survey plan (the "Premises") that will more specifically describe the property shown on Exhibit A hereto. The survey will be distributed to the parties hereto prior to expiration of the Due Diligence Period and the parties will agree on the property description prior to closing.

   c. **Financing Contingency.** Buyer shall have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is forty-five (45) days after the date of this Agreement (the "Financing Period") to obtain commercially reasonable financing, and shall take timely and commercially reasonable steps to secure such financing.

   d. **Title and Survey Objections.** Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

   e. **Option to Cure.** In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
f. **Deed.** City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements described herein, (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. **INSPECTIONS.**

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and
property damage, listing the City as an additional insured thereon, and also Workers’ Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City’s Corporation Counsel’s reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the City’s option, reimburse the City for any physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer’s obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within thirty (30) days after receipt of Buyer’s termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax attributable to Buyer’s one half shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer’s financing or closing shall be paid for by Buyer.

6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver
the Premises as stated, Buyer may terminate this Agreement and receive a refund of
the Deposit without interest, and neither party shall have any further obligations or
liabilities under this Agreement except as expressly set forth in this Agreement.

8. **PROPERTY SOLD “AS IS, WHERE IS.”** Buyer acknowledges that Buyer has had
an opportunity to inspect the Premises, and to hire professionals to do so, and that
Premises will be sold “as is, where is” and “with all faults.” City, and its agents,
make no representations or warranties with respect to the accuracy of any statement
as to boundaries or acreage, or as to any other matters contained in any description of
the Premises, or as to the fitness of the Premises for a particular purpose, or as to
development rights, merchantability, habitability, or as to any other matter, including
without limitation, land use, zoning and subdivision issues or the environmental,
mechanical, or structural condition of the Premises. Acceptance by Buyer of the
Deed at closing and payment of the purchase price shall be deemed to be full
performance and discharge by the City of every agreement and obligation contained
herein.

9. **ENVIRONMENTAL INDEMNIFICATION.** Buyer covenants and agrees to
indemnify, defend, and hold the City harmless from and against any and all claims,
damages, losses, liabilities, obligations, settlement payments, penalties, assessments,
citations, directives, claims, litigation, demands, defenses, judgments, costs, or
expenses of any kind, including, without limitation, reasonable attorneys’,
consultants’, and experts’ fees incurred in investigating, defending, settling, or
prosecuting any claim, litigation or proceeding, that may at any time be imposed
upon, incurred by or asserted or awarded against Buyer or the City and relating
directly or indirectly to the violation of or compliance with any federal, state, or local
environmental laws, rules, or regulations governing the release, handling or storage of
hazardous wastes or hazardous materials and affecting all or any portion of the
Premises, except to the extent that such a claim results directly from the release,
handling or storage of hazardous wastes or hazardous materials on the Premises. This
duty to indemnify, defend, and hold harmless shall be included in a covenant in the
deed and shall run with the land conveyed and be binding upon Buyer’s successors,
assigns, and transferees.

10. **CONDITIONS PRECEDENT TO CLOSING.** The City shall pursue removal of
the restrictions limiting development of and burdening the Premises stated or
described in the deed to the City from the State of Maine dated September 26, 2005
and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.
In the event the City is unable to obtain such removal prior to the Closing Date, as
defined below, the, unless Buyer elects to waive such restrictions in writing, the City
shall refund the Deposit, if previously paid, without interest, and this Agreement shall
be terminated and neither party shall have any further obligations or liabilities under
this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and
not in its regulatory capacity, in connection with this Agreement. The acceptance or
recording of a deed to the Buyer of the Premises will be conclusive and final evidence
of the consent by Buyer to the waiver or completion of all these conditions.
11. CLOSING. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer’s counsel at a time agreeable to the parties on or before the day that is five months after the date of this Agreement (the “Closing Date”). At the Closing:

   a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

   b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer; and

   c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

   d. Buyer shall deliver evidence, reasonably satisfactory to City’s Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting to Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER’S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY. Buyer agrees to commence development of the project depicted on the attached Plan (Exhibit B), as presented to the City’s Economic Development Committee on July 19, 2017, and specifically including at least fifty dwelling units depicted therein, 35% of which will be market rate, and 65% of which shall affordable to households at or below 60% of the area median income (the “Project”) within twelve (12) months after closing. If Buyer, its successors, assigns, or transferees fails to submit a complete site plan review application for the Project on the Property within 12 months after the closing, and construct the buildings which are part of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises at the lesser of (1) the Purchase Price plus all construction and approval expenses incurred by Buyer, or successors, to that juncture, or (2) the fair market value of the Premises determined by an appraiser agreed upon by the parties. The provisions of this paragraph will survive closing, and the City’s deed to Buyer shall include a reference to the City’s option to repurchase the Premises, and/or a Declaration of Covenants, Conditions and Restrictions, and Option to Repurchase with the provisions of this paragraph with greater detail, executed before or at the time of Closing, shall be recorded in the Cumberland County Registry of Deeds. This right to repurchase shall be assignable by the City.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.
14. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

**FOR THE City:**

City of Portland  
ATTN: City MANAGER  
389 Congress Street  
Portland, ME 04101

With a copy to:  
The Office of the Corporation Counsel at the same address.

**FOR Buyer:**

Ross Y. Furman  
Box Two  
Portland, ME 04112

With a copy to:  
Timothy H. Norton, Esq.  
Kelly, Remmel & Zimmerman  
53 Exchange Street
20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. City shall pay CBRE | The Boulos Company at closing a brokerage commission equal to five percent (5%) of the Purchase Price at closing. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction other than CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

23. ASSIGNMENT. Buyer may assign his rights and obligations under this Agreement to a limited liability company or other entity prior to Closing and the City shall acknowledge and consent to such assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers or representatives, as of the day and year first written above.

City OF PORTLAND

Jon P. Jennings
Its City Manager

Approved as to Form:

Corporation Counsel’s Office
The Szanton Company

The mission of The Szanton Company (TSC) is to create comfortable, attractive, and affordable rental housing. We do this by:

- Creating beautiful apartments of high quality in locations in or near downtowns, adding vitality to our cities and towns;
- Serving people with diverse incomes;
- Incorporating the highest standards of environmental responsibility in our properties, thereby minimizing their impact on the earth’s environment;
- Creating amenities for our residents which enhance their quality of life;
- Building properties which provide a consistent financial return to their owners, thus ensuring their stability for residents, lenders, investors, and neighborhoods.

We have extensive experience developing multifamily rental properties in Maine and New Hampshire, including seven existing properties totaling 334 units. Three of these are in Portland: Casco Terrace at 41 State Street; Walker Terrace at 1 Walker Street and 53 Danforth Street. We have two additional properties in the development pipeline, a 59-unit project under construction in Bath, Maine, and a 63-unit project in pre-development in Lewiston, Maine.

We have partnered with Ross Furman to provide housing on land he owns on the block bordered by Kennebec, Parris, Brattle and Lancaster streets.

We understand that the last piece of the block (approximately 10,000 square feet closest to and abutting Kennebec St.) is subject to the City’s RFP process.
**Project Details**

We are working with Ross Furman's team to incorporate housing into their multi-phase development of the block. Included in these materials is a site plan showing the block and the three phases of development. Conceptually, the first phase would include the area closest to Kennebec Street. It would include ground-level retail and/or artist studio space with approximately 50 units of housing on the upper floors. The housing would be rental, a mix of studio, 1-, 2-, and 3-bedroom apartments. We've included a concept floor-plan of Phase One.

The site has some unique advantages for residential development:

- The City has identified the Bay Side neighborhood as a priority for redevelopment. Kennebec Street is a prominent street in Bayside, and street-level retail will dovetail well with surrounding buildings.
- A mixed-use residential/retail building will bring new residents to live, work, and shop in Bayside, reinforcing the urban fabric and adding new vitality to the core of the City.
- The site is within walking distance of a variety of services and destinations for daily living (e.g., banks, library, schools, Deering Oaks, etc.) as well as employers and public transportation.

We expect the income mix targeted for this development will be 35% market rate, and 65% affordable (aimed at those at or below 60% of the area median income.)

The residents are intended to mirror the mix of people, incomes, and occupators in Portland. We have seven other properties with similar unit mixes and we know that tenants in income-restricted units will include people with jobs at the lower end of the wage scale, such as nurse's aids, entry-level workers in local businesses, clerks, artists, etc. The market-rate units are likely to have attorneys, doctors, or other urban professionals as tenants.

**Management**

We have an in-house property management company called Saco Falls Management (SFM). Our staff is dedicated to making our residents the central focus of our organization and creating a rental experience which far exceeds our residents' expectations, both in level of upkeep of properties and responsiveness to their needs.

For more information on our management company, please visit www.sacofallsmanagement.com.
April 26, 2017

Mr. Nate Stevens
CBRE/The Boulos Company
One Canal Plaza
Portland, ME 04101

RE: Ross Furman: Portland Public Works property

Dear Nate:

I am writing to inform you that Gorham Savings Bank has been doing business with Ross Furman since September of 2006. He has handled his banking relationship in a fully satisfactory manner. Based on Ross’ history with the Bank, he has exhibited the financial capacity to complete the proposed purchase of the Portland Public Works property.

If you should need further information, please call me at 222-1498.

Sincerely,

Frederick G. Proctor
Vice President

Cc: Ross Furman
PHASE ONE: Furman Place - Affordable Housing and Commercial Retail Building

PHASE TWO: New Systems - Artist Studios and New Media & Design Office Building
Portland, Maine

Building facade forms street front, land and hardscaping provided for public use and conciliatory to Portland Trails Right of Way.

5-story building constructed using green, affordable materials and energy efficient mechanical systems, enabling 65% affordable housing and 35% market rate apartments.

Building provides affordable space for artist studios on the 1st and 2nd levels and new media and designer studios on the 3rd and 4th levels.

Off-street parking and building commons garden area.
FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT is made as of the 5th day of March, 2018, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine ("Seller") and ROSS Y. FURMAN, an individual having a mailing address of Box Two, Portland, Maine 04112 (the "Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 10, 2017 (the "Agreement") with respect to certain real property located at 178 Kennebec Street, Portland, Maine; and

WHEREAS, Seller and Buyer wish to amend the Agreement as provided herein:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting from section 11 of the Agreement the words “the day that is five months after the date of this Agreement” and replacing therefore the words “April 13, 2018,” meaning and intended hereby to fix the Closing Date under the Agreement to on or before April 13, 2018.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

(Signature Page Follows)
IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

Jon P. Jennings

CITY OF PORTLAND

By:

Its City Manager

WITNESS:

Ryan R. Clip

Approved as to Form:

City Corporation Counsel’s Office

2-2
SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT is made as of the 12th day of April, 2018, by and between
the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine
(“Seller”) and ROSS Y. FURMAN, an individual having a mailing address of Box Two, Portland,
Maine 04112 (the “Buyer”).

WITNESSETH:

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated
October 10, 2017 as amended by a First Amendment to Purchase and Sale Agreement dated
March 13, 2018 (collectively, the “Agreement”), with respect to certain real property located at
178 Kennebec Street, Portland, Maine; and

WHEREAS, Seller and Buyer wish to amend the Agreement as provided herein:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable
consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer
hereby agree as follows:

1. The Agreement is hereby amended by deleting from section 11 of the Agreement the
words “the day that is five months after the date of this Agreement” and replacing
therefore the words “March 31, 2019,” meaning and intended hereby to fix the
Closing Date under the Agreement to on or before March 31, 2019.

2. Except as specifically amended hereby, the Agreement shall remain in full force and
effect, and the parties hereto ratify the terms and conditions of the Agreement.

(Signature Page Follows)
IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

[Signature]

[Signature]

Approved as to Form:
City Corporation Counsel's Office

CITY OF PORTLAND

By: [Signature]
Jon P. Jennings
Its City Manager

By: [Signature]
Ross Y. Furman
ORDER OF DISCONTINUANCE OF A PUBLIC EASEMENT ON LANCASTER STREET

ORDERED, that the discontinuance of a public access easement located on a parcel of land formerly comprising a portion of Lancaster Street, which portion was discontinued as a public street by order of the City Council on June 15, 1981 is hereby approved. Said public easement is discontinued for a distance of approximately two hundred and one (201) feet beginning at Hanover Street and ending at Parris Street. The public easement begins at the point of intersection of the centerline of a strip of land formerly comprising a portion of Lancaster Street with the westerly sideline of Hanover Street at a point on said westerly sideline of Hanover Street 461.67 feet northerly along said sideline from the northerly sideline of Portland Street; thence a distance of 201.30 feet to a point on the easterly sideline of Parris Street 458.81 feet northerly along said sideline from the northerly sideline of Portland Street; Said public easement being thirty (30) feet in width and lying fifteen (15) feet on either side of the above described centerline as shown more particularly on a plan titled “Lancaster Street Extension” on file at the City Engineer’s Archives as Plan 182/8; and

BE IT FURTHER ORDERED, that the right to enter into this portion of Lancaster Street for the purposes of maintenance, repair or replacement of the existing sewer known as the North Side Interceptor Sewer is hereby reserved unto the City of Portland until such time said sewer is abandoned or discontinued; and

BE IT FURTHER ORDERED, that the sole abutting owner is the City of Portland, Maine which is the petitioner for such discontinuance and no damages shall be paid to any such abutter.
ORDERED, that the discontinuance of vehicular access rights along a public easement located on a parcel of land formerly comprising a portion of Lancaster Street, which portion was discontinued as a public street by order of the City Council on June 15, 1981 is hereby approved. Said public vehicle easement with respect only to vehicular access is discontinued for a distance of approximately two hundred and one (201) feet beginning at Hanover Street and ending at Parris Street. The public easement begins at the point of intersection of the centerline of a strip of land formerly comprising a portion of Lancaster Street with the westerly sideline of Hanover Street at a point on said westerly sideline of Hanover Street 461.67 feet northerly along said sideline from the northerly sideline of Portland Street; thence a distance of 201.30 feet to a point on the easterly sideline of Parris Street 458.81 feet northerly along said sideline from the northerly sideline of Portland Street; Said public easement being thirty (30) feet in width and lying fifteen (15) feet on either side of the above described centerline as shown more particularly on a plan titled “Lancaster Street Extension” on file at the City Engineer’s Archives as Plan 182/8; and

BE IT FURTHER ORDERED, the City expressly reserves public pedestrian rights along the public easement as described above.

