

**AGENDA**  
**REGULAR CITY COUNCIL MEETING**  
**JULY 16, 2018 - 6:00 PM**

1. 6:00 P.M. City Council Meeting Agenda

Documents:

[CITY COUNCIL MEETING AGENDA 2018-07-16 600 PM.PDF](#)

2. 6:00 P.M. Tab 24-18/19 Addendum

Documents:

[TAB 24-18-19 ADDENDUM.PDF](#)

3. 6:00 P.M. City Council Meeting Agenda And Packet - Tab 25 Thru Tab 35

Documents:

[CITY COUNCIL MEETING AGENDA AND PACKET 2018-07-16 600 PM \(TAB 25 THRU TAB 35\).PDF](#)

4. 6:00 P.M. City Council Meeting Agenda And Packet - Tab 35 Thru Tab 44

Documents:

[CITY COUNCIL MEETING AGENDA AND PACKET 2018-07-16 600 PM 2\(TAB 36 THRU TAB 44\).PDF](#)

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

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

**AGENDA**  
**REGULAR CITY COUNCIL MEETING**  
**JULY 16, 2018**

The Portland City Council will hold a regular City Council Meeting at 6:00 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

**ANNOUNCEMENTS:**

**RECOGNITIONS:**

**Arts in the Chamber, Creative Portland Presents a “Sizzle” Reel  
Highlighting the Cultural Life of Portland**

**APPROVAL OF MINUTES OF PREVIOUS MEETING:**

(Tab 24)                      June 18, 2018 Draft Regular City Council Meeting Minutes

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

**PROCLAMATIONS:**

**APPOINTMENTS:**

**CONSENT ITEMS:**

**LICENSES:**

**BUDGET ITEMS:**

**COMMUNICATIONS:**

**RESOLUTIONS:**

Resolve 1-18/19              Resolution Approving Public Finance Authority Revenue Bond

(Tab 25)

**Financing for Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. – Sponsored by Danielle West-Chuhta, Corporation Council.**

Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. (collectively, “The Cedars”) are undertaking a major renovation to its assisted living, nursing home and memory care facility in Portland. The Cedars intends to finance the project with a tax-exempt bond issued by a Wisconsin-based conduit bond issuer called Public Finance Authority (“PFA”).

The Internal Revenue Code requires that a bond issue to be issued by an out-of-state agency must obtain a local approval of the bond issue. The City Council approval satisfies this requirement of the Code.”

The memorandum in the back up material provides additional background information. The City will not be required to take any further action with respect to the bond issue and will not need to enter into any transaction documents.

This renovation was reviewed by the Planning Board, and the site was conditionally approved in April 2018.

Five affirmative votes are required for passage after public comment.

**UNFINISHED BUSINESS:**

**Order 266-18/19  
(Tab 26)**

**Order Amending the Bayside Tax Increment Financing District to Support the Establishment of an Affordable Housing District for the 178 Kennebec Street Elderly Affordable Housing Project – Sponsored by the Economic Development, 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 approval.

The proposal is for the commercial ground floor to remain in the Bayside TIF at 100% TIF capture with no Credit Enhancement Agreement. The upper floors will be subject to a new Affordable Housing TIF District.

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 267-18/19  
(Tab 27)**

**Order Designating 178 Kennebec Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic**

**Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and the Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

Maine Workforce Housing (MWH) is proposing to construct 46 1-bedroom units for seniors (55+) on a site located at 178 Kennebec Street. MWH is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$96,305 annually over 30 years.

The developer has requested two forms of financial assistance.

(1) HOME funds request: \$400,000; At their June 27, 2018 meeting the Housing Committee did not recommend HOME funding for this project.

(2) Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$96,305, with an estimated total of \$2,889,164 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable, with an estimated annual assessment of \$4,300,000 and estimated annual tax of \$93,095. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo. Maine Workforce Housing is proposing to construct 46 1-bedroom units for seniors (55+). The development will include:

| 178 Kennebec Street  |                                    |    |
|----------------------|------------------------------------|----|
| 1-Bedroom Units (46) | at or below 40% area median income | 0  |
|                      | at or below 50% area median income | 15 |
|                      | at or below 60% area median income | 21 |
|                      | Market Rate                        | 10 |
| Total Units          |                                    | 46 |

As stated in the developer's application, the project:

*"...includes ground-level retail and/or artist studio space with 46 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 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.”*

The developer will submit an application with MaineHousing's Low Income Housing Tax Credit (LIHTC) program contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer. The LIHTC application is extremely competitive. Often, without the City's willingness to provide tax increment financing for an affordable housing development project, the developer is not competitive in the LIHTC application.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The third party analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the funding recommendation noted below. With that being said, the third party report makes the following recommendations:

Affordable Housing TIF financing through a Credit Enhancement Agreement at 75% of the increased assessed value for 30 years.

The Housing and Community Development (HCD) Division, reviewed and underwrote the 178 Kennebec Street project as a 46 1-bedroom units for seniors (55+). The financial proforma submitted by the developer described a 46-unit project. The developer has indicated their desire to increase the number of units to 51, which would include 16 units affordable at or below 50% of the area median income, 24 units affordable at or below 60% of the area median income and 11 units at market rate. An updated project underwriting will be available prior to the Council meeting.

This item must be read on two separate days. It was given a first reading on June 18, 2018. Five affirmative votes are required for passage after public comment.

**Order 268-18/19  
(Tab 28)**

**Order Approving and Authorizing the City Manager to Enter into The Credit Enhancement agreement with 100 Parris Street, LP – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and the Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 267-17/18 above.

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 269-18/19  
(Tab 29)**

**Order Designating 977 Brighton Avenue Apartments Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue. AHDC is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value currently estimated at an average \$65,150 annually over 30 years.

AHDC has requested two forms of financial assistance.

(1) HOME funds request: \$300,000; At their June 27, 2018 meeting the Housing Committee voted 3-0 to recommend HOME funding in the amount of \$300,000 for this project.

(2) Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30 year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

The development will include:

| 977 Brighton Avenue     |                                    |    |
|-------------------------|------------------------------------|----|
| 1-Bedroom<br>Units (40) | at or below 50% area median income | 24 |
|                         | at or below 60% area median income | 10 |
|                         | Market Rate                        | 6  |
| Total Units             |                                    | 40 |

Eight (8) units will have project based rental assistance. As stated in the developer's application:

*"The 0.73 acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project consists of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot of 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents."*

The developer will submit an application with MaineHousing's Low Income Housing Tax Credit program contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The third party analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the funding recommendation noted below. With that being said, the third party report makes the following recommendations:

AH TIF financing through a Credit Enhancement Agreement at 75% of the increased assessed value for 30 years.

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 270-18/19  
(Tab 30)**

**Order Approving and Authorizing the City Manager to Enter into the Credit Enhancement Agreement with Avesta 977 Brighton LP – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and the Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

This order is a companion to Order 269-17/18 above.

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 19-18/19  
(Tab 31)**

**Order Placing a Referendum Question on November 6, 2018, Municipal Ballot Re: Formation of the Greater Sebago Education Alliance – Sponsored by Katherine L. Jones, City Clerk.**

The Portland Board of Education respectfully requests the City Council to place the following question before the voters on the November ballot, as required by 20-A M.R.S. § 3805(3):

Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?

Five affirmative votes are required for passage after public comment.

**Order 20-18/19  
(Tab 32)**

**Order Appropriating \$130,000 for Middle School Math Curriculum Expansion and Materials for the Portland Public Schools – Sponsored by Jon P. Jennings, City Manager.**

During the FY2017 budget process, the Chief Academic Officer (CAO) budgeted approximately \$150,000 for a new middle school math curriculum. The CAO resigned their position at the end of FY2016 and an Interim CAO was named. Due to the temporary nature of their position, the Interim CAO did not want to purchase a middle school math curriculum and wanted to wait until a permanent CAO was hired. Unfortunately, the funds lapsed to unassigned fund balance at the end of the fiscal year.

The Superintendent and Staff did highlight to the Board that we would be requesting the use of these funds at a later date and did let them know that it would require City Council approval.

On May 1, 2018 the Assistant Superintendent for Teaching and Learning/Chief Academic Officer, recommended the purchase of a curriculum from Open Up Resources. The materials and cost of professional development for the first year is a minimum of \$97,500 but could be up to \$130,000 depending on how many teachers are included in the initial training. In her memo to the Board, the Assistant Superintendent of Teaching and Learning noted that we would like to use the FY2017 funds budgeted for this purpose.

Therefore, Portland Public Schools staff, including the Superintendent, Executive Director of Budget & Finance, and the Assistant Superintendent of Teaching and Learning, would like to request the approval from the City Council to use \$130,000 of unassigned fund balance, specifically budgeted for in FY2017, to purchase Open Up Resource's math curriculum.

This order will be considered by the Finance Committee before the August 13, 2018 City Council meeting.

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

**Order 21-18/19  
(Tab 33)**

**Order Approving Three-Party Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Allen Avenue between Pennell Avenue and Yale Street - Sponsored by Jon P. Jennings, City Manager.**

Approving and signing this agreement between Portland Area Comprehensive Transportation System, Maine Department of Transportation, and the City of Portland would confirm the City's intent to undertake this project and pay 50% of the total project cost. The estimated total project cost is \$367,500. The City's 50% share would be \$183,750. A copy of the fully executed agreement will be returned to the City and become the City's "notice to proceed" with this project.

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

**Order 22-18/19  
(Tab 34)**

**Order Approving the Acceptance and Appropriation of Brownfields Cleanup Fund Grant – Sponsored by Jon P. Jennings, City Manager.**

This order accepts and authorizes the appropriation of \$500,000 in Environmental Protection Agency (EPA) Supplemental Brownfields Revolving Loan Funds (RLF) grant funds, with the exception that the funds will become available on October 1, 2018. These funds will supplement the City's Brownfield RLF which was recapitalized last year with an \$800,000 EPA grant, allowing the provision of greater assistance for remediation of Brownfields sites in Portland.

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

**Order 23-18/19  
(Tab 35)**

**Traffic Schedule Amendment Re: Unrestricted to Metered Parking on India and Fore Streets – Sponsored by Jon P. Jennings City Manager.**

This order amends the Traffic Schedule to change the west side of India Street, between Middle Street and Newbury Street, from unrestricted to two-hour metered parking.