BE IT FURTHER ORDERED, that the right to enter into this portion of Lancaster Street for the purposes of maintenance, repair or replacement of the existing sewer known as the North Side Interceptor Sewer is hereby reserved unto the City of Portland until such time said sewer is abandoned or discontinued; and

BE IT FURTHER ORDERED, that the sole abutting owner is the City of Portland, Maine which is the petitioner for such discontinuance and no damages shall be paid to any such abutter.
MEMORANDUM

TO: Mayor and Portland City Council
FROM: Greg Mitchell, Economic Development Director
DATE: June 6, 2018
SUBJECT: Authorizing Discontinuance of Public Easement and Retention of Utility Easement along Lancaster Street between Parris Street and Hanover Street on the 82 Hanover Street Property
SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair; Meeting held June 5, 2018, and the vote was unanimous (3-0).

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 18, 2018 Final Action: July 16, 2018
Can action be taken at a later date: ____Yes _X__No (If no why not?) Time-is-of-the-essence for the Purchaser of 82 Hanover Street to close on the property sale.

PRESENTATION: Greg Mitchell, Economic Development Director/5 Minutes

I. SUMMARY

The Planning Board approved the 82 Hanover Street Site Plan on May 17, 2018. The Site Plan proposed certain improvements to be located in the Lancaster Street right of way (located between Parris and Hanover Streets), which was discontinued as a public street in the 1980s, but still includes a public easement for vehicular and pedestrian access as well as a utility easement. The Planning Board approved the site plan (copy attached), conditioning the proposed improvements in the Lancaster street right-of-way on the discontinuance of the easement and the provision of a 10-foot wide public pedestrian easement to provide midblock pedestrian permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. It is proposed that the City will reserve these easements when it sells the parcels. See attached drawing. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.
II. AGENDA DESCRIPTION

The Economic Development Committee met on June 5, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On October 2, 2017, the City Council approved the Purchase and Sale Agreement with Tom Watson of Watson & Co., LLC ("Purchaser") for its purchase of approximately 1.25 acres of land located at 82 Hanover Street for the purchase price of $2,350,000. The Purchase and Sale Agreement is included in the agenda backup.

The Purchaser then submitted a Site Plan application to the Portland Planning Board, which was approved on May 17, 2018. All site plan improvements proposed for the Lancaster Street right-of-way were conditioned upon the discontinuance of the public easement and the provision of a 10-foot wide public pedestrian easement to provide midblock permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line—5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

The approved Site Plan and project includes adaptive reuse of the 1940 Department of Public Works building with retail, restaurant, bar/eatery, brewery, fitness center, office space, and the following improvements: 39 newly paved parking spaces with landscaping, new concrete sidewalks, street trees, and lights along Parris and Hanover Streets. The site plan also includes outdoor seating areas within the Lancaster Street right-of-way and a 10' wide public pedestrian easement to provide midblock permeability.

On June 18, the City Council voted to approve the Order Proposing the Discontinuance of a Public Easement on Lancaster Street, which is found in the back up material. That order was posted in the Clerk's Office. The purpose of that order was simply to propose the discontinuance. At the vote on to propose the discontinuance and to post the notice in the Clerk's office, the Council took public comment on the proposal. At tonight's meeting, the City Council will vote on the Order of Discontinuance of a Public Easement on Lancaster Street. That vote, if in the affirmative, will finally approve the discontinuance of the public easement. Public comment is not required but is, of course, permitted at the Council's discretion. Five affirmative votes are required for passage.

III. BACKGROUND

It has been the long-term goal to sell this and other Public Works Bayside properties per the Year 2000 Bayside Vision. To support these property sales, the City Council approved the acquisition of
property along Canco Road which has been and continues to be redeveloped to support the relocation of Public Works operations from Bayside and other City Departments.

The subject property has been used for Public Works plowing operations.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result would be the discontinuance of vehicular and pedestrian access along this portion of the former Lancaster Street in order to allow for the development of the property as proposed by the developer. In order to effectuate the conditions placed on the site plan approval, a 10' pedestrian easement is also required. Because the City currently owns the property and can simply reserve those easements when it sells each parcel, it is proposed that the P&S Agreements be amended by agreement of the parties to authorize that reservation. The discontinuance and new pedestrian easement will help facilitate the sale of this property to support mixed use development in Bayside, while continuing to provide a pedestrian easement in this area. It also supports the Council’s long-term goal to sell Public Works Bayside properties to support Public Works relocation out of Bayside.

V. FINANCIAL IMPACT

There is no financial impact on amending the right-of-way easement.

VI. STAFF ANALYSIS AND BACKGROUND

Staff supports discontinuing the public easement and retaining the existing utility easement. Recommended future action includes amending the Purchase and Sale Agreements to retain two 5' pedestrian easements over 82 and 44 Hanover Street in order to ensure ongoing pedestrian permeability.

VII. RECOMMENDATION

The EDC voted 3-0, pursuant to 23 M.R.S.A. 3026-A, to recommend approval to the City Council to discontinue the public easement using the following process:

City Council Process

Discuss the proposed public easement at its public meeting on June 18, 2018 and vote to order the discontinuance of a public easement as outlined above. Because the discontinuance is only of the public easement, there are no current abutters other than the City, and this is being done at the request of the purchaser, no damages are needed.

If the Council so decides, an Order of Discontinuance must be voted on and then posted in the City Clerk’s office for no fewer than 10 business days. Proposed Motions accomplishing this will be included in the back up materials.

Thereafter, on July 16, 2018 (which is more than the required 10 business days from the vote on the 18th), the Council would hold a public hearing, with opportunity for public comment, on the Order of
Discontinuance. Staff further recommends that, at its July 16 public hearing, the Council authorize the amendment of the purchase and sale agreements for 82 and 44 Hanover Streets to reserve 5’ wide pedestrian easements along Lancaster Street as depicted on the attached plan. If the Council approves the Order of Discontinuance, the Clerk will record a certificate in the Cumberland County Registry of Deeds. The discontinuance will become effective on the day the certificate is recorded.

VIII. LIST ATTACHMENTS

82 Hanover Street Planning Board approved site plan.

Drawing No. EX-01 showing the portion of the Lancaster Street Easement (between Parris and Hanover Street) and the proposed location for the new pedestrian easement.

82 Hanover Street Purchase and Sale Agreement.

REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND AND TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.

REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.

FOR REVIEW NOT FOR CONSTRUCTION
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 24th day of October, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter referred to as “Buyer”).

RECITALS

WHEREAS, the CITY is the owner of approximately 1.25 acres of land at or near 82 Hanover Street, Portland, Maine as generally depicted as Parcel 4 on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the “Premises”) and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. SALE AND EFFECTIVE DATE. City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 82 Hanover Street. This Agreement shall become effective following the occurrence of both of the following: approval of this Agreement by the City Council of the City in substantially this form, and the City Manager’s execution of this Agreement. The first calendar day after which both such events have occurred is hereinafter referred to as the “Effective Date”. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date shall be computed from the Effective Date.

2. CONSIDERATION. The purchase price for the Premises shall be Two Million Three Hundred Fifty Thousand ($2,350,000) (the “Purchase Price”), subject to the following cost adjustments and conditions:

   a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars ($25,000.00) (the “Deposit”) within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and
b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Eastern Standard Time on the day that is sixty (60) days after the Effective Date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.

b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the “Survey”) which will more specifically describe the property shown on Exhibit A hereto (the “Premises Description”) in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close.

c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is sixty (60) days after the Effective Date of this Agreement (the “Financing Period”) to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the same date as the expiration of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.
d. **Title, Survey and Environmental Objections.** In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. **Option to Cure.** In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer’s reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

f. **Deed.** City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a city-wide PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement
and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer’s expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer’s intended use (collectively, the “Inspections”). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City’s request.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers’ Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City’s Corporation Counsel’s reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City’s option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or
take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX. Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Buyer’s one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer’s financing or closing shall be paid for by Buyer.

6. DEFAULT AND REMEDIES. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like, but Buyer at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. RISK OF LOSS. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.

8. PROPERTY SOLD “AS IS, WHERE IS.” Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make
no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein except as expressly set forth herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. CONDITIONS PRECEDENT TO CLOSING. It is a condition precedent to Closing that:

a. The City shall obtain in form reasonably acceptable to Buyer the removal of the restrictions limiting development of or use of the Premises or otherwise burdening the Premises (hereinafter the "Deed Restrictions") stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.

b. The City shall obtain Subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree, such Subdivision approval is not required (hereinafter the "Subdivision Approval").

In the event the City is unable to obtain Subdivision Approval and the removal of all the above Deed Restrictions prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the removal of the Deed Restrictions and the approvals to be obtained or (2) elect to terminate this Agreement either prior to the scheduled Closing Date or prior to the expiration of any extension period based on an
extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to pursue the removal of the Deed Restrictions and Subdivision Approval.

If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. **CLOSING.** Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer’s counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the “Closing Date”). At the Closing:

a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, and insurable title (at standard rates) to the Premises, free and clear of all liens and encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City); and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance in form reasonably acceptable to Buyer and to Buyer’s lender.

d. Buyer shall deliver evidence, reasonably satisfactory to City’s Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

12. **BUYER’S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT.** Buyer agrees as follows:

a. Buyer agrees at Closing to deposit $115,000.00 to be held in escrow (the “Escrow Account”) pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.
b. Buyer agrees to commence development of the residential project generally depicted on the plans that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017, and which shall specifically include at least twenty-three (23) new dwelling units at Buyer's property at 104 Grant Street (The "Residential Project"), within twelve (12) months after closing; provided, however, that Buyer shall be entitled to modify the Residential Project by increasing the number of residential units, modifying the size and layout of such units, or minor, non-substantive changes. Buyer shall also be entitled to modify the Residential Project in a manner deemed reasonably necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval; provided, however, that such modifications shall not reduce the number of new dwelling units below 23 unless the City's land use ordinance only permits a smaller number without material modifications to the Residential Project as proposed, in which case the Residential Project shall include the maximum number of dwelling units allowed at 104 Grant Street without material modifications to the Residential Project as proposed.

c. Buyer's commencement of the Residential Project development shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Residential Project within 12 months after the Closing under this Agreement.

d. Buyer agrees to commence development of a commercial project at the Premises in substantially the form depicted on the plans that are attached hereto as Exhibit C and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017 (the "Commercial Project"), within twelve (12) months after closing. the Commercial Project shall be deemed to be "substantially in the form depicted on the plan attached as Exhibit C" if it proposes to include (or is constructed to include) a) multiple commercial tenant(s) which may be of varied types including retailers and others, b) rooftop decks, and c) if reasonably feasible within the existing space available, open spaces/common areas available for public use. The Commercial Project may also be modified in a manner deemed necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval and the Commercial Project, if otherwise "substantially in the form depicted on the plan attached as Exhibit C" shall, notwithstanding any such modifications, continue to be so considered.

e. Buyer's commencement of the Commercial Project shall be effected by Buyer or its successors, assigns, or transferees submitting an Application for the Commercial Project within 12 months after the Closing under this Agreement.

f. If Buyer does not submit Applications for the Commercial Project and the Residential Project (including any modifications as described above) within one (1) year of Closing under this Agreement, then $10,000.00 shall be released
from escrow to the City's Housing Trust Fund, and until both Applications have been filed, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.

g. Additionally, Buyer shall commence construction of the Residential Project and the Commercial Project by the later of the date that is thirty-six (36) months after Closing under this Agreement or one hundred eighty (180) days after final approval of the Projects (including, without limitation, final decisions in all applicable municipal or judicial proceedings) and the expiration of all applicable appeal periods (the "Construction Start Date"). Buyer agrees to diligently pursue all approvals for both Projects. If Buyer fails to commence construction of the Residential Project and the Commercial Project by the later of the Construction Start Date, then $10,000.00 shall be released from escrow and to the City's Housing Trust Fund, and until construction on both Projects is commenced, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter. Within thirty (30) days after the commencement of construction of both Projects, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that Buyer fails to commence construction of both Projects within 5 years from the Closing Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

h. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Residential Project and the Commercial Project, that the two projects will be undertaken by two different Limited Liability Companies ("LLCs") to be formed or corporations to be formed which will be assignees of Buyer, and the City hereby consents to the same and to Buyer's assignment of its rights and obligations under this Agreement to any such LLC's or corporations, provided that Thomas Watson will be a manager or co-manager of any such LLCs and President or Vice President of any such corporations.

i. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for
the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

**FOR THE City:**
City of Portland  
ATTN: City Manager  
389 Congress Street  
Portland, ME 04101

With a copy to:  
The Office of the Corporation Counsel at the same address.