This would result in four metered parking spaces on this block of India Street. This action would also amend the Traffic Schedule to change the south side of Fore Street between India Street and Hancock Street, from No Parking Anytime to two-hour metered parking, resulting in nine metered parking spaces on this block of Fore Street.

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

**Order 24-18/19  
(Tab 36)**

**Traffic Schedule Amendment Re: Unrestricted Parking to No Parking Portions of Washington and Allen Avenues – Sponsored by Jon P. Jennings, City Manager.**

This order amends the Traffic Schedule in certain locations on Washington Avenue and Allen Avenue to facilitate and extend transportation improvements along both corridors in conjunction with resurfacing and signal work scheduled for the 2018 construction season.

The proposed schedule changes would impact 130 parking spaces on Washington Avenue and 80 parking spaces on Allen Avenue. Graphics are included in the agenda backup.

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

**Order 25-18/19  
(Tab 37)**

**Order Appropriating Home Investment Partnerships Program Funds in the Amount of \$200,000 to the Avesta Housing Development Corporation Re: Deering Place – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

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

Avesta Housing Development Corporation (AHDC) is proposing to renovate and construct a seventy-five (75) unit mixed-income rental housing development on a site they own located at 61 Deering Street and 510 Cumberland Avenue. AHDC is requesting additional financial assistance from the City in the form of a HOME Loan in the amount of \$200,000. In November 2017, Avesta Housing Development Corporation (AHDC) received a commitment of \$300,000 in HOME funding and approval of TIF Credit Enhancement Agreement (75% of the increased taxable value over 30 years, average of \$147,981/year) for this project. The project was awarded Low Income Housing Tax Credits in March of this year.

The developer is seeking additional HOME funding to ensure that the project can move forward. The HOME loan request is detailed in this memo.

The Deering Place project will include:

| Deering Place<br>510 Cumberland Avenue & 61 Deering Street |                                    |    |
|--|------------------------------------|----|
| Efficiency Units (15)                                      | at or below 40% area median income | 0  |
|  | at or below 50% area median income | 9  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 6  |
| 1-Bedroom Units (38)                                       | at or below 40% area median income | 0  |
|  | at or below 50% area median income | 14 |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 24 |
| 2-Bedroom Units (9)  | at or below 40% area median income | 5  |
|  | at or below 50% area median income | 4  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 0  |
| 3-Bedroom Units (13)                                       | at or below 40% area median income | 8  |
|  | at or below 50% area median income | 5  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 0  |
| Total Units  |                                    | 75 |

As stated in the developer's application:

*“Deering Place will combine the redevelopment of two under-utilized parking lots and the rehabilitation of an existing mixed-use building to create a mixed-income, contextually-appropriate residential community with 75 units and enhanced amenities. The project will include a mix of affordable and market rate units, making it possible to preserve and add affordable units as well as ensure the long term viability of the project. The scope of work includes a rehab and expansion of 510 Cumberland Avenue (“Building A”) and the construction of a new building at 61 Deering Street (“Building B”). Upon completion, there will be a total of 75 apartments, of which 62 will be newly constructed units and 15 will meet handicapped accessible standards.”*

In total, the development will include 75 apartment units, ranging in size from efficiency to 3 bedrooms. It will include a community room, a telemedical room, laundry facilities in each building, and 64 parking spaces. The project will serve a mixed income population, with 32 market rate units and 48 affordable units. Thirteen units will continue to serve households at 40% of AMI, per the existing affordability restriction with Maine Housing. The remaining 35 affordable units will serve households at 50% AMI.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is included in the agenda backup.

The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the HOME funding recommendation.

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

**Order 26-18/19  
(Tab 38)**

**Order Appropriating Home Investment Partnerships Program Funds in the Amount of \$300,000 to the Avesta Housing Development Corporation Re: 977 Brighton Avenue Apartments - Sponsored by the Housing Committee, Jill C. Duson, Chair.**

The Housing Committee met on June 27, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue. The development will include:

| 977 Brighton Avenue  |                                    |           |
|----------------------|------------------------------------|-----------|
| 1-Bedroom Units (40) | at or below 50% area median income | 24        |
|                      | at or below 60% area median income | 10        |
|                      | Market Rate                        | 6         |
| <b>Total Units</b>   |                                    | <b>40</b> |

Eight (8) units will have project based rental assistance. As stated in the developer's application:

*"The 0.73-acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project consists of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot of 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents."*

AHDC has requested two forms of financial assistance.

(1) HOME funds request: \$300,000, 0% interest rate loan, deferred for 30 years.

Total City HOME Investment of \$300,000/unit - \$7,500.

Total City HOME Investment of \$300,000/affordable unit = \$8,824.

(1) Affordable Housing Tax Increment Financing (AHTIF). The AHTIF request was presented as first read on the June 18 council agenda and as a second read with council action on the July 16 council agenda. If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280.

The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below.

The third party underwriting report makes the following recommendations:

Subject to availability of funding, a HOME loan in the amount of no more than \$300,000, at zero percent interest, deferred for 30 years.

The HOME Affordable Housing Development Application made funding available in the amount of \$1,080,174. The City received four applications requesting \$1,741,540 in funding.

The staff recommendation to the Housing Committee did not include HOME funding for the project at 977 Brighton Avenue. The staff recommendation to the Housing Committee included funding for Deering Place at an additional \$200,000, Front Street at \$510,174 and 178 Kennebec Street at \$370,000.

The Housing Committee voted to recommend HOME funding for Deering Place at an additional \$200,000, Front Street at \$580,174, 178 Kennebec Street at \$0 and 977 Brighton Avenue at \$300,000.

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

**Order 27-18/19  
(Tab 39)**

**Order Appropriating Home Investment Partnership Program Funds in the Amount of \$580,174 to the Portland Housing Development Corporation Re: Front Street – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

The Housing Committee met on June 27, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation is requesting HOME funding to assist in the re-development of affordable family rental housing on Front Street. The developer is proposing to demolish and re-develop the existing 50 units of housing and add an additional 61 units of mixed-income rental housing.

The development will include:

| Front Street         |  |     |
|----------------------|--|-----|
| 1-Bedroom Units (29) | at or below 50% area median income     | 7   |
|                      | at or below 50% area median income PBV | 11  |
|                      | Market Rate                            | 11  |
| 2-Bedroom Units (38) | at or below 50% area median income     | 19  |
|                      | at or below 50% area median income PBV | 7   |
|                      | Market Rate                            | 12  |
| 3-Bedroom Units (27) | at or below 50% area median income     | 5   |
|                      | at or below 50% area median income PBV | 19  |
|                      | at or below 60% area median income     | 3   |
| 4-Bedroom Units (13) | at or below 50% area median income PBV | 13  |
| 5-Bedroom Units (4)  | at or below 50% area median income PBV | 4   |
| Total Units          |  | 111 |

This project is seeking 4% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing. It will not proceed on the same timetable as the other three proposals who will be seeking 9% Low Income Housing Tax Credits. The developer has engaged in significant public outreach in the East Deering Neighborhood. A neighborhood meeting was held on November 7, 2017 and the Planning Board held a workshop on November 14, 2017. The Planning Department has made significant commitments to the neighborhood to ensure that the design of the project is contextual to the neighborhood. To ensure these commitments are met, staff is recommending funding for this project.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below.

The HOME Affordable Housing Development Application made funding available in the amount of \$1,080,174. The City received four applications requesting \$1,741,540 in funding.

The staff recommendation to the Housing Committee included HOME funding for Deering Place at an additional \$200,000, Front Street at \$510,174, 178 Kennebec Street at \$370,000 and 977 Brighton Avenue at \$0.

The Housing Committee voted to recommend HOME funding for Deering Place at an additional \$200,000, Front Street at \$580,174, 178 Kennebec Street at \$0 and 977 Brighton Avenue at \$300,000.

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

**Order 28-18/19  
(Tab 40)**

**Order Placing Charter Amendment on November 6, 2018, Municipal Ballot Re: 42-Day Finance Reports Required for Municipal Candidates – Sponsored by Councilor Belinda Ray.**

Currently, municipal candidates for public office are required to file just two campaign finance reports in the ten months prior to a November election: one in mid July, and one eleven days before the election.

At the state level, candidates for public office are required to file these two reports as well as a 42-day pre-election campaign finance report.

While state law exempts municipal candidates from the 42-day pre-election campaign finance reporting requirement, municipalities are free to enact additional requirements beyond what is mandated in state law. In the interest of ensuring transparency and openness in government at all levels, it makes sense for candidates for municipal office to meet the same reporting requirements as candidates for state office.

To add this reporting requirement for Portland municipal candidates, an amendment to the City Charter is required. The proposed amendment would add the following language (underlined below) to the City Charter:

## **Article IV**

### **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 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. (Referenda 11/4/08).

Because this amendment does not make a change to the City's governance structure as outlined in the City Charter, it can be made at the Council level subject to voter approval. This amendment does not require the formation of a Charter Commission or the opening of the Charter.

This amendment does not contain any provisions that are prohibited by the federal or state constitution or the general laws of the State of Maine (see 30-A M.R.S. section 2103(5)(D) and 2104(5)(B)).

If approved by the Council, this amendment will be put to voters for approval at the November 2018 election.

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

**Order 29-18/19  
(Tab 41)**

**Order Placing Charter Amendment on November 6, 2018, Municipal Ballot Re: Immigrant Voting – Sponsored by Councilor Pious Ali and Mayor Ethan K. Strimling.**

Currently, legal immigrants, refugees and asylees in Portland, who are also legal residents of the city, are not allowed to vote in municipal elections. This, despite the fact that many have children in our schools, almost all pay income, sales and/or property taxes, and many have lived in our city for years as they await the federal bureaucracy to grant citizenship.

In the interest of enhancing residential participation in municipal affairs and ultimately making Portland a more welcoming city to our newest immigrants, refugees, and asylees, it makes sense to expand voting rights to all legal residents.

To add this allowance an amendment to the City Charter is required. The proposed amendment would add the following language to the City Charter:

#### **Article IV**

##### 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.

Because this amendment does not make a change to the City's governance structure as outlined in the City Charter, it can be made at the Council level subject to voter approval. This amendment does not require the formation of a Charter Commission or the opening of the Charter (see legal opinion from Corporation Counsel, Gary Wood, August 18, 2010, which is included the agenda backup).

If approved by the Council, this amendment will be put to voters for approval at the November 2018 election.

This amendment does not contain any provisions that are prohibited by the federal or state constitution (see legal opinion from Corporation Counsel, Gary Wood, August 18, 2010, which is included in the agenda backup).

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

#### **AMENDMENTS:**

**Order 30-18/19  
(Tab 42)**

**Amendment Zoning Map Re: 1000, 1002/1004, and 1020 Congress Street – Sponsored by the Planning Board, Sean Dundon, Chair.**

The applicant, 1006 Congress LLC, requested a zoning map amendment for a 19,800 sq. ft. property at 1006 Congress Street, which is located at the corner of Congress and Westfield Streets. The parcel is in the Industrial-Low Impact IL zone. The requested map amendment is to change the zoning from IL to Business Community B-2.

The site is surrounded by I-L to the south, Residential R-6 to the west and north and B-2 on the eastern side. The majority of the buildings within the R-6 areas are multifamily buildings.

At the workshop on May 17, 2018, the Planning Board considered the request and recommended advertising an expanded area of B-2 along Congress Street for consideration at the public hearing. The expanded area included the surrounding properties at 1000, 1002/1004, and 1020 Congress Street (see map below), which would connect to the larger B-2 area in Libbytown. The rezoning to the B-2 zone would allow a wide range of commercial uses not allowed in the IL zone, such as retail, restaurants, neighborhood center and general businesses and professional offices.

On June 26, 2018, the Board held a public hearing and voted unanimously (5-0, Eaton and Whited absent) to recommend to City Council the zoning map amendment from Industrial-Low Impact IL zone to Business Community B-2 zone for the parcels at 1000, 1002/1004, 1006, and 1020 Congress Street.

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

**Order 31-18/19  
(Tab 43)**

**Amendment to Chapter 24 Sewers Re: Industrial Pretreatment Program Transfer to Portland Water District – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

In early April, the City Manager and the Portland Water District (PWD) executed a memorandum of understanding (MOU) documenting a plan to transfer responsibility for the administration and management of the Industrial Pretreatment Program (IPP) from the City to PWD. This transfer of responsibility is in line with the arrangement that PWD has with Westbrook and Gorham. The MOU contemplated changes to the City's Code of Ordinances to effectuate the shift of responsibility to PWD. Those proposed revisions to Chapter 24 are now being presented to the Council for its consideration. If these amendments to Chapter 24 are approved, the shift contemplated by the MOU will take effect.

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

**Order 32-18/19  
(Tab 44)**

**Amendment to Portland City Code Chapter 6 Re: Rental Housing Advisory Committee – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

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

The Housing Committee voted to recommend changes to the structure and duties of the Rental Housing Advisory Committee which is created under Chapter 6 Buildings and Building Regulations, Article XI, Tenant Housing Rights, Section 6-225, Rental Housing Advisory Committee.

The following recommended changes are from the May 23 meeting of the Housing Committee:

The Committee shall be comprised of nine (9) members, including  
three (3) members who are landlords  
three (3) members who are tenants  
one (1) member who is not a landlord or a tenant  
one (1) member experienced in legal rights/interest of tenants nominated by Pine Tree Legal Assistance

one (1) member with experience in legal rights/interests of landlords nominated by the Southern Maine Landlord Association

All members of the Committee shall be residents of the City of Portland and shall serve staggered terms set by City Council order.

- All members will be appointed by the City Council.
- The Southern Maine Landlord Association will submit one name for consideration for the landlord representative positions.
- Pine Tree Legal Assistance will submit one name for the tenant representative positions.
- The Committee will be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.
- The City's Planning and Urban Development Department, through the Housing and Community Development Division, will be the staff liaison to the Rental Housing Advisory Committee, attend all meetings and keep the minutes of the Committee.

The Committee shall meet not less than quarterly and shall undertake the following duties:

1. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues.
2. Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

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

Tab 24-18/19

IN COUNCIL REGULAR MEETING JUNE 18, 2018 VOL.133 PAGE 231

**ROLL CALL:** Mayor Strimling called the meeting to order at 5:30 P.M. (Councilor Costa arrived during recognitions.

**ANNOUNCEMENTS:** Councilor Ray announced that the Health and Human Services Committee will be meeting at 5:30, on June 26 in the City Council Chambers to move forward a new Emergency Shelter for the City of Portland.

Councilor Cook announced that she was at a meeting for Build Maine and was not at the Bayside meeting. She indicated that Facebook live recorded the event and invited all to watch it.

**RECOGNITIONS:**

**Arts in the Chamber, Allan Monga, Poet**

**SPECIAL MEETING OF THE PORTLAND DEVELOPMENT CORPORATION**

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to recess the meeting of the City Council and convene the Annual Meeting of the Corporator of the Portland Development Corporation. Passage 9-0.

**Order 250-17/18 Order Amending the Portland Development Corporation’s Business Assistance Program for Job Creation Guidelines – Sponsored by Tim Agnew, President, Portland Development Corporation Board.**

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

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to adjourn the Annual meeting of the Corporator of the Portland Development Corporation and reconvene the regular meeting of the City Council.

**APPROVAL OF MINUTES OF PREVIOUS MEETING:**

Motion was made by Councilor Cook and seconded by Councilor Ray to approve the minutes of June 4, 2018 City Council Meeting. Passage 9-0.

**PROCLAMATIONS:**

**Proc 39-17/18 Proclamation Honoring Deering High School Student Allan Monga for becoming Maine’s 2018 Poetry Out Loud Champion and Representing Maine in the National Finals in Washington D.C. – Sponsored by Councilor Pious Ali.**

**Proc 40-17/18 Proclamation Honoring Deering High School Staff and Students for Supporting Student Allan Monga in His Quest to Compete in the Poetry Out Loud Competition – Sponsored by Councilor Pious Ali.**

**APPOINTMENTS:**

**Order 251-17/18 Order Appointing Members to Various Board and Committees – Sponsored by the Legislative/Nominating Committee, Councilor Pious Ali, Chair.**

| <b>Landmark Commission</b> | <b>Expiration</b> |
|----------------------------|-------------------|
| *Kara Wooldrik             | 06/30/2021        |
| *Andrew Butcher            | 06/30/2021        |
| Patrizia Baily             | 06/30/2021        |

| <b>Parks Commission, Friends of Deering Oaks</b> | <b>Expiration</b> |
|--|-------------------|
| *Marie Gray                                      | 06/30/2021        |

| <b>Parks Commission</b> | <b>Expiration</b> |
|-------------------------|-------------------|
| Nathan Robbins          | 06/30/2021        |
| Craig Lapine            | 06/30/2021        |
| Cynthia Loebenstein     | 06/30/2021        |
| *Ana Lagunez            | 06/30/2021        |

| <b>Civil Service Police Citizen Review Subcommittee</b> | <b>Expiration</b> |
|---|-------------------|
| *Maria Testa  | 03/30/2021        |

| <b>Portland Public Art Committee</b> | <b>Expiration</b> |
|--------------------------------------|-------------------|
| *Kifah Abdulla                       | 06/30/2021        |
| *Jess Lipton                         | 06/30/2021        |
| James Cradock                        | 06/30/2021        |

| <b>Civil Service Employment Subcommittee</b> | <b>Expiration</b> |
|--|-------------------|
| *Elaine Edwards                              | 06/30/2021        |
| Margery Niblock                              | 06/30/2021        |

\*New board and commissions members

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

**CONSENT ITEMS:**

**Order 252-17/18 Order Declaring July 4, 2018 the July 4<sup>th</sup> Fireworks Festival – Sponsored by Jon P. Jennings, City Manager.**

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

**LICENSES:**

**Order 253-17/18      Order Granting Municipal Officers' Approval of Bujabelle LLP dba Bujabelle. Renewal application for an Entertainment with Dance at 249 St John Street – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**Order 254-17/18      Order Granting Municipal Officers' Approval of Portland Harbor Hotel Associates dba Portland Harbor Hotel. Renewal application for an Entertainment without Dance at 468 Fore Street – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**Order 255-17/18      Order Granting Municipal Officers' Approval of Oxbow Brewing Company LLC dba Oxbow Brewing Co. Renewal application for an Entertainment with Dance at 49 Washington Avenue – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**Order 256-17/18      Order Granting Municipal Officers' Approval of Illmadic LLC dba Illmadic. Application for a Class A Lounge at 41 Fox Street – Sponsored by Michael Russell, Director of Permitting and Inspections.**

Councilor Thibodeau recused himself; his employer was involved with the applicants application.

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

**Order 257-17/18      Order Granting Municipal Officers' Approval of TOC Industries dba The Escape Room. Application for a Class III & IV at 492 Congress Street – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**Order 258-17/18**      **Order Granting Municipal Officers' Approval of Nguoi Dep LLC dba Cong Tu Bot. Application for Outdoor Dining on Public Property at 57 Washington Avenue – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**Order 259-17/18**      **Order Granting Municipal Officers' Approval of TRL, LLC dba 371. Application for a Class III & IV at 371 Forest Avenue – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**Order 260-17/18**      **Order Granting Municipal Officers' Approval of BBS Enterprises, Inc dba 66S Fusion. Application for a Class I FSE at 425 Fore Street – Sponsored by Michael Russell, Director of Permitting and Inspections.**

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

**BUDGET ITEMS:**

**COMMUNICATIONS:**

**RESOLUTIONS:**

**Resolve 11-17/18**      **Resolution Honoring the Gift of Scholarships from the Late Raymond W. Allen, Jr. – Sponsored by Jon P. Jennings, City Manager.**

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

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

**UNFINISHED BUSINESS:**

**Order 242-17/18      Order Expanding the Geographic Area of the Portland Downtown - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.**

It was given a first reading on June 4, 2018.

Motion was made by Councilor Costa and seconded by Councilor Thibodeau to amend Order 242 by excluding the areas indicated on Exhibits 1 and 2.

Motion was made by Councilor Mavodones and seconded by Councilor Ray to table Order 242. Passage 7-0 (Ali, Batson out).

Motion was made by Councilor Duson and seconded by Councilor Costa to take Order 242 off the table. Passage 9-0.