**FOR Buyer:**
Mr. Thomas Watson  
Tom Watson & Co., LLC  
104 Grant Street  
Portland, ME 04101

With a copy to:  
William H. Leete, Jr., Esq.  
Leete & Lemieux, P.A.  
511 Congress Street, Suite 502  
Portland, ME 04101

20. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and
all of which together shall constitute one and the same agreement.

21. BROKERS. The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

Jon P. Jennings
its City Manager

TOM WATSON & CO., LLC

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office
BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF A 23 UNIT APARTMENT BUILDING AT 104 GRANT STREET, PORTLAND, MAINE
BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE
1st Floor

23 PARKING SPACES - TOTAL

COMMUNITY ROOM - 1,102 SF

MECH

CORRIDOR

TENANT ENTRY / LOBBY

MANAGEMENT OFFICE - 643 SF

GRANT STREET

MANAGEMENT CORRIDOR

MECH

23 PARKING SPACES - TOTAL

COMMUNITY ROOM - 1,102 SF

TENANT ENTRY / LOBBY

MANAGEMENT OFFICE - 643 SF

GRANT STREET
CITY OF PORTLAND BAYSIDE PROPERTIES
TOM WATSON LETTER OF INTENT TO PURCHASE

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DESCRIPTION OF INTENDED USE

82 Hanover

- Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- Bring in retailers/partners who will contribute to the community as well as the economy
- Open spaces/commons available for public use
- Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- 16 separate spaces all with autonomous access to the street.
- One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- Affordable/accessible to the creative community at under $1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- Commons/courtyard space open to public for public use
- Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street

- 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood
Thomas Watson founded Port Property Management in 1993 with his father Jack who later sold his half of the business to Russell Pierce (Tom’s brother-in-law). Tom and Russ have had a successful partnership for the last 17 years and currently employ 41 full time employees, most of whom call Portland their home.

Port Property manages over 1,300 apartments and commercial spaces in Portland and South Portland, the bulk of which are on the Portland peninsula. All of the properties are owned by Port Property related companies.

Tom graduated with a B.A. from Stanford University in 1985 and received an MBA from Boston University in 1992.

He lives in Portland with his wife Judy and their 3 children, all of whom attend Portland Public Schools.
BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF
82 HANOVER STREET, PORTLAND MAINE
BAYSIDE RFP - 82 HANOVER STREET- Second Floor
PORTLAND, MAINE

JUNE 12, 2017

RYAN SENATORE ARCHITECTURE
ORDER APPROVING THE FIRST AMENDMENT TO THE 44 HANOVER STREET PURCHASE AND SALE AGREEMENT

ORDERED, that the attached First Amendment to the Purchase and Sale Agreement for 44 Hanover Street is hereby approved, substantially in the form attached hereto; and

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

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

FROM: Greg Mitchell, Economic Development Director

DATE: June 28, 2018

SUBJECT: Proposed First Amendment to 44 Hanover Street Purchase and Sale Agreement

SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair – Meeting held on 6/19/2018 and the Vote was Unanimous (3-0)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: July 16, 2018.

Can action be taken at a later date: No, time-is-of-the-essence to move forward on the sale of this property. Requesting emergency action to allow immediate execution of the Amendment prior to the due diligence deadline of July 23, 2018.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

The proposed First Amendment to the Purchase and Sale Agreement for 44 Hanover Street will enable a new 10-foot wide pedestrian easement to be established, between Parris and Hanover Street along the proposed 44 and 82 Hanover Street property line.

II. BACKGROUND

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street. The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.
In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line.

It is noted that Tom Watson is the buyer for both the 44 and 82 Hanover Street properties.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is City Council approval of the attached First Amendment to the Purchase & Sale Agreement for 44 Hanover Street.

This supports the private redevelopment of the 44 and 82 Hanover Street properties formerly occupied by the City Public Works Department.

IV. FINANCIAL IMPACT

There is no financial impact related to this transaction.

V. STAFF ANALYSIS

In order to account for the loss of public access in the former Lancaster Street right of way and comply with Planning Board requirements, City staff negotiated the attached amendment with Tom Watson (buyer for both the 44 and 82 Hanover Street properties) to preserve public easements on both properties related to the new ten (10) foot wide pedestrian easement area between Parris and Hanover Streets along the boundary between 44 and 82 Hanover Street.

VI. RECOMMENDATION

The EDC, at its June 19, 2018 meeting, voted to recommend, to the City Council, approval of the Draft First Amendment to the Purchase and Sale Agreement for 44 Hanover Street in substantially the form as attached.

VII. LIST ATTACHMENTS

- Proposed First Amendment to Purchase and Sale Agreement for 44 Hanover Street

- 44 Hanover Street Purchase and Sale Agreement
FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated May 14, 2018 (the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement as approved by the City of Portland Planning Board on May 23, 2018 (the "Public Pedestrian Easement") along the entire length of the common boundary between the Premises and 82 Hanover Street, which is also the northwesterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the "Public Pedestrian Easement Area"). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing
conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or ice removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City’s fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager
WITNESS

Approved as to Form:

Corporation Counsel’s Office

TOM WATSON & CO., LLC

Printed Name: Thomas E. Watson
Its Manager
1. A sewer easement is reserved by the City of Portland over the discontinued portion of Lancaster Street per the June 16, 1981 discontinuance found in the City of Portland records volume 98, page 167.

2. Refer to subdivision plat made for the City of Portland by Titcomb Associates dated November 29, 2017.


4. Proposed 10'-wide pedestrian/bicycle easement to the City of Portland from Tom Watson Co., LLC. Approx. 2,007 SF.
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 14th day of May, 2018 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter, collectively, referred to as “Buyer”).

RECITALS

WHEREAS, the CITY is the owner of certain land and buildings located at or near 44 Hanover Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the “Premises”) and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. SALE AND EFFECTIVE DATE. City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 44 Hanover Street, Portland, Maine. This Agreement shall become effective after the City Council of the City approves it and after both Buyer and Seller have signed this Agreement. The date that the last of Buyer or City sign this Agreement shall be the effective date (the “Effective Date”), and the last signor shall insert that date in the first paragraph of this Agreement as the Effective Date. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date (all as defined hereafter) shall be computed from the Effective Date.

2. CONSIDERATION. The purchase price for the Premises shall be One Million Two Hundred Seventy-Five Thousand Dollars ($1,275,000.00) (the “Purchase Price”), subject to the following cost adjustments and conditions:

   a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars ($25,000.00) (the “Deposit”) within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and
b. The parties agree that the City will continue to occupy and lease the Premises from Buyer after Closing (as defined herein) until at least March 31, 2019 by entering into a lease agreement with Buyer or Buyer’s successor or assigns, as Buyer shall elect, in substantially the form attached hereto as Exhibit C (the “Lease”); provided, however, that the City shall have the right to continue to occupy the Premises until September 30, 2019. The City hereby agrees to notify Buyer in writing on or before the date that is sixty (60) days after the Effective Date if it intends to occupy the Premises beyond March 31, 2019 or the City shall be limited to a lease ending on March 31, 2019 unless Buyer and City shall otherwise agree.

At Closing, Buyer shall receive a credit against (that is, a reduction of) the Purchase Price in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) per month for the number of months remaining between the Closing Date and the end of the term of the Lease, which shall be no earlier than March 31, 2019 (the “Rent Credit”). If the first month which the City will occupy the Premises after Closing is less than a full month, the Rent Credit for that month shall be prorated. The Rent Credit shall serve as City’s nonrefundable advance payment of rent for the Lease of the Premises to the City by the Buyer or the Buyer’s successor or assigns, as Buyer shall elect. At Closing, the parties shall execute a Lease in substantially the form attached hereto as Exhibit C. Regardless of the length of the term of the Lease or the date that the City vacates the Premises, in no event shall the Rent Credit be less than $75,000.00.

c. The Buyer shall pay the remainder of the Purchase Price to the City after the Purchase Price is reduced by the full amount of the Rent Credit. Such payment shall be made by wire transfer (or as otherwise reasonably requested by the City) at Closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the later of July 23, 2018 or the day that is sixty (60) days after the Effective Date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.

b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the “Survey”) which will more specifically describe the property shown on Exhibit A hereto (the “Premises Description”) in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at
least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close using a description to which the City will agree.

c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the day that is fifteen (15) days after the expiration of the Due Diligence Period (the "Financing Period") to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the date which is thirty (30) days after the expiration date of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or the cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing, or utility easements discovered by Buyer, after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period,
the Due Diligence Period will be extended (without the need for further action by the parties hereto) to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts
the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (c) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

3.1 TITLE DOCUMENTATION:

The City agrees to reasonably cooperate with Buyer's requests for documentation related to the title of the Premises or any tax taking of the Premises.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments as Buyer shall deem appropriate or desirable, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City’s request.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers’ Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City’s Corporation Counsel’s reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections and other due diligence be acceptable to Buyer in its sole discretion. If the results of such Inspections or other due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects
to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX. Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter except as provided in this Agreement and in the Lease. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. In the event that the Parties agree to not execute the Lease and the City does not continue to occupy the Property after the Closing Date, any utilities for the Property shall be prorated as of the Closing Date. The Buyer’s one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer’s financing or closing shall be paid for by Buyer.

6. DEFAULT AND REMEDIES. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as liquidated damages as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like. Buyer at all times may elect in substitution for any other remedies available under this Agreement, as its sole remedy, the right to a return of its deposit.

7. RISK OF LOSS. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.

8. PROPERTY SOLD “AS IS, WHERE IS.” Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City’s agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and
obligation contained herein except as set forth in the Lease, if executed by the parties, and except as otherwise expressly set forth herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

Notwithstanding the foregoing, during the longer of the Lease term or the period in which the City occupies the Premises, the City shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations.

10. CONDITIONS PRECEDENT TO CLOSING. It is a condition precedent to Closing that:

a. The City shall obtain subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree in writing, such subdivision approval is not required (hereinafter the “Subdivision Approval”).

b. In the event the City is unable to obtain the Subdivision Approval prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the approvals to be obtained or (2) elect to terminate this Agreement prior to the later of the scheduled Closing Date or the expiration date of any extension period based on an extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to make reasonable efforts to pursue the Subdivision Approval.

c. If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to
extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer’s counsel or Buyer’s Lender’s counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the “Closing Date”). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer’s request at least 10 days prior to closing. At the closing:

a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, insurable title to the Premises at standard rates, free and clear of all liens and encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the balance of the Purchase Price, subject to any adjustments set forth in section 2 of this Agreement, including, without limitation, reduction by the Rent Credit, to the City by wire transfer (or as otherwise reasonably requested by the City); and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance at standard rates in form reasonably acceptable to Buyer and to Buyer’s lender.

d. Buyer shall deliver evidence, reasonably satisfactory to City’s Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

e. City shall deliver to Buyer a copy of all City Council Orders approving this Agreement and authorizing the City Manager or other City officials to execute this Agreement, the deed, the Lease, and any other documents necessary to effectuate the intent and purpose of this Agreement.

f. Except as otherwise provided in section 2(b), the parties shall execute the Lease.
12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

a. Buyer agrees at Closing (and only upon Closing) to deposit $50,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.

b. Buyer agrees to commence development of a project at the Premises in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on or about July 19, 2017 (the "Project"), within one (1) year after the later of the end of the term of the Lease or the last date of the City's occupancy of the Premises (the later of the two such dates hereinafter is referred to as the "City's End Date"). The Project shall be deemed to be "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" if it proposes to include (or is constructed to include): (i) multiple separate spaces, which may have separate or shared access to the street; (ii) one large central space of a size and for a use to be determined; and (iii) an emphasis on rental affordability. The Project may also be modified in a manner that is reasonably necessary for Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval, and the Project, if otherwise "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" shall, notwithstanding any such modifications, continue to be so considered. In addition, if Buyer determines that interest rates or community demand for the use of the Premises change such that Buyer wishes to make changes to the Project, or if Buyer wishes to make other changes to the Project, Buyer shall request the City's approval of such changes.

c. Buyer's commencement of development of the Project shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an “Application”) for the Project within one (1) year after the City’s End Date.

d. If Buyer does not submit an Application for the Project (which Application may include modifications as described above) within one (1) year of the City’s End Date, then $10,000.00 shall be released from escrow to the City’s Housing Trust Fund, and until an Application has been filed, an additional $10,000.00 shall be released from escrow to the City’s Housing Trust Fund each ninety (90) days thereafter.

e. Within thirty (30) days after the submission of an Application for the Project, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall
not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that a Closing on the sale of the Premises to Buyer under this Agreement takes place and Buyer fails to submit any Application for the Project within the later of 5 years from the Closing Date or 4 years after the City’s End Date, the entire remaining balance of the Escrow Account shall be released to the City’s Housing Trust Fund.

f. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Project, that the Project will be undertaken by a different Limited Liability Company (“LLC”) to be formed, or corporation to be formed, which will be an assignee of Buyer, and the City hereby consents to the same and consents to Buyer’s assignment of its rights and obligations under this Agreement to any such LLC or corporation, provided that Thomas Watson will be a manager or co-manager of any such LLC and President or Vice President of any such corporation.

g. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, provided, however that this Agreement shall not be assigned by the City.

17. TIME. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be
invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager’s office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:  
City of Portland  
ATTN: City Manager  
389 Congress Street  
Portland, ME 04101

With a copy to:  
The Office of the Corporation Counsel at the same address.