Motion was made by Councilor Thibodeau and seconded by Councilor Cook to amend the amendment by removing the parcels located from 127 to 135 Spring Street in Exhibit 1; and by removing the aqua colored parcels on Exhibit 2. Passage 9-0.

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

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

**Order 243-17/18      Order Adopting Development Program for Portland Downtown for Fiscal Year 2018-2019 - Sponsored by Jon P. Jennings, City Manager.**

It was given a first reading on June 4, 2018.

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

**Order 244-17/18      Order Assessing Maintenance and Implementation Assessments for Portland Downtown for Fiscal Year 2018-2019 – Sponsored by Jon P. Jennings, City Manager.**

It was given a first reading on June 4, 2018.

Motion was made by Councilor Costa and seconded by Councilor Mavodones to amend Order 244 by changing the sum of \$962,162 to "\$956,208.77". Passage 9-0.

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

**Order 245-17/18      Order Approving and Authorizing the Fiscal Year 2019 Master Agreement and Supplemental Services Agreement with Portland Downtown – Sponsored by Jon P. Jennings, City Manager.**

It was given a first reading on June 4, 2018.

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

**Order 246-17/18      Amendment to Portland City Code Chapter 19 and Chapter 28  
Re: Paying for Street Parking with an App – Sponsored by Jon P. Jennings, City Manager**

It was given first reading on June 4, 2018.

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

Motion was made by Councilor Batson and seconded by Councilor Thibodeau to commence after 10:00 P.M.. Passage 9-0.

**Order 247-17/18      Amendment to Portland City Code Chapter 14 Re: Affordable Housing – Sponsored by the Planning Board, Sean Dundon, Chair.**

It was given a first reading on June 4, 2018.

Motion was made by Councilor Batson and seconded by Mayor Strimling to amend Order 247 by striking out in section 14-485 10 % and “increasing it to 18 %”. Motion failed 3-6 (Duson, Mavodones, Cook, Costa, Ray, Thibodeau).

Motion was made by Councilor Strimling and seconded by Councilor Mavodones to change income eligibility in Section 14-485 from 100 % to “80%”. Motion failed 8-1(Strimling)

Motion was made by Councilor Cook and seconded by Councilor Duson to insert back into section 14-485”the Sunset Clause”. Motion failed 8-1(Cook).

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

**Order 248-17/18      Amendment to Portland City Code Chapter 14 Re: Street Access  
- Sponsored by the Planning Board, Sean Dundon, Chair.**

It was given a first reading on June 4, 2018.

Motion was made by Councilor Cook and seconded by Councilor Batson to postpone order 248 until July 16, 2018. Passage 9- 0.

**Order 249-17/18      Amendment to Portland City Code Chapter 25. Streets, Sidewalks, and  
Sponsored by the Sustainability and Transportation Committee,  
Councilor Spencer Thibodeau, Chair.**

It was given a first reading on June 4, 2018

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

**ORDERS:**

**Order 261-17/18      Order Accepting Fiscal Year 2018 Annual Report and 2019 Budget  
Plan of the Portland Public Art Committee – Sponsored by the  
Portland Public Art Committee, Julia Kirby, Chair.**

Motion was made by Councilor Ray and seconded by Councilor Duson for passage. Passage 8-0 (Mavodones gone).

**Order 262-17/18      Order Approving Ground Lease Agreement with Duluth Holdings,  
Inc. - Sponsored by Jon P. Jennings City Manager.**

Motion was made by Councilor Batson and seconded by Councilor Duson for passage. Passage 8-0 (Mavodones gone).

**Order 263-17/18      Order Accepting and Adopting the 2018 Housing Trust Fund Annual  
Plan - Sponsored by the Housing Committee, Councilor Jill C. Duson,  
Chair.**

Motion was made by Councilor Duson and seconded by Councilor Batson for passage. Passage 8-0 (Mavodones gone).

**Order 264-17/18      Order Proposing the Discontinuance of Public Easement on Lancaster  
Street – Sponsored by the Economic Development Committee,  
Councilor Justin Costa, Chair.**

Councilor Thibdoeau disclosed that his employer is representing a project that is near the Public Easement.

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 8-0 (Mavodones gone).

**Order 265-17/18**      **Order Appropriating \$1,850,000 for Improvements to the Portland International Jetport Passenger Terminal – Sponsored by Jon P. Jennings, City Manager.**

This is its first reading.

**Order 266-17/18**      **Order Amending the Bayside Tax Increment Financing District to Support the Establishment of an Affordable Housing District for the 178 Kennebec Street Elderly Affordable Housing Project – Sponsored by the Economic Development, Councilor Justin Costa, Chair.**

This is its first reading.

**Order 267-17/18**      **Order Designating 178 Kennebec Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

This is its first reading.

**Order 268-17/18**      **Order Approving and Authorizing the City Manager to Enter into The Credit Enhancement agreement with 100 Parris Street, LP – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

This is its first reading

**Order 269-17/18**      **Order Designating 977 Brighton Avenue Apartments Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

This is its first reading.

**Order 270-17/18**      **Order Approving and Authorizing the City Manager to Enter into the Credit Enhancement Agreement with Avesta 977 Brighton LP – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

This is its first reading.

**AMENDMENTS:**

**Order 271-17/18**      **Amendment to Portland City Code Chapter 6 Re: Disorderly Houses – Sponsored by the Housing Committee, Council Jill C. Duson, Chair.**

This is its first reading.

Motion was made by Councilor Ray and seconded by Councilor Batson to adjourn. Passage 8-0 (Mavodones gone), 11:00 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

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

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

**AGENDA**  
**REGULAR CITY COUNCIL MEETING**  
**JULY 16, 2018**

The Portland City Council will hold a regular City Council Meeting at 6:00 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

**ANNOUNCEMENTS:**

**RECOGNITIONS:**

**Arts in the Chamber, Creative Portland Presents a “Sizzle” Reel  
Highlighting the Cultural Life of Portland**

**APPROVAL OF MINUTES OF PREVIOUS MEETING:**

(Tab 24)                      June 18, 2018 Draft Regular City Council Meeting Minutes

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

**PROCLAMATIONS:**

**APPOINTMENTS:**

**CONSENT ITEMS:**

**LICENSES:**

**BUDGET ITEMS:**

**COMMUNICATIONS:**

**RESOLUTIONS:**

Resolve 1-18/19              Resolution Approving Public Finance Authority Revenue Bond

(Tab 25)

**Financing for Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. – Sponsored by Danielle West-Chuhta, Corporation Council.**

Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. (collectively, “The Cedars”) are undertaking a major renovation to its assisted living, nursing home and memory care facility in Portland. The Cedars intends to finance the project with a tax-exempt bond issued by a Wisconsin-based conduit bond issuer called Public Finance Authority (“PFA”).

The Internal Revenue Code requires that a bond issue to be issued by an out-of-state agency must obtain a local approval of the bond issue. The City Council approval satisfies this requirement of the Code.”

The memorandum in the back up material provides additional background information. The City will not be required to take any further action with respect to the bond issue and will not need to enter into any transaction documents.

This renovation was reviewed by the Planning Board, and the site was conditionally approved in April 2018.

Five affirmative votes are required for passage after public comment.

**UNFINISHED BUSINESS:**

**Order 266-18/19  
(Tab 26)**

**Order Amending the Bayside Tax Increment Financing District to Support the Establishment of an Affordable Housing District for the 178 Kennebec Street Elderly Affordable Housing Project – Sponsored by the Economic Development, 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 approval.

The proposal is for the commercial ground floor to remain in the Bayside TIF at 100% TIF capture with no Credit Enhancement Agreement. The upper floors will be subject to a new Affordable Housing TIF District.

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 267-18/19  
(Tab 27)**

**Order Designating 178 Kennebec Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic**

**Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and the Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

Maine Workforce Housing (MWH) is proposing to construct 46 1-bedroom units for seniors (55+) on a site located at 178 Kennebec Street. MWH is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$96,305 annually over 30 years.

The developer has requested two forms of financial assistance.

(1) HOME funds request: \$400,000; At their June 27, 2018 meeting the Housing Committee did not recommend HOME funding for this project.

(2) Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$96,305, with an estimated total of \$2,889,164 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable, with an estimated annual assessment of \$4,300,000 and estimated annual tax of \$93,095. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo. Maine Workforce Housing is proposing to construct 46 1-bedroom units for seniors (55+). The development will include:

| 178 Kennebec Street  |                                    |    |
|----------------------|------------------------------------|----|
| 1-Bedroom Units (46) | at or below 40% area median income | 0  |
|                      | at or below 50% area median income | 15 |
|                      | at or below 60% area median income | 21 |
|                      | Market Rate                        | 10 |
| Total Units          |                                    | 46 |

As stated in the developer's application, the project:

*"...includes ground-level retail and/or artist studio space with 46 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 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.”*

The developer will submit an application with MaineHousing's Low Income Housing Tax Credit (LIHTC) program contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer. The LIHTC application is extremely competitive. Often, without the City's willingness to provide tax increment financing for an affordable housing development project, the developer is not competitive in the LIHTC application.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The third party analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the funding recommendation noted below. With that being said, the third party report makes the following recommendations:

Affordable Housing TIF financing through a Credit Enhancement Agreement at 75% of the increased assessed value for 30 years.

The Housing and Community Development (HCD) Division, reviewed and underwrote the 178 Kennebec Street project as a 46 1-bedroom units for seniors (55+). The financial proforma submitted by the developer described a 46-unit project. The developer has indicated their desire to increase the number of units to 51, which would include 16 units affordable at or below 50% of the area median income, 24 units affordable at or below 60% of the area median income and 11 units at market rate. An updated project underwriting will be available prior to the Council meeting.

This item must be read on two separate days. It was given a first reading on June 18, 2018. Five affirmative votes are required for passage after public comment.

**Order 268-18/19  
(Tab 28)**

**Order Approving and Authorizing the City Manager to Enter into The Credit Enhancement agreement with 100 Parris Street, LP – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and the Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 267-17/18 above.

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 269-18/19  
(Tab 29)**

**Order Designating 977 Brighton Avenue Apartments Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue. AHDC is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value currently estimated at an average \$65,150 annually over 30 years.

AHDC has requested two forms of financial assistance.