FOR Buyer:  
Mr. Thomas Watson  
Tom Watson & Co., LLC  
104 Grant Street  
Portland, ME 04101

With a copy to:  
William H. Leete, Jr., Esq.  
Leete & Lemieux, P.A.  
511 Congress Street, Suite 592  
Portland, ME 04101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer’s representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, if applicable, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City’s representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECATALS INCORPORATED BY REFERENCE. The recitals set forth above
are incorporated herein by reference and made a part of this Agreement.

23. EXTENSIONS: Wherever this Agreement provides that a deadline will be extended, including without limitation any extension(s) which may be elected by Buyer or City as well as any extensions based upon the occurrence or non-occurrence of any event (such as, for example, the delivery of a survey or Phase II environmental report), then any such extension will be deemed to have automatically occurred, without the need for any additional action by Buyer or City.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

Jon P. Jennings
Its City Manager
Dated: May 14, 2018

Approved as to Form:

Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.
TOM WATSON & CO., LLC

Thomas E. Watson
Its Manager
Dated: 5.14.2018
DESCRIPTION OF INTENDED USE

EXHIBIT B TO PSA

82 Hanover
- Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- Bring in retailers/partners who will contribute to the community as well as the economy
- Open spaces/commons available for public use
- Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover
- 16 separate spaces all with autonomous access to the street.
- One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- Affordable/accessible to the creative community at under $1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)
- Commons/courtyard space open to public for public use
- Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street
- 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood
BAYSIDE RFP - 44 HANOVER ST. -Rendering
PORTLAND, MAINE

MAY 15, 2017

Port Property
MANAGEMENT

RYAN SENATORE ARCHITECTURE
EXHIBIT C
LEASE AGREEMENT

This Lease Agreement, is made as of the _____ day of _____, 2018, by and between _______________ with a mailing address of 104 Grant Street, Portland, Maine 04101 (hereinafter referred to as “Landlord”) and the CITY OF PORTLAND, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as “Tenant”).

WHEREAS, Tenant has recently conveyed to Landlord certain property located at or about 44 Hanover Portland Street in Portland, Maine and wishes to continue to occupy and use such property; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property and has full power and authority to enter into this Agreement in respect thereto, and is willing to have Tenant occupy and use the 44 Hanover Street property on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Tenant hereby mutually agree as follows:

1. Premises.

Tenant, as of the date of this Lease, exclusively occupies certain land and a building or buildings located at or about 44 Hanover Street, Portland, Maine (hereinafter the “Building”) (the land and Building are referred to herein as the “Premises”) as generally depicted on the plan attached hereto as Exhibit A. Landlord does hereby agree to lease, demise, and let the Premises unto Tenant, subject to the access and parking easement benefitting the owner of the property located at 55 Portland Street (the “Access Easement”), which easement is depicted on Exhibit A. Tenant shall have no authority to modify or make any substantial changes (whether cosmetic, structural or otherwise) to the Premises without the prior written consent of Landlord.

2. Term.

The initial term of this Lease shall commence __________, 2018 (the “Effective Date”) and terminate __________, 2019 (the “Initial Term”), unless earlier terminated as provided herein, or extended as provided herein. The Initial Term together with any Renewal Term (as defined herein) are referred to collectively hereinafter as the “Term.”

In the event Tenant shall continue in occupancy of the Premises after the expiration of the Initial Term or any Renewal Term (as defined herein), such occupancy shall not be deemed to extend or renew the terms of this Lease, but occupancy shall, at the option of the Landlord, continue as a tenancy at will from month to month upon covenants, provisions, and conditions herein contained, and at the rent in effect prior to the expiration of the Initial Term or Renewal Term (as
defined herein) whichever last occurred, increased by twenty five (25%) percent, prorated and payable month to month on the first day of each month for the period of such hold-over occupancy. This paragraph shall not be deemed or construed as giving the Tenant any right to hold over after the expiration of the Initial Term or any Renewal Term thereof.

2.1. Renewal.

Upon expiration of the Initial Term, at the request of the Tenant, the Term of this Lease may be renewed for one (1) three (3) month extension (which such extension hereinafter will be referred to as the “Renewal Term”) subject to and conditioned upon Landlord’s written consent, and provided that the Tenant is not in default of the terms of this Lease prior to the expiration of the Initial Term and provided that Tenant gives Landlord at least three (3) months’ notice in writing of its request for a Renewal Term. Landlord’s consent shall not be unreasonably withheld, delayed, or conditioned.

The Renewal Term shall commence the day following the expiration of the Initial Term of the Lease. If the Tenant exercises its option to renew Tenant agrees to pay to Landlord, or its designee, rent on the terms described in Paragraph 4 below at the new rental rate for the Renewal Term as set forth in Paragraph 4.

Tenant shall be responsible for all costs and expenses relating to the Premises during the entire period in which the Tenant occupies any part of the Premises (hereinafter the “Occupancy Period”) including, without limitation, for the entire Term of this Lease (and any Renewal Term if applicable), all costs and expenses with respect to utilities as set forth in this Lease Agreement.

3. Permitted Uses.

The Premises may be used by Tenant for the current use of the Premises and for any other similar, lawful purposes. Tenant shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way violate any applicable laws, ordinances or regulations of any municipal, State or other governmental authority.

4. Rent.

a. Rent Paid in Advance at Closing. The rent for the lease to the Tenant for the Initial Term shall be in the amount of ______________ Dollars ($____________.00). As stated in the related Purchase and Sale Agreement dated on or about ______________, 2018 between the City of Portland, Maine and Landlord (the “Purchase and Sale Agreement”) with respect to the Premises, the full Rent Credit (as that term is defined in the Purchase and Sale Agreement) for the Initial Term is to be paid at the closing by the City of Portland, Maine as seller upon Landlord’s purchase of the Premises (the “Closing”), granting a credit to Buyer in the full amount of said Rent Credit against and reducing the purchase price for the Premises by that amount. Landlord, by its initials here: __________ acknowledges receipt of the Rent Credit in the amount of $ ______________. Tenant agrees that the agreement to pay rent in advance is a substantial inducement for Landlord to purchase the Premises at the purchase price set forth in the Purchase and Sale Agreement, and
accordingly, all of the rent paid and credited at Closing, including, without limitation, the Rent Credit, shall be non-refundable.

b. **Rent During Renewal Term.** If there is a Renewal Term of this Lease, the rent during the Renewal Term of this Lease shall be in the amount of the greater of Twelve Thousand Five Hundred and 00/100 Dollars ($12,500.00) per month or the then market rate of rent for the Premises, as determined by an independent commercial real estate agent or appraiser chosen by the Landlord, from three qualified agents or appraisers with at least ten (10) years’ experience in the profession proposed by the Tenant, at least two months prior to the date when this Lease would terminate if not renewed. If none of the agents or appraisers proposed by Tenant are acceptable to Landlord, Landlord may request an appraisal from Landlord’s agent which shall be averaged with one from an agent or appraiser selected by Tenant from the three proposed by Tenant to determine the then market rental rate.

c. **Renewal Term Rent Payments; When Due.** Rent during the Renewal Term (and rent for any time period for which rent is not fully paid in advance at the Closing on the sale of the Premises) shall be payable in advance the first day of each and every calendar month during such Renewal Term (and any other applicable period during which rent is due) and rent payments shall be made to the Landlord’s manager, Port Property Management, 104 Grant Street, Portland, ME 04101 or such other address as Landlord shall in writing direct. Any rent payment received by the Landlord after the 7th of the applicable month shall be subject to a 5% late fee.

d. **Additional Rent.** Tenant shall also pay as additional rent all expenses and costs relating to the Premises, including, without limitation, all taxes, utilities and insurance, and including, without limitation, those set forth in Paragraphs 5, 6, 7, 8, 10 and 10.1 of this Lease.

5. **Taxes and Utilities.**

a. **Taxes.** The Tenant shall be responsible for timely payment of all taxes of any kind due to the City of Portland, Maine as well as any other fees due to the City of Portland, Maine, including, without limitation, all municipal real property taxes on or assessed against the Premises during the Term of the Lease. Tenant shall also be responsible for timely payment of all personal property taxes with respect to all personal property on or about the Premises. In the event the Premises are determined to be tax exempt, either wholly or partially, Tenant shall be required to pay any and all amounts due to the City of Portland, Maine in lieu of or as a replacement for real and personal property tax payments, including, without limitation, all amounts specified in Paragraph 3(f) of the Purchase and Sale Agreement. Upon receipt of a tax bill from the City of Portland, Landlord shall notify Tenant of the amount due and Tenant shall pay said amount within 30 days of receipt of such notice. In the event that the Term of the Lease is due to expire prior to the end of the six month tax period that is the subject of such a tax bill, the amount Tenant is required to pay shall be prorated accordingly.

b. **Utilities.** Tenant shall also be responsible for paying all the costs of all utilities servicing the Premises during the Initial Term of this Lease and any Renewal Term, including but not limited to electrical, gas, water, sewer, heat and air conditioning (together with all other HVAC expenses), internet, cable and telephone. Tenant shall also be responsible for payment of all
stormwater fees and stormwater service charges due to the Portland Water District or City of Portland, as well as any other assessments or fees against the Premises by the City of Portland, Maine or the Portland Water District. Landlord is not responsible for payment of any such assessments or fees, nor for providing heat nor any other utilities to the Premises, nor for paying the costs of any such utilities, all of which are Tenant’s sole responsibility.

6. **Tenant to Plow and Remove Snow.**

Tenant, at Tenant’s expense, shall be responsible for plowing and removing snow and ice from the Premises in accordance with applicable City ordinances. Landlord shall have no obligation to remove snow or ice from the Premises.

7. **Tenant to Remove Trash and Debris; Maintenance.**

Tenant, at Tenant’s expense, shall maintain the entire portion of the Premises in the same condition and repair as it is in as of the Effective Date, except only for reasonable wear and tear, and shall remove from the Premises all trash and debris which it shall create, which is located upon the Premises or which is otherwise attributable to Tenant. Tenant shall not do anything to cause nor permit the Premises nor the activities therein or thereon to violate any municipal, county, state or federal law, ordinance or requirement, and shall promptly act upon direction of any officer of competent authority.

8. **Responsibility for Repairs and Maintenance; Tenant’s Acceptance Of Premises In “As Is” Condition.**

a. **Maintenance and Repair.** Tenant is currently in possession of the Premises and does hereby accept the Premises and Common Areas in their present “AS IS” condition as of the Effective Date. During the Term of the Lease, Tenant shall, at its sole expense, maintain and make any reasonably necessary repairs to the Premises at its sole expense.

b. **Capital Repairs.** Tenant hereby warrants and represents that it has inspected the Premises and that it knows of no capital repairs that are presently necessary. The term “Capital Repair” is agreed to mean the repair or replacement of a major component or structural part of the Premises and shall also include the rebuilding of a major component or structural part of the Premises after the end of its useful life. Based on the information acquired in its inspection, together with its historic use of the Premises, Tenant represents that it has no actual knowledge that any Capital Repairs will be required during the Initial Term or if the Lease is renewed, during any Renewal Term. In the event any Capital Repairs to the Premises are reasonably necessary during the Term and Tenant does not wish to make such Capital Repair at Tenant’s sole expense, Tenant shall so advise Landlord in writing and Landlord may, in its sole discretion, elect to make, or not to make, such Capital Repair. Notwithstanding the foregoing, Tenant agrees that whenever it determines that it is reasonably possible to make a temporary repair or patch and defer the need for a Capital Repair, it shall make such temporary patch or replacement. In the event Landlord elects not to make any Capital Repairs, Tenant shall have the right, but not the obligation to make such repairs at its own expense. Tenant acknowledges and agrees that even if Tenant determines it is unable to occupy the Premises due to the condition of the Building or the
Premises, all of its rent payments shall continue to be non-refundable even if Tenant determines that it could occupy the Building or the Premises if a Capital Repair was made.

Notwithstanding the foregoing, Landlord and Tenant agree that in the event of a casualty loss or event (hereinafter “Casualty”) causing material physical damage to the Premises or Building for which there is insurance coverage as determined by the insurer issuing the applicable policy of insurance, that subject to and conditioned upon any requirements or conditions imposed by Landlord’s lender (including, without limitation, any restrictions or conditions on disbursement of insurance payments or proceeds), funds paid by an insurer with respect to such Casualty shall be released to fund the cost of a Capital Repair resulting from such Casualty, upon such terms as shall be reasonably acceptable to Landlord and provided that Landlord shall not be required to make any payment of any kind toward such Capital Repair.

8.1 Improvements/Alterations. No improvements or alterations to the Premises which materially change or alter the Premises shall be made without Landlord’s written approval, which shall not be unreasonably withheld, delayed, or conditioned. Any request by Tenant for such approval shall be submitted with written specifications and drawings reasonably satisfactory to Landlord. All improvements made to the Premises by Tenant must be done in accordance with all local Building codes and ordinances and all applicable State and Federal statutes and regulations, and Tenant must obtain all necessary permits prior to commencing improvements. Tenant shall promptly pay for any and all trades furnishing services and/or alterations to the Leased Premises. With the exception of any of Tenant’s removable property, including without limitation, all of its personal property and trade fixtures, any and all property left by Tenant in the Leased Premises shall become property of the Landlord at the expiration or termination of Tenant’s tenancy. A list of trade fixtures which are owned and controlled exclusively by Tenant and which Tenant shall remove at the end of the Term or when Tenant vacates the Premises, whichever shall be earlier, is attached as Exhibit B.

9. Compliance with Laws.

Tenant shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county and city government.

10. Insurance.

Prior to the execution of this Lease and continuing during the Term of the Lease or for such longer period during which Tenant shall occupy the Premises, Tenant shall obtain, maintain and pay for all the costs of the insurance listed in the following subsections:

a. Tenant shall maintain occurrence based General Liability Insurance, which shall include liability insurance with respect to automobiles, trucks and other motor vehicles, in the amount of $400,000 per occurrence for causes of action pursuant to the Maine Tort Claims Act, and the policy for such insurance shall name Landlord as an additional insured. Tenant shall provide Landlord with a certificate evidencing such General Liability Insurance coverage prior to execution of this Lease. Tenant
shall be responsible for covering its personal property with such property and casualty insurance as it deems reasonably necessary and shall provide Landlord with documentation of such policies of insurance or self-insurance prior to execution of this Lease. Landlord shall not be responsible for any damage to Tenant’s personal property except for damage caused by Landlord. Claims brought by Landlord against Tenant for damage to the Premises, that are not covered by an insurance policy, and are the result of Tenant’s use and/or negligence, and not resulting from the Landlord, its employees, subcontractors, or others using the Access Easement to access the property at 55 Portland Street, shall be Tenant’s responsibility to repair or reimburse Landlord in an amount equal to that reasonably necessary to return the Premises, to substantially the same condition in which they were at the start of this Lease. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages, available to the Tenant 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 Tenant. For the purposes of this Lease, an insurance claim will be deemed to be “not covered by an insurance policy insuring Tenant” if such claim is denied by the insurer issuing the policy against which the claim is made.

b. Glass. Tenant shall be solely responsible for the cleaning, maintenance and replacement of plate glass and other windows located within the Leased Premises and is advised to obtain insurance coverage with respect to damage thereto. Tenant agrees to repair promptly any damage to such glass and windows at its sole expense. Tenant shall not be responsible for damage to glass or windows caused by Landlord, its employees or subcontractors, or others using the Access Easement to access 55 Portland Street. Any such cleaning, maintenance and/or repairs shall be to return all glass and windows to substantially the same condition in which they were at the start of this Lease.

c. Workers Compensation. Tenant self-insures for workers compensation coverage and shall provide Landlord with evidence of its self-insured status.

d. Property and Casualty Insurance. Landlord shall procure and maintain such Property and Casualty insurance as it deems reasonably necessary in regard to the Premises, and Tenant shall pay Landlord upon execution of this Lease for annual premiums in an amount up to and including ten thousand dollars ($10,000). Such coverage shall be in form and amount to coverage as commonly written for comparable buildings. In the event that the Term of this Lease exceeds the term of Landlord’s Property and Casualty insurance policy, Tenant shall pay landlord for applicable premiums within 10 days of Landlord’s request for such payment. Any deductibles and/or retentions in an amount higher than ten thousand dollars ($10,000) shall be subject to approval by Tenant. Tenant shall be named an additional insured on such policy for coverage only in those areas where government immunity has been expressly waived by 14
e. Pollution Liability Insurance. Tenant shall procure and maintain premises pollution liability insurance in form and content reasonably acceptable to Landlord considering Tenant’s use of the Premises as a vehicle maintenance garage and fueling station in an amount not less than one million dollars ($1,000,000) per occurrence, for the Term of this Lease, or if the Occupancy Period ends later than the end of the Term, then, for the entire Occupancy Period, naming Landlord as an additional insured thereon. The pollution liability insurance policy (hereinafter in this sub-paragraph referred to as the “Policy”) shall provide at least such coverage as is commonly written for buildings comparable to the building(s) located on the Premises and uses comparable to Tenant’s use of the Premises. The Policy shall provide liability coverage on a claims-made and reported basis which covers claims first made against or by an insured and reported to the Insurer, during the policy period. The Policy shall also provide coverage for remediation costs which covers pollution conditions first discovered and reported to the insurer during the policy period. Tenant shall include in the pollution coverage of the Policy, conditions emanating from storage tanks (including gas and oil tanks) on the Premises. Tenant additionally agrees to purchase a so-called “tail” or extended reporting period coverage (hereinafter “Tail Coverage”) for at least a one-year term in form reasonably acceptable to Landlord that provides coverage for claims pursuant to said Policy. The Tail Coverage shall, at minimum, extend the period for reporting claims under the Policy for at least a year after the expiration of the Occupancy Period.

Tenant agrees to procure and submit for Landlord’s review a certificate of insurance and binder for the Policy and Tail Coverage at least ten (10) days prior to the commencement of this Lease Agreement as well as such other documents detailing the proposed terms of coverage as Landlord shall reasonably request. Tenant further agrees that the Policy shall be in full force and effect upon commencement of the Term.

f. Self-Insurance, Large Deductibles and/or Retentions. Tenant is solely responsible for all deductibles and or retentions on any insurance policies required by this Lease, and agrees to pay all deductibles and retentions with respect to any such policies. Any coverage required by this Lease for which Tenant chooses to self-insure shall be the responsibility of the Tenant, and Tenant agrees to pay any covered claims for which it chooses to self-insure.

g. Waiver of Subrogation. Tenant shall procure waiver of subrogation on any insurance policies required under this Lease in which it is able to do so. Tenant agrees that it shall waive subrogation with respect to any matters for which it self-insures,
including, without limitation, worker's compensation insurance. Landlord acknowledges and agrees that Tenant's general liability insurance coverage shall not include a waiver of subrogation. Landlord may choose to either waive subrogation or list the Tenant as a named insured in lieu of waiving subrogation under its property and casualty insurance policy.

h. Notice. All of the insurance policies in which the Tenant or Landlord are an additional or named insured under the terms of this Lease shall, contain a clause that the insurer shall not cancel or reduce the coverage of the insurance without first giving Tenant, Landlord and any mortgagees of Landlord thirty (30) days’ prior written notice.

10.1 Tenant’s Responsibilities.

a. To the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (any such injury, harm or damage hereinafter is referred to as a “Liability Event”), including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers and invitees (all of whom hereinafter are referred to as “Tenant’s Affiliates” in the plural or as a “Tenant Affiliate” in the singular) or to any of their property, arising out of, during, or in connection with Tenant’s lease of the Premises from Landlord, Tenant’s occupancy of the Premises or any other use by Tenant of the Premises (all such risks are hereinafter collectively referred to as the “Assumed Risks”), but only to the extent (i) any such Liability Event is a result of actions or omissions by Tenant, one of Tenant’s Affiliates or any other person or entity for whom Tenant may be liable and (ii) is a negligent act or omission, an intentional act which is not a discretionary function, or an act or omission for which Tenant is liable under the Maine Tort Claims Act. Such Assumed Risks do not include injury, harm, or damage caused by (1) any act or omission of Landlord, its officers, agents, employees, contractors or anyone else for whom Landlord may be liable except Tenant or a Tenant Affiliate, or (2) any act or omission of any third party who is not a Tenant Affiliate utilizing the Access Easement. Tenant’s obligations hereunder are subject to and limited by the defenses, immunities and limitations of liability available to the Tenant under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq, and other applicable law.

b. Tenant and Landlord agree that, subject to Landlord’s right to enforce the terms of this Lease and to terminate this Lease as provided herein, and except to the extent that the Access Easement is used by others, Tenant shall have during the Term until the later of the expiration of the Lease, the earlier termination of the Lease, or when Tenant vacates the Premises, full control over the Premises (including, without limitation, all buildings or structures located on the Premises, including, without limitation, the Building and any parking lot, or walkways or other grounds located on the Premises) and shall be solely responsible for all maintenance and repairs to the Building and Premises except as expressly set forth in this Lease.
c. Covenant against liens: Tenant shall not cause nor permit any lien against the Landlord's property or the Premises or any improvements thereto to arise out of or accrue from any action, omission or use thereof by Tenant; provided, however, that Tenant may in good faith contest the validity of any alleged lien. In the event Tenant contests such lien, upon the request of the Landlord, Tenant shall post a bond approved by the court in which such lien claim is pending or if not yet pending, a court with jurisdiction over such lien, warranting payment of any such lien. If Tenant does not contest a lien, it shall pay off and cause the discharge of any such lien within twenty (20) days of its recording. If a court or other proceeding is commenced, Tenant shall cause such lien to be "bonded off" to Landlord's satisfaction within forty-five (45) days of commencement of such proceeding. Should Landlord be subjected to any claim(s), suit(s) or lien(s), including, without limitation, any claim(s), suit(s) or lien(s) relating to any mechanic's lien claim for any services or materials associated with Tenant's improvements or alterations to the Leased Premises, Tenant shall indemnify and hold harmless Landlord from all damages and costs (including any attorneys' fees incurred by Landlord) arising out of or relating to any such claim(s), suit(s) or lien(s), and shall pay any and all costs (including attorneys' fees) incurred by Landlord in defense or prosecution of such actions within ten (10) days of demand by Landlord. Tenant's failure to comply with the foregoing requirements regarding liens shall constitute a default under the terms of this Lease.

10.2 Environmental Compliance.

During the longer of the Term or the Occupancy Period, the Tenant shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations (hereinafter collectively "Environmental Laws") and taking all necessary steps to prevent any violation of any such Environmental Laws. In addition, Tenant shall be responsible for payment of the costs and expenses relating to any violation of Environmental Law regarding any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period (including, without limitation payment of all fines, penalties or the like, as well as the costs of removal and remediation) including, any and all losses, damages, suits, penalties, costs, liability and expenses (including but not limited to reasonable investigation, laboratory fees, environmental audit and legal expenses) arising out of any claim for loss or damage to any real or personal property or to person(s) including the Premises, injuries to or death of person(s), contamination of or adverse effects on the environment or any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period. Tenant's obligations under this paragraph do not apply to any violation of Environmental Laws or claims resulting from the actions or omission of Landlord, its employees, subcontractors, or others using the Access Easement to access the
property at 55 Portland Street. This paragraph is only intended to govern Tenant's actions during the longer of the Term or the Occupancy Period of the Lease and does not apply to Tenant's ownership of the Premises.

The term "Hazardous Materials" or "Hazardous Material" as used in this Lease Agreement includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future State, Federal or municipal environmental law, regulation or ordinance including but not limited to any such law, regulation or ordinance relating to petroleum or petroleum products, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables or explosives.

Landlord acknowledges and agrees that nothing in section 10 of this Lease is intended to alter or does alter the rights and obligations of the parties under sections 8 and 9 of the Purchase and Sale Agreement.

11. **Assignment/Subletting.**

Tenant shall not sublet all or any portion of the Premises, nor sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder, all of which shall remain in full force and effect, including, without limitation, with respect to payment and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefore in the same manner as Tenant.

12. **Casualty Damage.**

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then, and in such case: (i) if such fire or unavoidable casualty occurs during the Initial Term, then Tenant shall have the right to terminate this Lease; or (ii) if such fire or unavoidable casualty shall occur following the expiration of the Initial Term and during the Renewal Term or any other term, either Landlord or Tenant shall have the right to terminate this Lease. Such right of termination, if available, shall be exercised by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the Term of this Agreement shall cease and come to an end as of the earlier of the date Tenant fully moves out of the Premises or the expiration or earlier termination of the then application term of the Lease. Upon the date Tenant fully moves out of the Premises, Tenant's obligation to pay utilities shall end, except for such charges for utilities as shall have accrued prior to the date of move-out. Notwithstanding anything else contained in this Lease Agreement, Tenant shall not receive any rent refund or credit for such early termination of the Lease or for any early move out, but Tenant shall not be obligated to continue to pay rent due if the Lease is so terminated during any Renewal Term. For avoidance of doubt, Landlord and Tenant hereby agree no rent shall be
refunded to Tenant upon such termination (or under any other circumstance) and that the Rent Credit shall be permanently retained by Landlord.

b. Tenant shall be responsible for covering its equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Premises, whether it is owned or leased by Tenant.

12.1 Condemnation. If the Premises or any part thereof are taken or condemned by a duly constituted public authority, this Lease shall, as to the part taken, terminate and all proceeds and awards shall be paid to the Landlord. Tenant shall have no claim against Landlord with respect to any such taking or condemnation. In the event that a substantial portion of the Premises itself is taken or condemned, both Landlord and Tenant shall have the right to terminate this Lease upon giving notice in writing ten (10) days in advance of proposed termination date. Notwithstanding any such condemnation, taking or termination, no rent shall be refunded to Tenant, and all rent shall be permanently retained by Landlord.

13. Default; Termination.

a. This Lease is made on the condition that if the Tenant shall fail to pay any rent or any other monetary obligation to Landlord within five (5) days of its due date, or fail to perform any other obligation to Landlord within thirty (30) days after written notice thereof, or in case of an obligation that cannot with due diligence be cured within said thirty (30) day period, fail to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the performance of such obligation with due diligence and within a period of time that under all prevailing circumstances shall be reasonable or if Tenant shall violate or fail to comply with any of the terms or provisions of this Lease and such failure to comply or violation of this Lease shall reoccur or continue after written notice of such violation from Landlord, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall be declared bankrupt or insolvent according to law, or if Tenant shall file bankruptcy, or if an involuntary bankruptcy shall be filed against Tenant which shall not be dismissed within thirty (30) days, or if the Tenant shall hold over at the termination of the Lease as herein provided, then and in any of said cases, notwithstanding any license or any former breach of covenants or waiver or consent in former instances, the Landlord lawfully may, in addition to and not in derogation of any remedies for breach of covenant, immediately or at any time thereafter, without prior demand or prior notice whatsoever, (a) terminate this Lease by notice in writing which termination shall be effective immediately or at Landlord’s election on a date stated in said notice; (b) with or without process of law, enter into and upon the leased Premises or any part thereof and repossess the same; and (c) expel the Tenant and those claiming through or under the Tenant and remove its effects (together with any third parties’ property) without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preventing a breach of covenant, and upon entry as aforesaid, all rights of Tenant hereunder shall terminate; and Tenant covenants that in case of such termination, Tenant will during the remainder of the then-current term or any Renewal Term pay to Landlord on the last day of each calendar month the difference, if any, between the rental, and other monetary obligations of Tenant, which would have been due for such month had there been no such termination and the sum of the amounts being received by the Landlord from occupants of the leased Premises, if
any. In addition, Tenant agrees to pay the Landlord, as damages for any above-described breach, all costs of reletting the Leased Premises including, without limitation, real estate commissions, costs of advertising, costs of damage repair, cleaning, costs of renovation of the Premises to suit a new tenant, and costs of moving and storing Tenant’s personal and trade fixtures.

b. Legal Fees and Expenses.