(1) HOME funds request: \$300,000; At their June 27, 2018 meeting the Housing Committee voted 3-0 to recommend HOME funding in the amount of \$300,000 for this project.

(2) Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30 year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

The development will include:

| 977 Brighton Avenue |                                    |    |
|---------------------|------------------------------------|----|
| 1-Bedroom           |                                    |    |
| Units (40)          | at or below 50% area median income | 24 |
|                     | at or below 60% area median income | 10 |
|                     | Market Rate                        | 6  |
| Total Units         |                                    | 40 |

Eight (8) units will have project based rental assistance. As stated in the developer's application:

*"The 0.73 acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project consists of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot of 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents."*

The developer will submit an application with MaineHousing's Low Income Housing Tax Credit program contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The third party analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the funding recommendation noted below. With that being said, the third party report makes the following recommendations:

AH TIF financing through a Credit Enhancement Agreement at 75% of the increased assessed value for 30 years.

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 270-18/19  
(Tab 30)**

**Order Approving and Authorizing the City Manager to Enter into the Credit Enhancement Agreement with Avesta 977 Brighton LP – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and the Economic Development Committee (3-0) voted to forward this item to the City Council with a recommendation for passage.

This order is a companion to Order 269-17/18 above.

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 19-18/19  
(Tab 31)**

**Order Placing a Referendum Question on November 6, 2018, Municipal Ballot Re: Formation of the Greater Sebago Education Alliance – Sponsored by Katherine L. Jones, City Clerk.**

The Portland Board of Education respectfully requests the City Council to place the following question before the voters on the November ballot, as required by 20-A M.R.S. § 3805(3):

Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?

Five affirmative votes are required for passage after public comment.

**Order 20-18/19  
(Tab 32)**

**Order Appropriating \$130,000 for Middle School Math Curriculum Expansion and Materials for the Portland Public Schools – Sponsored by Jon P. Jennings, City Manager.**

During the FY2017 budget process, the Chief Academic Officer (CAO) budgeted approximately \$150,000 for a new middle school math curriculum. The CAO resigned their position at the end of FY2016 and an Interim CAO was named. Due to the temporary nature of their position, the Interim CAO did not want to purchase a middle school math curriculum and wanted to wait until a permanent CAO was hired. Unfortunately, the funds lapsed to unassigned fund balance at the end of the fiscal year.

The Superintendent and Staff did highlight to the Board that we would be requesting the use of these funds at a later date and did let them know that it would require City Council approval.

On May 1, 2018 the Assistant Superintendent for Teaching and Learning/Chief Academic Officer, recommended the purchase of a curriculum from Open Up Resources. The materials and cost of professional development for the first year is a minimum of \$97,500 but could be up to \$130,000 depending on how many teachers are included in the initial training. In her memo to the Board, the Assistant Superintendent of Teaching and Learning noted that we would like to use the FY2017 funds budgeted for this purpose.

Therefore, Portland Public Schools staff, including the Superintendent, Executive Director of Budget & Finance, and the Assistant Superintendent of Teaching and Learning, would like to request the approval from the City Council to use \$130,000 of unassigned fund balance, specifically budgeted for in FY2017, to purchase Open Up Resource's math curriculum.

This order will be considered by the Finance Committee before the August 13, 2018 City Council meeting.

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

**Order 21-18/19  
(Tab 33)**

**Order Approving Three-Party Agreement between Portland, Portland Area Comprehensive Transportation System and Maine Department of Transportation Re: Allen Avenue between Pennell Avenue and Yale Street - Sponsored by Jon P. Jennings, City Manager.**

Approving and signing this agreement between Portland Area Comprehensive Transportation System, Maine Department of Transportation, and the City of Portland would confirm the City's intent to undertake this project and pay 50% of the total project cost. The estimated total project cost is \$367,500. The City's 50% share would be \$183,750. A copy of the fully executed agreement will be returned to the City and become the City's "notice to proceed" with this project.

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

**Order 22-18/19  
(Tab 34)**

**Order Approving the Acceptance and Appropriation of Brownfields Cleanup Fund Grant – Sponsored by Jon P. Jennings, City Manager.**

This order accepts and authorizes the appropriation of \$500,000 in Environmental Protection Agency (EPA) Supplemental Brownfields Revolving Loan Funds (RLF) grant funds, with the exception that the funds will become available on October 1, 2018. These funds will supplement the City's Brownfield RLF which was recapitalized last year with an \$800,000 EPA grant, allowing the provision of greater assistance for remediation of Brownfields sites in Portland.

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

**Order 23-18/19  
(Tab 35)**

**Traffic Schedule Amendment Re: Unrestricted to Metered Parking on India and Fore Streets – Sponsored by Jon P. Jennings City Manager.**

This order amends the Traffic Schedule to change the west side of India Street, between Middle Street and Newbury Street, from unrestricted to two-hour metered parking.

This would result in four metered parking spaces on this block of India Street. This action would also amend the Traffic Schedule to change the south side of Fore Street between India Street and Hancock Street, from No Parking Anytime to two-hour metered parking, resulting in nine metered parking spaces on this block of Fore Street.

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

**Order 24-18/19  
(Tab 36)**

**Traffic Schedule Amendment Re: Unrestricted Parking to No Parking Portions of Washington and Allen Avenues – Sponsored by Jon P. Jennings, City Manager.**

This order amends the Traffic Schedule in certain locations on Washington Avenue and Allen Avenue to facilitate and extend transportation improvements along both corridors in conjunction with resurfacing and signal work scheduled for the 2018 construction season.

The proposed schedule changes would impact 130 parking spaces on Washington Avenue and 80 parking spaces on Allen Avenue. Graphics are included in the agenda backup.

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

**Order 25-18/19  
(Tab 37)**

**Order Appropriating Home Investment Partnerships Program Funds in the Amount of \$200,000 to the Avesta Housing Development Corporation Re: Deering Place – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

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

Avesta Housing Development Corporation (AHDC) is proposing to renovate and construct a seventy-five (75) unit mixed-income rental housing development on a site they own located at 61 Deering Street and 510 Cumberland Avenue. AHDC is requesting additional financial assistance from the City in the form of a HOME Loan in the amount of \$200,000. In November 2017, Avesta Housing Development Corporation (AHDC) received a commitment of \$300,000 in HOME funding and approval of TIF Credit Enhancement Agreement (75% of the increased taxable value over 30 years, average of \$147,981/year) for this project. The project was awarded Low Income Housing Tax Credits in March of this year.

The developer is seeking additional HOME funding to ensure that the project can move forward. The HOME loan request is detailed in this memo.

The Deering Place project will include:

| Deering Place<br>510 Cumberland Avenue & 61 Deering Street |                                    |    |
|--|------------------------------------|----|
| Efficiency Units (15)                                      | at or below 40% area median income | 0  |
|  | at or below 50% area median income | 9  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 6  |
| 1-Bedroom Units (38)                                       | at or below 40% area median income | 0  |
|  | at or below 50% area median income | 14 |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 24 |
| 2-Bedroom Units (9)  | at or below 40% area median income | 5  |
|  | at or below 50% area median income | 4  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 0  |
| 3-Bedroom Units (13)                                       | at or below 40% area median income | 8  |
|  | at or below 50% area median income | 5  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 0  |
| Total Units  |                                    | 75 |

As stated in the developer's application:

*“Deering Place will combine the redevelopment of two under-utilized parking lots and the rehabilitation of an existing mixed-use building to create a mixed-income, contextually-appropriate residential community with 75 units and enhanced amenities. The project will include a mix of affordable and market rate units, making it possible to preserve and add affordable units as well as ensure the long term viability of the project. The scope of work includes a rehab and expansion of 510 Cumberland Avenue (“Building A”) and the construction of a new building at 61 Deering Street (“Building B”). Upon completion, there will be a total of 75 apartments, of which 62 will be newly constructed units and 15 will meet handicapped accessible standards.”*

In total, the development will include 75 apartment units, ranging in size from efficiency to 3 bedrooms. It will include a community room, a telemedical room, laundry facilities in each building, and 64 parking spaces. The project will serve a mixed income population, with 32 market rate units and 48 affordable units. Thirteen units will continue to serve households at 40% of AMI, per the existing affordability restriction with Maine Housing. The remaining 35 affordable units will serve households at 50% AMI.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is included in the agenda backup.

The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the HOME funding recommendation.

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

**Order 26-18/19  
(Tab 38)**

**Order Appropriating Home Investment Partnerships Program Funds in the Amount of \$300,000 to the Avesta Housing Development Corporation Re: 977 Brighton Avenue Apartments - Sponsored by the Housing Committee, Jill C. Duson, Chair.**

The Housing Committee met on June 27, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue. The development will include:

| 977 Brighton Avenue  |                                    |           |
|----------------------|------------------------------------|-----------|
| 1-Bedroom Units (40) | at or below 50% area median income | 24        |
|                      | at or below 60% area median income | 10        |
|                      | Market Rate                        | 6         |
| <b>Total Units</b>   |                                    | <b>40</b> |

Eight (8) units will have project based rental assistance. As stated in the developer's application:

*"The 0.73-acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project consists of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot of 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents."*

AHDC has requested two forms of financial assistance.

(1) HOME funds request: \$300,000, 0% interest rate loan, deferred for 30 years.

Total City HOME Investment of \$300,000/unit - \$7,500.

Total City HOME Investment of \$300,000/affordable unit = \$8,824.

(1) Affordable Housing Tax Increment Financing (AHTIF). The AHTIF request was presented as first read on the June 18 council agenda and as a second read with council action on the July 16 council agenda. If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280.

The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below.

The third party underwriting report makes the following recommendations:

Subject to availability of funding, a HOME loan in the amount of no more than \$300,000, at zero percent interest, deferred for 30 years.

The HOME Affordable Housing Development Application made funding available in the amount of \$1,080,174. The City received four applications requesting \$1,741,540 in funding.

The staff recommendation to the Housing Committee did not include HOME funding for the project at 977 Brighton Avenue. The staff recommendation to the Housing Committee included funding for Deering Place at an additional \$200,000, Front Street at \$510,174 and 178 Kennebec Street at \$370,000.

The Housing Committee voted to recommend HOME funding for Deering Place at an additional \$200,000, Front Street at \$580,174, 178 Kennebec Street at \$0 and 977 Brighton Avenue at \$300,000.