(i) Tenant further agrees to pay and indemnify the Landlord against all reasonable legal costs and charges, including, without limitation, all reasonable attorney’s fees and expenses (hereinafter collectively referred to as “Legal Expenses”) incurred by Landlord if Landlord prevails in a civil action to obtain possession of the leased Premises (including, without limitation, in any forcible entry and detainer or eviction action).

(ii) Tenant shall pay to Landlord all such Legal Expenses within ten (10) days following the entry of a final judgment and the passing of any applicable appeals period in such civil action.

c. Surrender. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of this Lease. If this Lease is terminated, Tenant shall remain liable to Landlord for all Rent due under this Lease Agreement which has not yet been paid to Landlord. The Rent Credit shall remain nonrefundable and shall be permanently retained by Landlord. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement.

d. Termination for Convenience. Tenant may terminate this Lease for its convenience upon no less than thirty (30) calendar days’ prior written notice to Landlord. If Tenant so terminates this Lease for its convenience, no rent shall be refunded to Tenant, and the Rent Credit shall be permanently retained by Landlord.


Landlord shall provide at least 24 hours advance notice of its intention to enter the Premises, except in the case of an emergency. Upon such notice, the Landlord and its representatives, agents, or employees, may enter the Premises.

15. Signs.

Tenant shall not erect, install or place any signage upon the interior or exterior of the Premises except with the written approval of Landlord, which approval Landlord agrees not to withhold unreasonably. Tenant shall pay any and all costs associated with any such signage approved by Landlord.

It is the responsibility of Tenant to determine all zoning information and secure all necessary or required permits and approvals of its proposed use of the subject Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for, the subject Premises for Tenant’s intended use.

17. **Self-Help.**

In the event of a dispute between Tenant and Landlord, Tenant shall not be permitted to withhold all or any part of the rental payment then due unless and until a forum of appropriate jurisdiction has so ruled. The acceptance of a check by the Landlord for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full shall be given no effect and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

18. **Miscellaneous Provisions.**

Subject to the foregoing, the covenants and agreements of the Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective successors and assigns, but no covenant or agreement of Landlord, expressed or implied, shall be binding individually upon any LLC manager or member nor any fiduciary nor any trustee or beneficiary under any trust.

19. **Subordination.**

Tenant shall, from time to time, upon request of the Landlord, subordinate this Lease to any mortgage deed, and/or other security indenture hereafter placed upon the leased Premises, and to any renewal, modification, replacement or extension of such mortgage or security indenture, if, and only if, any mortgagee of Landlord and Landlord (if required by lender) execute (either before or after) such subordination agreement or subordination, non-disturbance and attornment agreement (“SNDA”). Landlord agrees to make reasonable efforts to negotiate with its lender with respect to the terms of any such SNDA, and shall advise such lender of any Tenant objections to such SNDA. Tenant hereby agrees it shall execute and deliver to Landlord within five (5) days of Landlord’s request such subordination agreement or SNDA submitted to Tenant by Landlord or Landlord’s lender.

20. **Estoppel Certificates.**

Tenant shall, within five (5) days after each and every request by Landlord execute, acknowledge and deliver to Landlord a statement in writing including any or all of the following as determined by Landlord: (a) certifying that the Lease is unmodified and in full force or effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), (b) specifying dates to which the annual rent has been paid, (c) stating whether or not Landlord is in default in performance or observance of its obligations under the Lease, and, if so, specifying each such default, (d) stating whether or not to the best of the knowledge of the Tenant, any event has occurred which, with giving of notice or passage of time, or both, would constitute a default by Landlord under Lease, and, if so, specifying each such event, and (e)
certifying that Tenant, as of the date of the statement, has no charge, lien or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder. Any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, transferee or mortgagee of the Leased Premises or any interest therein.

21. Return of Premises; Trade Fixtures.

Tenant at the expiration or termination of this Lease Agreement shall peaceably yield up to Landlord the Premises in broom clean condition, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by the acts or omissions of Tenant, its officers, employees, agents, invitees or contractors excepted. At such time, Tenant shall also remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises, including, without limitation, those listed on Exhibit B. Should Tenant fail to remove its trade fixtures, equipment or other personal property withinThirty (30) days of a notice to do so from Landlord, ownership of such fixtures, equipment and property shall automatically be vested in Landlord and Landlord have the right to dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom.

22. Covenants.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the Initial Term of this Agreement, or if applicable, any Renewal Term. Each party covenants that the Agreement is signed by a duly authorized individual.


Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery at the addresses below shall be effective as personal delivery to the party specified on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

To Tenant:  City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel
at the same address
To Landlord:  
Mr. Thomas Watson  
104 Grant Street  
Portland, ME  04101  

With a copy to:  
William H. Leete, Jr., Esq.  
Leete & Lemieux, P.A.  
511 Congress Street, Suite 502  
Portland, ME  04101  

24. **Amendment.**  
Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

25. **Governing Law.**  
This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

26. **Force Majeure.**  
Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and a suspension of performance shall only be permitted if the party prevented from performance has given written notice thereof to the other party.

27. **Non-Waiver.**  
No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

28. **Limitations of Liability.** Tenant agrees to look solely to the Landlord's interest in 44 Hanover Street, for recovery of any judgment from Landlord, it being agreed that Landlord is not personally liable for any such judgment beyond its interest in 44 Hanover Street (except to the extent that insurance proceeds may be available to satisfy any such judgment).
29. **Brokers.**

Landlord and Tenant each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement, other than the related purchase transaction for the Premises between Landlord and Tenant, and Tenant hereby warrants and represents that its broker [CBRE | The Boulos Company] has been paid in full for its services rendered in connection with that transaction and is not entitled to any compensation with respect to this Lease. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys’ fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim or whose statement contained in this Paragraph 29 shall be untrue.

30. **Tenant agrees that its obligations to Landlord under this Lease Agreement are contractual and are not subject to any defenses available under the Maine Tort Claims Act and Tenant further agrees not to seek to invoke any such defenses.**

31. **Memorandum of Lease.**

Landlord and Tenant agree that this Lease shall not be recorded but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed the day and year first above written.

**WITNESS:**

**LANDLORD**

By: __________________________
Thomas E. Watson
Its Manager

**WITNESS**

**CITY OF PORTLAND**

By: __________________________
Jon P. Jennings
Its City Manager

Approved as to Form:

Corporation Counsel’s Office
EXHIBIT A
(Plan of Premises to be inserted closing)
EXHIBIT B
Tenant’s Property To Be Removed At End Of Term

Lifts –
- 2 Post Forward model DP15SN000M, 15,000 lb, 230 volt – Pickup Bay
- 2 Post Forward model DP10A2, 10,000 lb, 230 volt – Police Bay 2
- 2 Post Forward model 110N000M, 10,000 lb, 230 volt – Police Bay 1
- 4 post Rotary model SM18N000, 18,000 lb, 230 volt – Medcu Bay
- (4) sets of 4 Stertil Koni mobile column lifts, 18,000 lb each post, 230 volt, 3 phase

Tire Machines –
- Atlas tire changer – 110 volt
- Accuturn tire balancer – 110 volt
- Brunick tire spreader – 110 volt
- Old tire changer

Crane
- Demag 10 ton.

Air Compressor – Replace with new
- Champion 3 phase, 230 volt compressor, circa 1992, with air drier 110 volt

Misc Shop Equipment 110 volt
- 2 ac machines, 110 volt
- 1 transmission service machine – 110 volt
- 110 welders for mechanics (2)
- Diesel transfer tank 110 volt
- Multiple waste oil transfer tanks 110 volt

Machine Shop
- Shop press, 110 volt
- Fume extraction – 110 – 220 volt depending on size.
- Millermatic 252 mig welder, 220 volt (work bay)
- Older mig welder, 220 volt (work bay)
- Tig welder – 220 volt (work bay)
- Plasma cutter, 220 volt (work bay)
- Jet bandsaw – 110 volt (in machine shop)
- Vertical bandsaw, 220 volt, 3 phase (machine shop)
- Ironworker, Scotchman, 110 volt (machine shop)
- Lathe, 220 volt, 3 phase (machine shop)
- Milling machine, 220 volt, 3 phase (machine shop)
- Large drill press, 220 volt, 3 phase (machine shop)
- Small drill press, 110 volt (machine shop)
Other/Misc Equipment
- (2) Generators (Admin and Fleet)
- Misc hose / cord / wiring reels
- Tire bay water tank
- Spring compressor – wall mounted in Fire bay
- Bulk fluid tanks
- Paint mix room
- Newer floor body shop lights
- 2 new Fleet building dumpsters
- Misc shelving
ORDER APPROVING THE FOURTH AMENDMENT TO THE 82 HANOVER STREET PURCHASE AND SALE AGREEMENT

ORDERED, that the attached Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street is hereby approved, substantially in the form attached hereto; and

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

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

FROM: Greg Mitchell, Economic Development Director

DATE: June 28, 2018

SUBJECT: Proposed Fourth Amendment to 82 Hanover Street Purchase and Sale Agreement

SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair – Meeting held on 6/19/2018 and the Vote was Unanimous (3-0)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: July 16, 2018

Can action be taken at a later date: No, time-is-of-the-essence to move forward on the sale of this property. Requesting emergency action to allow immediate execution of the Amendment prior to the due diligence deadline of July 23, 2018.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

The proposed Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street will enable a new 10-foot wide pedestrian easement to be established, between Parris and Hanover Street along the proposed 44 and 82 Hanover Street property line and restrict parking in the 30-foot wide Lancaster Street right of way area.

II. BACKGROUND

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street. The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.
In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line. Following guidance from the EDC at its June 19, 2018, the amendments to the Purchase and Sale Agreement for 82 Hanover also require a covenant in the deed restricting parking in the 30-foot wide portion of the property currently encumbered by the public easement in the former Lancaster Street right of way.

It is noted that Tom Watson is the buyer for both the 44 and 82 Hanover Street properties.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is City Council approval of the attached Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover.

This supports the private redevelopment of the 44 and 82 Hanover Street properties formerly occupied by the City Public Works Department.

IV. FINANCIAL IMPACT

There is no financial impact related to this transaction.

V. STAFF ANALYSIS

In order to account for the loss of public access in the former Lancaster Street right of way and comply with Planning Board requirements and EDC recommendations, City staff negotiated the attached Fourth Amendment with Tom Watson (buyer for both the 44 and 82 Hanover Street properties) to preserve public easements on both properties related to the new ten (10) foot wide pedestrian easement area between Parris and Hanover Streets along the boundary between 44 and 82 Hanover Street and to restrict parking in the former Lancaster Street right of way.

VI. RECOMMENDATION

The EDC, at its June 19, 2018 meeting, voted to recommend approval, to the City Council, of the Draft Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street in substantial conformance as attached.

VII. LIST ATTACHMENTS

- Proposed Fourth Amendment to Purchase and Sale Agreement for 82 Hanover Street
- 3rd Amendment to Purchase and Sale Agreement
- 2nd Amendment to Purchase and Sale Agreement
- 1st Amendment to Purchase and Sale Agreement
- 82 Hanover Street Purchase and Sale Agreement
FOURTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the ___ day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017, that certain Second Amendment dated February 28, 2018, and that certain Third Amendment dated May 14, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises and to include a restrictive covenant governing parking in a portion of the Premises as set forth in greater detail below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement approved by the City of Portland Planning Board on May 23, 2018 (the "Public Pedestrian Easement") along the entire length of the common boundary between the Premises and 44 Hanover Street, which is also the southeasterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the "Public Pedestrian Easement Area"). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be...
subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area.

Buyer further acknowledges and agrees that the deed will include a restrictive covenant governing parking in the northerly 25 foot wide portion of the area on Exhibit A marked “Lancaster Street (Discontinued),” which area extends from Parris Street to Hanover Street (the “Restricted Parking Area”). Use of the Restricted Parking Area shall be open space, free from permanent structures, sheds, dumpsters, and the like, and shall be for the commercial use of Buyer, its tenants, and their business invitees and customers, subject to commercially reasonable rules and regulations imposed by the Buyer. Buyer, its successors and assigns shall prohibit short or long-term parking in the Restricted Parking Area at all times, provided, however, that Buyer may allow brief stopping and standing in the Restricted Parking Area for vehicles loading or unloading people or goods for commercial purposes at the Premises. Such covenants and restrictions are intended to be and shall be considered covenants that run with the Premises and shall bind all subsequent owners of the Premises. Such covenants and restrictions shall survive a sale, transfer, foreclosure or transfer of title in lieu of foreclosure, or other disposition of the Premises and shall be enforceable by Seller as a contract and shall inure to the benefit of and be enforceable by Seller, its successors, transferees and assigns. The covenants restrictions may be amended or modified in whole or in part only by written agreement of Seller and Buyer.

Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City’s fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in
the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel’s Office

2. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 28, 2017.

3. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.

NOTE:

PROPOSED 10'-WIDE PEDESTRIAN/BICYCLE EASEMENT TO THE CITY OF PORTLAND FROM TOM WATSON CO. LLC. APPROX. 2,007 SF

N:301035.29
E:2926718.28

44 HANOVER ST.

LANCASTER ST. (DISCONTINUED)

PROPERTY LINE, TYP.

HANOVER STREET

30' SEWER EASEMENT
SEE NOTE 1

N72°24'45"E
0.50'

500'-TYP.

N:301094.64
E:2926909.91

FOR REVIEW NOT FOR CONSTRUCTION

SCALE: 1" = 30'

DATE: 5/29/2018

DESIGN BY:

DRAWN BY:

CHECKED BY:

ACORN ENGINEERING, INC.

DRAWING NO. EX-01

PROJECT NAME: 82 HANOVER REDEVELOPMENT

CLIENT: TOM WATSON & CO. LLC
THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 14th day of May, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Seller”) and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the “Buyer”).

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017 and that certain Second Amendment dated February 28, 2018 (hereinafter collectively the “Agreement”) with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to May 15, 2018 or such later date as may be set forth in the Agreement (the “Due Diligence and Financing Period Expiration Date”); and

WHEREAS, Seller and Buyer wish to further amend the Agreement to further extend the Due Diligence Period and Financing Period Expiration Date and to amend the “Option to Cure” and other provisions of Section 3(e) of the Agreement, all as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to May 15, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement (the First Amendment replaced “sixty (60) days after the Effective Date of this Agreement” with “March 1, 2018,” and the Second Amendment replaced it with “May 15, 2018”), and replacing it with a reference to “July 23, 2018,” meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on July 23, 2018.

2. The Agreement is hereby further amended by deleting the reference to May 15, 2018 as the expiration date of the Financing Period in the first sentence of Section 3(e) of the Agreement (The First Amendment replaced “sixty (60) days after the Effective Date of this Agreement” with “March 1, 2018” and the Second Amendment replaced it with “May 15, 2018”), and replacing it with a reference to “July 23, 2018,” meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on July 23, 2018.
3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to July 23, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than July 23, 2018 and it is the parties' intent that both such periods be extended to the later of July 23, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. The Agreement is hereby further amended by deleting Paragraph 3(e) of the Agreement in its entirety and replacing it with the following:

   e. Option to Cure.

   (1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

   (A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

   (B) waive the objection and close; or

   (C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer’s sixty (60) day cure period set forth in this subsection (C) to
terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (e) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

7. The Agreement is hereby further amended by deleting Paragraph 3(f) of the Agreement in its entirety and replacing it with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.
8. Except as specifically amended hereby and by the First and Second Amendments, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Third Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

Jon P. Jennings
Its City Manager

Signature page for Tom Watson & Co., LLC follows.
Printed Name: Thomas E. Watson
Its Manager
SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 25th day of February, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017 (the “Agreement”) with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, on December, 22, 2017, Seller and Buyer entered into a First Amendment to Purchase and Sale Agreement for 82 Hanover Street ("First Amendment"), which amended the Agreement and provided, among other things, that the Due Diligence period and the Financing Period, as those terms are defined in the Agreement, were extended to March 1, 2018 or such later date as may be set forth in the Agreement, (the “Due Diligence and Financing Period Expiration Date”);

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence Period and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to March 1, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement (the First Amendment replaced “sixty (60) days after the Effective Date of this Agreement” with “March 1, 2018”), and replacing it with a reference to “May 15, 2018,” meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on May 15, 2018.

2. The Agreement is hereby further amended by deleting the reference to March 1, 2018 as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement (The First Amendment replaced “sixty (60) days after the Effective Date of this Agreement” with “March 1, 2018”), and replacing it with a reference to “May 15, 2018,” meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on May 15, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due
Diligence Period they also intend, and hereby agree to (and hereby do) extend to May 15, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and Financing Period may be automatically extended to a date later than May 15, 2018 and it is the parties' intent that such periods be extended to the later of May 15, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. Except as specifically amended hereby and by the First Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Second Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

[Signature]

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

[Signature]

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

[Signature]

 Corporation Counsel’s Office:
FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 20th day of December, 2017, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 24, 2017 (the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, the Due Diligence period and the Financing Period, as those terms are defined in the Agreement, were to expire sixty (60) days after the date of the Agreement, (the "Due Diligence and Financing Period Expiration Date") but under the terms of the Agreement, have been automatically extended by at least thirty (30) days because certain due diligence items, such as a Phase II Environmental study, have not yet been provided to Buyer;

WHEREAS, Seller and Buyer wish to amend the Agreement to extend the Due Diligence Period and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to “sixty (60) days after the Effective Date of this Agreement” in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to “March 1, 2018,” meaning and intending hereby to extend the deadline of the Due Diligence Period to 4pm Portland, Maine time on March 1, 2018.

2. The Agreement is hereby further amended by deleting the reference to “sixty (60) days after the Effective Date of this Agreement” in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to “March 1, 2018,” meaning and intending hereby to extend the deadline of the Financing Period to 4pm Portland, Maine time on March 1, 2018.

3. Seller and Buyer further agree that due to certain automatic extensions provisions in the Agreement, that both the Due Diligence Period and Financing Period may be automatically extended to a date later than March 1, 2018 and it is the parties’ intent that such periods be extended to the later of March 1, 2018 or such later date as is provided in the Agreement.
4. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

5. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

[Signature]
WITNESS

[Signature]
WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

[Signature]
Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

[Signature]
Corporation Counsel’s Office
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 29th day of October, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter referred to as “Buyer”).

RECITALS

WHEREAS, the CITY is the owner of approximately 1.25 acres of land at or near 82 Hanover Street, Portland, Maine as generally depicted as Parcel 4 on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the “Premises”) and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. SALE AND EFFECTIVE DATE. City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 82 Hanover Street. This Agreement shall become effective following the occurrence of both of the following: approval of this Agreement by the City Council of the City in substantially this form, and the City Manager’s execution of this Agreement. The first calendar day after which both such events have occurred is hereinafter referred to as the “Effective Date”. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date shall be computed from the Effective Date.

2. CONSIDERATION. The purchase price for the Premises shall be Two Million Three Hundred Fifty Thousand ($2,350,000) (the “Purchase Price”), subject to the following cost adjustments and conditions:

   a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars ($25,000.00) (the “Deposit”) within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and
b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. **TITLE AND DUE DILIGENCE.**

a. **Due Diligence Period.** Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Eastern Standard Time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.

b. **Property Description.** The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close.

c. **Financing Contingency.** Buyer shall have from the Effective Date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Financing Period") to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the same date as the expiration of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.
d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived, provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure. In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer’s reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a city-wide PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement...
and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or
take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX. Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Buyer’s one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer’s financing or closing shall be paid for by Buyer.

6. DEFAULT AND REMEDIES. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like, but Buyer at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. RISK OF LOSS. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.

8. PROPERTY SOLD “AS IS, WHERE IS.” Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make
no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City’s agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein except as expressly set forth herein.

9. **ENVIRONMENTAL INDEMNIFICATION.** Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City’s release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer’s successors, assigns, and transferees.

10. **CONDITIONS PRECEDENT TO CLOSING.** It is a condition precedent to Closing that:

   a. The City shall obtain in form reasonably acceptable to Buyer the removal of the restrictions limiting development of or use of the Premises or otherwise burdening the Premises (hereinafter the “Deed Restrictions”) stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.

   b. The City shall obtain Subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree, such Subdivision approval is not required (hereinafter the “Subdivision Approval”).

In the event the City is unable to obtain Subdivision Approval and the removal of all the above Deed Restrictions prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the removal of the Deed Restrictions and the approvals to be obtained or (2) elect to terminate this Agreement either prior to the scheduled Closing Date or prior to the expiration of any extension period based on an...
extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to pursue the removal of the Deed Restrictions and Subdivision Approval.

If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). At the Closing:

a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, and insurable title (at standard rates) to the Premises, free and clear of all liens and encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City); and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance in form reasonably acceptable to Buyer and to Buyer's lender.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

a. Buyer agrees at Closing to deposit $115,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.
b. Buyer agrees to commence development of the residential project generally depicted on the plans that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City’s Economic Development Committee on July 19, 2017, and which shall specifically include at least twenty-three (23) new dwelling units at Buyer’s property at 104 Grant Street (the “Residential Project”), within twelve (12) months after closing; provided, however, that Buyer shall be entitled to modify the Residential Project by increasing the number of residential units, modifying the size and layout of such units, or minor, non-substantive changes. Buyer shall also be entitled to modify the Residential Project in a manner deemed reasonably necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval; provided, however, that such modifications shall not reduce the number of new dwelling units below 23 unless the City’s land use ordinance only permits a smaller number without material modifications to the Residential Project as proposed, in which case the Residential Project shall include the maximum number of dwelling units allowed at 104 Grant Street without material modifications to the Residential Project as proposed.

c. Buyer’s commencement of the Residential Project development shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an “Application”) for the Residential Project within 12 months after the Closing under this Agreement.

d. Buyer agrees to commence development of a commercial project at the Premises in substantially the form depicted on the plans that are attached hereto as Exhibit C and incorporated herein by reference, and which project was presented to the City’s Economic Development Committee on July 19, 2017 (the “Commercial Project”), within twelve (12) months after closing. The Commercial Project shall be deemed to be "substantially in the form depicted on the plan attached as Exhibit C" if it proposes to include (or is constructed to include) a) multiple commercial tenant(s) which may be of varied types including retailers and others, b) rooftop decks, and c) if reasonably feasible within the existing space available, open spaces/common areas available for public use. The Commercial Project may also be modified in a manner deemed necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval and the Commercial Project, if otherwise "substantially in the form depicted on the plan attached as Exhibit C" shall, notwithstanding any such modifications, continue to be so considered.

e. Buyer’s commencement of the Commercial Project shall be effected by Buyer or its successors, assigns, or transferees submitting an Application for the Commercial Project within 12 months after the Closing under this Agreement.

f. If Buyer does not submit Applications for the Commercial Project and the Residential Project (including any modifications as described above) within one (1) year of Closing under this Agreement, then $10,000.00 shall be released
g. Additionally, Buyer shall commence construction of the Residential Project and the Commercial Project by the later of the date that is thirty-six (36) months after Closing under this Agreement or one hundred eighty (180) days after final approval of the Projects (including, without limitation, final decisions in all applicable municipal or judicial proceedings) and the expiration of all applicable appeal periods (the "Construction Start Date"). Buyer agrees to diligently pursue all approvals for both Projects. If Buyer fails to commence construction of the Residential Project and the Commercial Project by the later of the Construction Start Date, then $10,000.00 shall be released from escrow and to the City's Housing Trust Fund, and until construction on both Projects is commenced, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter. Within thirty (30) days after the commencement of construction of both Projects, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that Buyer fails to commence construction of both Projects within 5 years from the Closing Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

h. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Residential Project and the Commercial Project, that the two projects will be undertaken by two different Limited Liability Companies ("LLCs") to be formed or corporations to be formed which will be assignees of Buyer, and the City hereby consents to the same and to Buyer's assignment of its rights and obligations under this Agreement to any such LLC's or corporations, provided that Thomas Watson will be a manager or co-manager of any such LLCs and President or Vice President of any such corporations.

i. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for
the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:  
City of Portland  
ATTN: City Manager  
389 Congress Street  
Portland, ME 04101

With a copy to:  
The Office of the Corporation Counsel at the same address.

FOR Buyer:  
Mr. Thomas Watson  
Tom Watson & Co., LLC  
104 Grant Street  
Portland, ME 04101

With a copy to:  
William H. Leete, Jr., Esq.  
Leete & Lemieux, P.A.  
511 Congress Street, Suite 502  
Portland, ME 04101

20. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and
all of which together shall constitute one and the same agreement.

21. **BROKERS.** The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

[Signature]

WITNESS

[Signature]

WITNESS

Approved as to Form:

[Signature]

Corporation Counsel's Office
EXHIBIT B

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF A 23
UNIT APARTMENT BUILDING AT
104 GRANT STREET, PORTLAND MAINE
104 Grant St- Current Use
PORTLAND, MAINE
BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE
4th Floor

UNIT-23
935 SF

UNIT-21
998 SF

UNIT-19
613 SF

UNIT-17
1,208 SF

UNIT-22
1,004 SF

UNIT-20
1,646 SF

UNIT-18
1,000 SF

104 GRANT STREET
BUILDING AREA

FIRST FLOOR

Common Area
1,128 SF

MANAGEMENT OFFICE
464 SF

SECOND FLOOR

UNIT-1
1,000 SF
UNIT-2
1,000 SF
UNIT-3
720 SF
UNIT-4
738 SF
UNIT-5
616 SF
UNIT-6
616 SF
UNIT-7
1,000 SF
SECOND FLOOR ARCH.

UNIT-14
1,000 SF
UNIT-15
1,000 SF
UNIT-16
616 SF
UNIT-17
616 SF
UNIT-18
616 SF

TOTAL

40,450 SF

NOTE: ALL SQUARE FOOTAGE CALCULATIONS BASED ON FOOTPRINT OF SPACE WALLS AND EXTERIOR WALLS.

JUNE 01, 2017
RYAN SENATORE ARCHITECTURE
CITY OF PORTLAND BAYSIDE PROPERTIES
TOM WATSON LETTER OF INTENT TO PURCHASE

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1. LETTERS OF INTENT TO PURCHASE (IN SEPARATE PACKET):
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2. DESCRIPTION OF INTENDED USES

3. TOM WATSON BIO

4. 82 HANOVER
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   c. ARCHITECT RENDERING
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9. 117 LOFTS: THE SCHLOTTERBECK & FOSS BUILDING (NOW A 56 UNIT APARTMENT BLDG)
   a. EXTERIOR PICTURES
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DESCRIPTION OF INTENDED USE

82 Hanover

- Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- Bring in retailers/partners who will contribute to the community as well as the economy
- Open spaces/commons available for public use
- Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- 16 separate spaces all with autonomous access to the street.
- One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- Affordable/accessible to the creative community at under $1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- Commons/courtyard space open to public for public use
- Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street

- 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood
Thomas Watson founded Port Property Management in 1993 with his father Jack who later sold his half of the business to Russell Pierce (Tom’s brother-in-law). Tom and Russ have had a successful partnership for the last 17 years and currently employ 41 full time employees, most of whom call Portland their home.

Port Property manages over 1,300 apartments and commercial spaces in Portland and South Portland, the bulk of which are on the Portland peninsula. All of the properties are owned by Port Property related companies.

Tom graduated with a B.A. from Stanford University in 1985 and received an MBA from Boston University in 1992.

He lives in Portland with his wife Judy and their 3 children, all of whom attend Portland Public Schools.
BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF
82 HANOVER STREET, PORTLAND MAINE
82 Hanover Street- Streetscape, #1
PORTLAND, MAINE
BAYSIDE RPF-82 Hanover Street- Street Scape, #2
PORTLAND, MAINE

JUNE 16, 2017
RYAN SENATORE ARCHITECTURE
BAYSIDE RFP - 82 HANOVER STREET-Rendering
PORTLAND, MAINE

MAY 11, 2017

RYAN SENATORE ARCHITECTURE
ORDER PROPOSING THE DISCONTINUANCE OF A PUBLIC WAY
ALONG A PORTION OF PORTLAND PIER

ORDERED, that the City Council for the City of Portland hereby proposes the discontinuance of all of that portion of the street that lies southeasterly of the following described line:

Beginning at a point on the northeasterly street line of Portland Pier as laid out by the Commissioners of Cumberland County on June 6, 1887 and recorded in the County Commissioners' Records in Volume 16 Page 86. Said point of beginning being the intersection of said northeasterly street line of Portland Pier with the boundary line between land now or formerly of Fifty Portland Pier, Inc. (Book 8144 Page 140) and land now or formerly of 60 Portland Pier, LLC (Book 31814 Page 209). Said point of beginning also being located five-hundred-forty-three and fifty-one hundredths feet (543.51'), more or less, from the intersection of said northeasterly street line of Portland Pier with the southeasterly street line of Commercial Street. Thence southwesterly across said Portland Pier and at right angles to said street line a distance of twenty-nine feet and two inches (29' 2") to the southwesterly street line of said Portland Pier; and

BE IT FURTHER ORDERED AND ADJUDGED, that the City will retain a public easement over the land herein described;

BE IT FURTHER ORDERED AND ADJUDGED, that the sole abutting owner is ____________, which is supportive of such discontinuance. ____________ has waived any entitlement to damages. Accordingly, no damages shall be paid to such abutter.

Date of Order: July 16, 2018

Mayor Ethan K. Strimling

Councilor Justin Costa

Councilor Belinda S. Ray

Councilor Kimberly M. Cook

Councilor Spencer R. Thibodeau

Councilor Jill C. Duson

Councilor Brian E. Batson

Councilor Pious Ali
Councilor Nicholas M. Mavodones, Jr.
MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English, Mona Bector
FROM: Greg Mitchell, Economic Development Director
DATE: June 28, 2018
SUBJECT: Portland Pier, Partial Right of Way Discontinuance
SPONSOR: Justin Costa, Chair of the Economic Development Committee, as recommended on June 19, 2018 by unanimous vote of the Committee

COUNCIL MEETING DATE ACTION IS REQUESTED: 1st reading: July, 16, 2018 Final Action: First Available Meeting
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)
Economic Development staff with support from Ports and Public Buildings will provide introductory comments and be available for clarifying questions.

I. ONE SENTENCE SUMMARY
The City Council is asked to consider discontinuing a portion of public right of way on Portland Pier while retaining access for the public and commercial marine businesses, including fishing vessels.

II. AGENDA DESCRIPTION
The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The Department of Economic Development, the Facilities Division, and the Department of Public Works recommend that the City Council hold a public hearing to consider discontinuance of a portion...
of public right of way at the southerly end of Portland Pier. The portion of right of way considered for discontinuance serves only a single property, 60 Portland Pier, Portland Pier Holdings, LLC. All private properties on Portland Pier, including 60 Portland Pier, will continue to have access from a public right of way and public access rights are to remain in effect for both commercial fishing and pedestrian use of the pier.

City staff and the Economic Development Committee recommend the discontinuance to promote private investment and maintenance of currently degraded pier infrastructure. Only with immediate and continued investment will public and fishing access be retained on the subject portion of right of way.

The subject portion of right of way is occupied by a pile-supported pier structure over submerged lands owned by the State of Maine. Following the proposed discontinuance, the City-owned portion of pier described will transfer to the surrounding property owner, Portland Pier Holdings, LLC. subject to the limits and requirements of the State Submerged Lands program.

Portland Pier Holdings, LLC. At 60 Portland Pier is amenable to the discontinuance and has agreed to waive damages and has further agreed to conduct immediate necessary repairs to the pier to promote continued public and fishing access.

Discontinuance of a street is a statutory process outlined in 23 M.R.S. § 3026-A. According to the statute, it is typically a 3-meeting process. In this case, that process should be as follows:

- At its July 16, 2018 meeting, the Council is asked simply to vote to propose the discontinuance. No public hearing or comment is required.

- If it so votes, notice of that proposal and of the public hearing at which the proposal will be considered must then be mailed to the abutter and posted in the City Clerk’s office.

- The Council must then hold the public hearing on the proposal. Public comment should be taken but no vote by the Council will be taken at this hearing.

- Finally, ten or more business days after the public hearing, the Council must take a vote on the order of discontinuance. If it votes to discontinue the street, the Clerk will file a certification of that fact in the Registry of Deeds.

III. BACKGROUND

Located between Custom House Wharf and Long Wharf (DiMillo’s,) Portland Pier, is unique along Portland’s Central Waterfront in that there is a public right of way down the center of the pier flanked by private parcels. Most piers on Portland’s waterfront are private. Formerly the home of the Casco Bay Lines car ferry terminal, the southerly end of the Pier has been occupied by lobstering interests since the 1980’s.

In addition to the subject property (the former New Meadow’s Lobster pound,) the pier is home to J’s Oyster, commercial offices, 40 and 50 Portland Pier Condominiums. Lobster boats berth on the easterly and southerly pier perimeter with DiMillo’s yacht brokerage leasing berthing along much of the westerly edge.
By previous action of the City Council in 2014, the southerly most portion of the public right of way was sold to a previous owner (McAllen’s New Meadow’s Lobster.) Public rights of access were retained in the 2014 transfer.

The portion of right of way considered for discontinuance serves only one property (60 Portland Pier, Portland Pier Holdings, LLC) and is in need of significant rehabilitation. The current owners are currently engaged in repairing adjacent private portions of the pier and are willing to take on the current rehabilitation needs and ongoing maintenance of the subject portion of the pier. Without repair, access to the pier will need to be restricted for safety. There is currently no City budget identified for repair.

Portland Pier Holdings, LLC plans to rehabilitate and restart the lobster pound operation, retain the current commercial berthing, and to establish a seafood restaurant specializing in lobster and seafood landed and processed on the pier. All of the current and proposed uses are planned to be consistent with the Waterfront Central Zone requirements. Public access and continued lobster operations are central to the redevelopment program.

The subject portion of right of way and the entirety of the 60 Portland Pier buildings and pier deck are supported by pilings over submerged lands. The property owners are currently conducting significant repair on the private portions of the pier. The City Manager has provided a license to Portland Pier Holdings, LLC to conduct work on the public portions of the pier to ensure that commercial fishing and access to berthed vessels can continue in the short term.

The sketch graphic attached to this memo shows approximate private parcel boundaries, the 2014 sale parcel, and areas of right of way to be retained and for potential discontinuance.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Functionally, users of the pier will see no change within the right of way post discontinuance. The proposed discontinuance will allow for the private maintenance of pile supported pier while continuing commercial and public access to the southerly end of the pier.

V. FINANCIAL IMPACT

Portland Pier, LLC, as part of their on-going repairs of the private portions of the pier, estimate that the immediate repairs needed on the subject public portion of Portland Pier would cost +/-$78,000. If the subject portion of ROW is to remain in public hands, these immediate costs and future maintenance and repairs will remain the responsibility of the City.

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

Since the 1980’s, Portland Pier has provided access to berthing, commercial lobsterring, and public views to the inner harbor for pedestrians. Maintenance of the pier is key to preserving these functions. The public right of way appears to reflect the historic use of the pier as a (private) car ferry terminal. In the transition from ferry terminal to lobster pound, the southerly end of the pier retained the public’s right to use the pier, but functionally access to the water for active use was privatized. Promoting private commercial fishing access within the Central Waterfront was consistent with City policy in 2014 and remains so today. Private ownership of the remaining portion of right of way that is surrounded by 60 Portland Pier would promote continued maintenance of the
infrastructure while preserving access for current and future commercial fishing and public pedestrian use.

VII. RECOMMENDATION

The Department of Economic Development, the Facilities Division, and the Department of Public Works join the Economic Development Committee in recommending the discontinuance while retaining public and commercial fishing access to the pier.

VIII. LIST ATTACHMENTS

a. Orientation sketch map
b. Discontinuance documents currently being drafted by Corporation Counsel and DPW

Prepared by: Bill Needelman, Waterfront Coordinator
Date: June 28, 2018
Portland Pier ROW Discontinuance Orientation Sketch
3-21-18

- 40 Portland Pier
- 50 Portland Pier
- "Bait Shack"
- Public ROW to Retain
- Wooden Structure
- Filled Land
- Public ROW to Discontinue
- Area included in 2014 sale City to McAllaney
- Apparent Occupancy by 60 Portland Pier
ORDER OF DISCONTINUANCE OF A PUBLIC WAY
ALONG A PORTION OF PORTLAND PIER

ORDERED, that the discontinuance of all of that portion of the street that lies southeasterly of the following described line is hereby approved:

Beginning at a point on the northeasterly street line of Portland Pier as laid out by the Commissioners of Cumberland County on June 6, 1887 and recorded in the County Commissioners’ Records in Volume 16 Page 86. Said point of beginning being the intersection of said northeasterly street line of Portland Pier with the boundary line between land now or formerly of Fifty Portland Pier, Inc. (Book 8144 Page 140) and land now or formerly of 60 Portland Pier, LLC (Book 31814 Page 209). Said point of beginning also being located five-hundred-forty-three and fifty-one hundredths feet (543.51’), more or less, from the intersection of said northeasterly street line of Portland Pier with the southeasterly street line of Commercial Street. Thence southwesterly across said Portland Pier and at right angles to said street line a distance of twenty-nine feet and two inches (29’ 2”) to the southwesterly street line of said Portland Pier; and

BE IT FURTHER ORDERED AND ADJUDGED, that the City will retain a public easement over the land herein described;

BE IT FURTHER ORDERED AND ADJUDGED, that the sole abutting owner is ______________ which is supportive of such discontinuance. ___________ has waived any entitlement to damages. Accordingly, no damages shall be paid to such abutter.
ORDER SETTING A PUBLIC HEARING ON PROPOSED AMENDMENT TO PORTLAND CITY CHARTER, ARTICLE IV ELECTIONS
RE: 42-DAY FINANCE REPORTS REQUIRED FOR MUNICIPAL CANDIDATES

ORDERED, that the Portland City Council will hold a public hearing on the attached proposed amendments to Article IV (Elections) of the Portland City Charter on August 13, 2018 at 6:00 p.m. in the Council Chambers at Portland City Hall, said amendment to be placed upon the November 6, 2018, Regular Municipal Election ballot if submission to the voters is approved by the Council.
Question #1. Shall the Municipality approve the Charter Amendment reprinted below:

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law.
ORDER SETTING A PUBLIC HEARING ON PROPOSED AMENDMENT TO PORTLAND CITY CHARTER, ARTICLE IV ELECTIONS RE: IMMIGRANT VOTING

ORDERED, that the Portland City Council will hold a public hearing on the attached proposed amendments to Article IV (Elections) of the Portland City Charter on August 13, 2018 at 6:00 p.m. in the Council Chambers at Portland City Hall, said amendment to be placed upon the November 6, 2018, Regular Municipal Election ballot if submission to the voters is approved by the Council.
Shall the City approve the Charter Amendment to Article IV, by adding Section 12, printed below:

Section 12. Qualification to vote

Any other provision in this charter notwithstanding, legal immigrants who are residents of Portland and 18 years old or older on the date of any municipal election shall be allowed to register to vote and vote in municipal elections. In order to register, a legal immigrant shall provide proof of identity, age and residency, pursuant to title 21-A and legal status according to standards established by the city clerk. Such persons shall not have the right to run for and hold an elected municipal office.