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

**Order 27-18/19  
(Tab 39)**

**Order Appropriating Home Investment Partnership Program Funds in the Amount of \$580,174 to the Portland Housing Development Corporation Re: Front Street – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

The Housing Committee met on June 27, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation is requesting HOME funding to assist in the re-development of affordable family rental housing on Front Street. The developer is proposing to demolish and re-develop the existing 50 units of housing and add an additional 61 units of mixed-income rental housing.

The development will include:

| Front Street         |  |     |
|----------------------|--|-----|
| 1-Bedroom Units (29) | at or below 50% area median income     | 7   |
|                      | at or below 50% area median income PBV | 11  |
|                      | Market Rate                            | 11  |
| 2-Bedroom Units (38) | at or below 50% area median income     | 19  |
|                      | at or below 50% area median income PBV | 7   |
|                      | Market Rate                            | 12  |
| 3-Bedroom Units (27) | at or below 50% area median income     | 5   |
|                      | at or below 50% area median income PBV | 19  |
|                      | at or below 60% area median income     | 3   |
| 4-Bedroom Units (13) | at or below 50% area median income PBV | 13  |
| 5-Bedroom Units (4)  | at or below 50% area median income PBV | 4   |
| Total Units          |  | 111 |

This project is seeking 4% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing. It will not proceed on the same timetable as the other three proposals who will be seeking 9% Low Income Housing Tax Credits. The developer has engaged in significant public outreach in the East Deering Neighborhood. A neighborhood meeting was held on November 7, 2017 and the Planning Board held a workshop on November 14, 2017. The Planning Department has made significant commitments to the neighborhood to ensure that the design of the project is contextual to the neighborhood. To ensure these commitments are met, staff is recommending funding for this project.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below.

The HOME Affordable Housing Development Application made funding available in the amount of \$1,080,174. The City received four applications requesting \$1,741,540 in funding.

The staff recommendation to the Housing Committee included HOME funding for Deering Place at an additional \$200,000, Front Street at \$510,174, 178 Kennebec Street at \$370,000 and 977 Brighton Avenue at \$0.

The Housing Committee voted to recommend HOME funding for Deering Place at an additional \$200,000, Front Street at \$580,174, 178 Kennebec Street at \$0 and 977 Brighton Avenue at \$300,000.

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

**Order 28-18/19  
(Tab 40)**

**Order Placing Charter Amendment on November 6, 2018, Municipal Ballot Re: 42-Day Finance Reports Required for Municipal Candidates – Sponsored by Councilor Belinda Ray.**

Currently, municipal candidates for public office are required to file just two campaign finance reports in the ten months prior to a November election: one in mid July, and one eleven days before the election.

At the state level, candidates for public office are required to file these two reports as well as a 42-day pre-election campaign finance report.

While state law exempts municipal candidates from the 42-day pre-election campaign finance reporting requirement, municipalities are free to enact additional requirements beyond what is mandated in state law. In the interest of ensuring transparency and openness in government at all levels, it makes sense for candidates for municipal office to meet the same reporting requirements as candidates for state office.

To add this reporting requirement for Portland municipal candidates, an amendment to the City Charter is required. The proposed amendment would add the following language (underlined below) to the City Charter:

## **Article IV**

### **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 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. (Referenda 11/4/08).

Because this amendment does not make a change to the City's governance structure as outlined in the City Charter, it can be made at the Council level subject to voter approval. This amendment does not require the formation of a Charter Commission or the opening of the Charter.

This amendment does not contain any provisions that are prohibited by the federal or state constitution or the general laws of the State of Maine (see 30-A M.R.S. section 2103(5)(D) and 2104(5)(B)).

If approved by the Council, this amendment will be put to voters for approval at the November 2018 election.

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

**Order 29-18/19  
(Tab 41)**

**Order Placing Charter Amendment on November 6, 2018, Municipal Ballot Re: Immigrant Voting – Sponsored by Councilor Pious Ali and Mayor Ethan K. Strimling.**

Currently, legal immigrants, refugees and asylees in Portland, who are also legal residents of the city, are not allowed to vote in municipal elections. This, despite the fact that many have children in our schools, almost all pay income, sales and/or property taxes, and many have lived in our city for years as they await the federal bureaucracy to grant citizenship.

In the interest of enhancing residential participation in municipal affairs and ultimately making Portland a more welcoming city to our newest immigrants, refugees, and asylees, it makes sense to expand voting rights to all legal residents.

To add this allowance an amendment to the City Charter is required. The proposed amendment would add the following language to the City Charter:

**Article IV**

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.

Because this amendment does not make a change to the City's governance structure as outlined in the City Charter, it can be made at the Council level subject to voter approval. This amendment does not require the formation of a Charter Commission or the opening of the Charter (see legal opinion from Corporation Counsel, Gary Wood, August 18, 2010, which is included the agenda backup).

If approved by the Council, this amendment will be put to voters for approval at the November 2018 election.

This amendment does not contain any provisions that are prohibited by the federal or state constitution (see legal opinion from Corporation Counsel, Gary Wood, August 18, 2010, which is included in the agenda backup).

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

**AMENDMENTS:**

**Order 30-18/19  
(Tab 42)**

**Amendment Zoning Map Re: 1000, 1002/1004, and 1020 Congress Street – Sponsored by the Planning Board, Sean Dundon, Chair.**

The applicant, 1006 Congress LLC, requested a zoning map amendment for a 19,800 sq. ft. property at 1006 Congress Street, which is located at the corner of Congress and Westfield Streets. The parcel is in the Industrial-Low Impact IL zone. The requested map amendment is to change the zoning from IL to Business Community B-2.

The site is surrounded by I-L to the south, Residential R-6 to the west and north and B-2 on the eastern side. The majority of the buildings within the R-6 areas are multifamily buildings.

At the workshop on May 17, 2018, the Planning Board considered the request and recommended advertising an expanded area of B-2 along Congress Street for consideration at the public hearing. The expanded area included the surrounding properties at 1000, 1002/1004, and 1020 Congress Street (see map below), which would connect to the larger B-2 area in Libbytown. The rezoning to the B-2 zone would allow a wide range of commercial uses not allowed in the IL zone, such as retail, restaurants, neighborhood center and general businesses and professional offices.

On June 26, 2018, the Board held a public hearing and voted unanimously (5-0, Eaton and Whited absent) to recommend to City Council the zoning map amendment from Industrial-Low Impact IL zone to Business Community B-2 zone for the parcels at 1000, 1002/1004, 1006, and 1020 Congress Street.

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

**Order 31-18/19  
(Tab 43)**

**Amendment to Chapter 24 Sewers Re: Industrial Pretreatment Program Transfer to Portland Water District – Sponsored by Danielle West-Chuhta, Corporation Counsel.**

In early April, the City Manager and the Portland Water District (PWD) executed a memorandum of understanding (MOU) documenting a plan to transfer responsibility for the administration and management of the Industrial Pretreatment Program (IPP) from the City to PWD. This transfer of responsibility is in line with the arrangement that PWD has with Westbrook and Gorham. The MOU contemplated changes to the City's Code of Ordinances to effectuate the shift of responsibility to PWD. Those proposed revisions to Chapter 24 are now being presented to the Council for its consideration. If these amendments to Chapter 24 are approved, the shift contemplated by the MOU will take effect.

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

**Order 32-18/19  
(Tab 44)**

**Amendment to Portland City Code Chapter 6 Re: Rental Housing Advisory Committee – Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

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

The Housing Committee voted to recommend changes to the structure and duties of the Rental Housing Advisory Committee which is created under Chapter 6 Buildings and Building Regulations, Article XI, Tenant Housing Rights, Section 6-225, Rental Housing Advisory Committee.

The following recommended changes are from the May 23 meeting of the Housing Committee:

The Committee shall be comprised of nine (9) members, including  
three (3) members who are landlords  
three (3) members who are tenants  
one (1) member who is not a landlord or a tenant  
one (1) member experienced in legal rights/interest of tenants nominated by Pine Tree Legal Assistance

one (1) member with experience in legal rights/interests of landlords nominated by the Southern Maine Landlord Association

All members of the Committee shall be residents of the City of Portland and shall serve staggered terms set by City Council order.

- All members will be appointed by the City Council.
- The Southern Maine Landlord Association will submit one name for consideration for the landlord representative positions.
- Pine Tree Legal Assistance will submit one name for the tenant representative positions.
- The Committee will be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.
- The City's Planning and Urban Development Department, through the Housing and Community Development Division, will be the staff liaison to the Rental Housing Advisory Committee, attend all meetings and keep the minutes of the Committee.

The Committee shall meet not less than quarterly and shall undertake the following duties:

1. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues.
2. Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

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

*Resolve 1-18-19*  
*Tab 25*      *7-16-18*

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

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

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

**RESOLUTION APPROVING PUBLIC FINANCE AUTHORITY  
REVENUE BOND FINANCING FOR  
CEDARS NURSING CARE CENTER, INC. AND JHA ASSISTED LIVING, INC.**

**WHEREAS**, Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. (collectively with other affiliates, "The Cedars") operate an assisted living, nursing home and memory care facility at 620-650 Ocean Avenue, Portland, Maine (the "Facilities"); and

**WHEREAS**, The Cedars proposes to finance and refinance certain improvements at its Facilities (as described in more detail in the "Project Description" header below, the "Project") (and to reimburse costs of the Project previously paid) in order to:

- Transition to the Household Model™ of person-directed care in a home environment;
- Construct a new three-story building to include:
  - an assisted living memory care household,
  - an assisted living memory care household,
  - two long-term care households;
- Renovate existing space for rehabilitation and long-term care;
- Expand the Learning Community™;
- Refinance existing indebtedness that financed and refinanced the construction and equipping of and improvements to The Cedars senior living community, which included at that time, a 102 bed nursing home, a 30 unit assisted living facility, and a 61 unit apartment senior living community; and

**WHEREAS**, to finance the Project, The Cedars intends to enter into a tax-exempt bond financing transaction of up to \$55,000,000 issued by Public Finance Authority (the "Authority"), a national conduit bond issuer, domiciled in Wisconsin; and

**WHEREAS**, pursuant to Section 66.0304(11)(a) of the Wisconsin Statutes, prior to their issuance, bonds issued by the Authority must be approved by the governing body or highest ranking executive or administrator of the political jurisdiction within whose boundaries the project is to be located; and

**WHEREAS**, Section 147(f) of the Internal Revenue Code (the "Code") also requires that The Cedars obtain a local "host" approval of the bond issue for the Project; and

**WHEREAS**, Cedars has requested that the Portland City Council approve the financing of the Project and the issuance of the bonds in order to satisfy the requirements of Section 147(f) of the Code, Section 4 of the Amended and Restated Joint Exercise of Powers Agreement Relating to the Public Finance Authority, dated as of September 28, 2010

(the "Joint Exercise Agreement"), and Section 66.0304(11)(a) of the Wisconsin Statutes;

**NOW THEREFORE**, following a public hearing of the City Council of the City of Portland, Maine, held upon two-weeks published notice, **IT IS HEREBY RESOLVED THAT** the City Council hereby approves issuance of the bonds by the Authority to finance the Project as follows:

Bond Issuer: Public Finance Authority

Project Owner / User: Cedars Nursing Care Center, Inc.  
JHA Assisted Living, Inc.  
JHA Development I, Inc.  
JHA Development II, Inc.  
JHA Services, Inc.  
The Cedars Foundation, Inc.  
JHA Management Services, LLC

Project Location: 620-650 Ocean Avenue, Portland, Maine

Project Description: (i) Improvements to The Cedars senior living community, including:

- a. Construction and equipping of a new health care center, anticipated to contain approximately 20 assisted living or memory care units, approximately 40 long term care skilled nursing units, common areas, and other related improvements, and
- b. Renovations to and equipping of the existing Hoffman building to contain approximately 62 mostly semi-private rooms / units.
- c. Other miscellaneous capital improvements and/or equipment at the locations above.

(ii) Refunding some or all of Maine Health and Higher Educational Facilities Authority Revenue Bonds, Cedars Obligated Group Issue, Series 2014 issued to finance and refinance the construction and equipping of and improvements to The Cedars senior living community, which included at that time:

- a. a 102 bed nursing home;
- b. a 30 unit assisted living facility, and
- c. a 61 unit apartment senior living community.

Bond Amount: Not to exceed \$55,000,000; and

**BE IT FURTHER RESOLVED**, that it is the purpose and intent of the Portland City Council that this Resolution constitute approval of the issuance of the bonds by the City of Portland, which is the governmental unit having jurisdiction over the area in which the Project is located, in accordance with Section 147(f) of the Code, Section 4 of the Joint Exercise Agreement, and Section 66.0304(11)(a) of the Wisconsin Statutes.

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

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

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

**DATE:** June 28, 2018

**SUBJECT:** Resolution Approving Public Finance Authority Revenue Bond Financing for Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc.

**SPONSOR:** Danielle West-Chuhta

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

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading \_\_\_\_\_ Final Action 7/16/2018

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

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

**I. ONE SENTENCE SUMMARY**

The Resolution Approving Public Finance Authority Revenue Bond Financing for Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. provides a required local approval for a bond issue to benefit improvements to The Cedars Nursing Home.

**II. AGENDA DESCRIPTION**

Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. (collectively, "The Cedars") are undertaking a major renovation to its assisted living, nursing home and memory care facility in Portland. The Cedars intends to finance the project with a tax-exempt bond issued by a Wisconsin-based conduit bond issuer called Public Finance Authority ("PFA").

Although PFA will issue the conduit bonds and enter into the required transaction documents and agreements, the Internal Revenue Code and PFA's rules require that The Cedars obtain from the City of Portland (as the municipality where the project is located) a local approval of the bond issue for the project. The resolution reflects this local approval.

The memorandum in the back up material provides additional background information. The City will not be required to take any further action with respect to the bond issue and will not need to enter into any transaction documents.

**III. BACKGROUND**

Please see the Memo, attached

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

Improved nursing care services in the City of Portland.

**V. FINANCIAL IMPACT**

n/a

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

Please see the Memo, attached.

**VII. RECOMMENDATION**

The Resolution is approved as to form by Corporation Counsel.

**VIII. LIST ATTACHMENTS**

Resolution Approving Public Finance Authority Revenue Bond Financing for Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc.

Memorandum Re: Cedars Nursing Home Project

Prepared by: James Saffian, Esq.

Date: June 28, 2018

Bean/agendarequestmemo/rev 11/2015



Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101  
207-791-1100

To: Danielle West-Chuhta, Portland Corporation Counsel  
From: Jim Saffian, Pierce Atwood LLP  
Date: June 28, 2018  
Re: Cedars Nursing Home Project

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### Introduction

Cedars Nursing Care Center, Inc. and JHA Assisted Living, Inc. (collectively with other affiliates, "The Cedars") operate an assisted living, nursing home and memory care facility at 620-650 Ocean Avenue, Portland, Maine (the "Facilities").

The Cedars is a nonprofit 501(c)(3) organization that has provided healthcare and housing services to Portland's frail elderly since 1929. Services provided by The Cedars extends to over 900 elderly residents annually, many of whom are also MaineCare eligible. These Services also include skilled nursing and rehab services, housing, assisted living and outpatient services. The Cedars has an annual operating budget of about \$20 million, which includes just under \$11 million in annual wages and benefits to over 300 employees. These substantial annual expenditures create a significant economic impact for the Portland area. In addition, The Cedars pays approximately \$800,000 in provider taxes to the State of Maine, which directly subsidizes high MaineCare volume providers such as the Baron Center.

The Cedars is now undertaking a project to transform existing institutional models of care to the patient-centered, household model which will be a first for the state of Maine. Under this expansion and renovation plan, The Cedars will finance and refinance certain improvements at its Facilities in order to:

- Transition to the Household Model™ of person-directed care in a home environment;
- Construct a new three-story building to include:
  - an assisted living memory care household,
  - two long-term care households;
- Renovate existing space for rehabilitation and long-term care;
- Expand the Learning Community™;
- Refinance existing indebtedness that financed and refinanced the construction and equipping of and improvements to The Cedars senior living community, which included at that time, a 102 bed nursing home, a 30 unit assisted living facility, and a 61 unit apartment senior living community. (All, collectively, the "Project".)

### Plan of Financing - PFA

To finance the Project, The Cedars is entering into a tax-exempt bond financing transaction of up to \$55,000,000 (the "PFA Bonds") issued by Public Finance Authority ("PFA"). PFA is a national conduit bond issuer, similar to FAME and the Maine Health and Higher Educational Facilities Authority, domiciled in Wisconsin. Although the bonds will be issued by PFA, Section 147(f) of the Internal Revenue Code (the "Code") and the PFA enabling legislation and agreements require that The Cedars obtain a local "host" approval for the bond issue. Under the Code, this approval must come from the City Council. Thus, The Cedars is requesting that the City Council adopt the attached resolution and grant host approval pursuant to Section 147(f) of the Code.

#### Status of Project

The Cedars has obtained Planning Board approval for the Project. It is currently putting its plan of financing into place. The requested host approval from the City is a necessary step in the financing plan. Once financing is in place, The Cedars will obtain the necessary building permit from the City to proceed with construction of the Project.

#### Repayment Obligation – No City of Portland Liability

The Cedars is solely responsible for repaying the PFA Bonds. Other than a certification of the necessary local host approval, the City will not be a party to the transaction or to any transaction document. The City will have no obligation or liability with respect to the PFA Bonds or the Project.

#### Local Host Approval

The attached local host approval resolution has been reviewed and approved by the City's corporation counsel. Because of the importance of the Project to the on-going and future success of The Cedars and the critical health services it provides to its clients, The Cedars requests that the City Council adopt the attached resolution and grant local host approval pursuant to Section 147(f) of the Code and the PFA enabling legislation and agreements.

# CITY OF PORTLAND, MAINE

## PLANNING BOARD

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Sean Dundon, Chair  
Brandon Mazer, Vice Chair  
David Eaton  
David Silk  
Austin Smith  
Maggie Stanley  
Lisa Whited

April 30, 2018

John Watson  
JHA Assisted Living, INC  
630 Ocean Avenue  
Portland, ME 04103

Jan Wiegman, P.E.  
Wright-Pierce  
11 Bowdoin Mill Island, Suite 140  
Topsham, ME 04086

|                      |   |                    |                    |
|----------------------|---|--------------------|--------------------|
| <b>Project Name:</b> | The Cedars Expansion                                  | <b>Project ID:</b> | 2017-278, 2017-298 |
| <b>Address:</b>      | 630 Ocean Avenue                                      | <b>CBL:</b>        | 174-A-013          |
| <b>Applicant:</b>    | JHA Assisted Living, INC and Cedars Nursing Care, INC |                    |                    |
| <b>Planner:</b>      | Matthew Grooms  |                    |                    |

Dear Mr. Watson and Mr. Wiegman:

On April 24, 2018, the Planning Board considered an application to redevelop a portion of the Cedars Campus located at 630 Ocean Avenue and specifically to construct a new three story-building with 60 private bedrooms, reconfigure the existing parking layout to accommodate 11 new parking spaces and install new site and buffer landscaping. The Planning Board reviewed the proposal for conformance with the standards of the Site Plan and Conditional Use sections of the city's land use code and Site Development of Location Act regulations. The Planning Board voted 6-0 (Eaton absent) to approve the application with the following conditions as presented below:

### **Storm Water Management Permit**

Based upon the City of Portland's Delegated Review Authority, the Planning Board voted 6-0 (Eaton absent) to approve the Stormwater Management Permit application, as submitted, subject to the following conditions:

1. Storm Water Management Condition of Approval  
The developer/contractor/subcontractor must comply with conditions of the construction storm water management plan and sediment and erosion control plan based on City standards and state guidelines.

The owner/operator of the approved stormwater management system, and all assigns. shall comply with the conditions of Chapter 32 Storm water including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.

A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form, shall be submitted for review by Corporation Counsel. Once approved, the document shall be signed and recorded at the Cumberland County Registry of Deeds prior to the issuance of a building permit. Please submit final copies to both the Department of Planning and Urban Development and the Department of Public Works.

### **Conditional Use**

The Planning Board voted 6-0 (Eaton recused) that the plan is in conformance with the conditional use standards of the Land Use Code, authorizing the conditional use, long-term care facility.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application 2017-298 which is attached.

### **Development Review**

The Planning Board voted 6-0 (Eaton recused) that the plan is in conformance with the site plan standards of the Land Use Code and the Site Location of Development Act regulations, subject to the following conditions of approval (to be met prior to issuance of a building permit unless otherwise stated):

1. The applicant shall provide a new or updated stormwater maintenance agreement that shall be reviewed and approved by the Department of Public Works and Corporation Counsel.
2. Applicable 'ability to serve' letters shall be provided for Central Maine Power and the Portland Water District.
3. In the event that the applicant is unable to construct the proposed all-brick building as approved by the Planning Board, they shall be required to seek administrative approval from the Planning Authority for the alternative clapboard design. If the building materials or design deviate significantly from the alternative presented to the Board, then the applicant will be required to go back before the Planning Board for a site plan amendment.
4. A large blast, meaning removal of more than 300 cubic yards of rock material, has been indicated in the applicant's application. For large blasts, a pre-blast survey is required within 600 feet of the perimeter of the blasting site. [Editor's note: As requested by the Planning Board, the applicant shall expand the pre-blast survey to encompass complete buildings that are touched by the 600 foot radius and shall coordinate the blasting plan with the construction management plan for the project.]

5. A financial contribution of \$5,400 shall be provided for construction of an ADA compliant crosswalk across Rainbow Mall Road along the west side of Ocean Avenue.
6. A financial contribution of up to \$13,000 shall be provided for construction of a sidewalk along Rainbow Mall Road in the right-of-way provided that the city match the contribution to be provided by the issuance of a certificate of occupancy.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application 2017-278 which is attached.

### **Site Location of Development**

The Planning Board voted 6-0 (Eaton recused) that the plan is in conformance with the Site Location of Development Act regulations.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application 2017-278 which is attached.

### **Standard Conditions of Approval**

Please Note: The following standard conditions of approval and requirements apply to all approved site plans:

1. Develop Site According to Plan The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. Separate Building Permits Are Required This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Permitting and Inspections Department.
3. Site Plan Expiration The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
4. Performance Guarantee and Inspection Fees A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning and Urban Development Department and Public Works Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to

make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

5. Defect Guarantee A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. Preconstruction Meeting Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Works representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. Construction Management Plans The applicant, contractor and subcontractors are required to conform to the approved Construction Management Plan, and all conditions contained within the project's approval, for the entire duration of the project. Any amendments to the approved Construction Management Plan shall be reviewed and approved by the Department of Public Works prior to the execution. The Planning Authority and the Department of Public Works have the right to seek revisions to an approved Construction Management Plan. The applicant shall coordinate the project's construction schedule with the timing of nearby construction activities to avoid cumulative impacts on a neighborhood and prevent unsafe vehicle and pedestrian movements. Accordingly, nearby construction activities could involve a delay in the commencement of construction.
8. Department of Public Works Permits If work or obstructions will occur within the public right-of-way, such as utilities, curb, sidewalk, driveway construction, site deliveries and equipment siting, a Street Opening and/or Occupancy Permit (s) is required for your site. Please contact the Department of Public Works Permit Clerk at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
9. As-Built Final Plans Final sets of as-built plans shall be submitted digitally to the Planning and Urban Development Department, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning and Urban Development Department at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Matthew Grooms at (207) 874-8725

Sincerely,



Sean Dundon, Chair  
Portland Planning Board

**Attachments:**

1. Planning Board Report
2. Staff Review Comments
3. Portland City Code: Chapter 32
4. Sample Stormwater Maintenance Agreement
5. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
Stuart G. O'Brien, City Planning Director, Planning and Urban Development  
Barbara Barhydt, Development Review Services Manager, Planning and Urban Development  
Matthew Grooms, Planner, Planning and Urban Development  
Philip DiPierro, DRC, Planning and Urban Development  
Mike Russell, Director of Permitting and Inspections  
Ann Machado, Zoning Administrator, Permitting and Inspections  
Jonathan Rioux, Deputy Director, Permitting and Inspections  
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Doug Roncarati, Stormwater Coordinator, Public Works  
Jane Ward, Engineering, Public Works  
Rhonda Zazzara, Construction Engineering Coordinator, Public Works  
Jeff Tarling, City Arborist, Public Works  
Jeremiah Bartlett, Transportation Systems Engineer, Public Works  
William Scott, Chief Surveyor, Public Works  
Mike Thompson, Fire  
Danielle West-Chuhta, Corporation Counsel  
Jennifer Thompson, Corporation Counsel  
Victoria Volent, Housing Program Manager, Housing and Community Development  
Thomas Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard and Curran  
Christopher Huff, Assessor

# Planning Board Report Portland, Maine



630 Ocean Avenue, The Cedars Building Expansion  
Level III Site Plan (2017-278), Site Location of Development and Conditional Use (2017-298)  
JHA Assisted Living, INC and Cedars Nursing Care, INC, Applicant

|  |  |
|--|--|
| Submitted to: Portland Planning Board<br>Public Hearing Date: April 24, 2018 | Prepared by: Matthew Grooms, Planner<br>Date: April 20, 2018 |
|--|--|

## I. INTRODUCTION

JHA Assisted Living, INC and Cedars Nursing Care, INC are requesting a Level III site plan, conditional use, and site location of development amendment review for a proposed expansion of their campus located at 630 Ocean Avenue. The proposed development scheme, which includes demolition of an existing single-family building, reconfiguration of existing parking and construction of a new three-story building, is derived from recent trends in the long-term care model where residents are provided with private rooms as opposed to semi-private rooms. The proposed expansion represents a minimal increase in the number of residents, which are accommodated through additional on-site parking.



Figure 1: The Cedars Campus with view of surrounding context. The area outlined in red represents the proposed expansion area.

This development is being referred to the Planning Board for compliance with site plan and conditional use standards of the land use code as well as the Site Location of Development Act regulations. A Planning Board workshop was held on February 13, 2018 and the applicant has submitted final plans for review in response to staff review comments and Planning Board feedback. A total of 280 notices were sent to property owners within 500 feet of the site and a legal ad ran in the April 16<sup>th</sup> and 17<sup>th</sup> 2018 editions of the Portland Press Herald.

**Applicant:** JHA Assisted Living, INC and Cedars Nursing Care, INC  
**Consultants:** Jan Wiegman, Wright-Pierce; Alex Toye, Action Pact Design

## II. REQUIRED REVIEWS

| Review                       | Applicable Standards        |
|------------------------------|-----------------------------|
| Site Plan                    | Section 14-526              |
| Conditional Use              | Section 14-474              |
| Site Location of Development | Section 14-Technical Manual |

## III. PROJECT DATA

|                 |                              |
|-----------------|------------------------------|
| Existing Zoning | R-3 and R-5 Residential      |
| Existing Use    | Institutional Long-Term Care |
| Proposed Use    | Institutional Long-Term Care |

|                           |              |            |            |
|---------------------------|--------------|------------|------------|
| Parcel Size               | 460,350 SF   |            |            |
|                           | Existing     | Proposed   | Net Change |
| Building Footprint        | 81,114 SF    | 96,956 SF  | 15,842 SF  |
| Building Floor Area       | N/A          | 45,000 SF  | 45,000 SF  |
| Impervious Surface Area   | 4.98 acres   | 5.37 acres | 0.39 acres |
| Parking Spaces (on site)  | 170          | 183        | 13         |
| Bicycle Parking Spaces    | 0            | 4          | 4          |
| Estimated Cost of Project | \$16,000,000 |            |            |

**IV. EXISTING CONDITIONS**

The applicant proposes to develop on a 10.5 acres site located on the west side of Ocean Avenue between Rainbow Mall Road to the north Washington Avenue to the south. At present, the site is occupied by the Cedars long-term care facility campus, which consists of three connected buildings, two two-story buildings identified as “The Osher inn” and “The Hoffman Center”, as well as a larger three-story building identified as “The Atrium”, along with off-street parking for 170 vehicles distributed across seven (7) parking areas, and a series of individual unit parking garages. The campus is organized around a central courtyard, with the three existing buildings situated around the perimeter of that courtyard. An internal driveway system provides multiple opportunities for resident drop-off and pick-up, and internal pedestrian pathways are provided alongside the internal driveway. This site features primary access off of Ocean Avenue with secondary access off of Byfield Road. A former single-family structure is located at the northeast corner of the site and is currently being utilized as office space. This building fronts Ocean Avenue and is accessible via a second-curb cut located just north of the primary facility entrance.

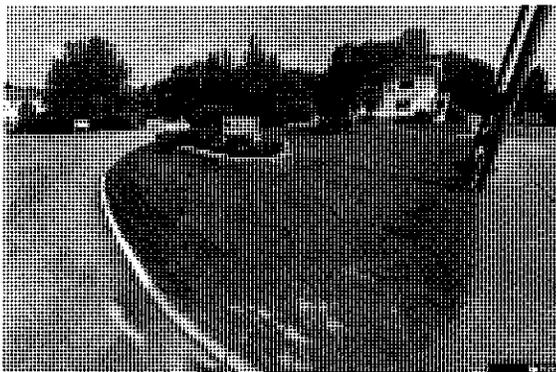


Figure 2: View of the existing entrance with single-family structure in the background.



Figure 3: Single-family structure to be demolished under proposed expansion.

The development site itself is located along a ridge, and generally slopes from higher areas in the northern portions of the site towards the south, with a portion of the property conveying surface flows towards the west. The far western portion of the site discharges to Fall Brook. This property also contains significant bedrock, and with prior projects, blasting work has been required.

**BACKGROUND**

In 1988, the Planning Board approved a 99-bed long term care facility and a 50-bed intermediate care facility for this site. The property totaled 5.93 acres at that time. The long-term care facility was built with 102 beds (23,200 sq. ft. footprint/65,648 sq ft floor area) and is now known as Cedars Care Center and is the location of the Rehabilitation Center. The intermediate care facility was deferred. In 1997 Cedars acquired an additional 4 acres and received approval to add a 61-bed intermediate care facility (95,332 sq. ft. total floor area) now known as the Atrium.

In 2005 approval was given for a 2-story addition for 30 assisted living units (12,371 sq. ft. footprint/ 26,119 sq. ft. floor

area) known as the Cedars Assisted Living Facility. At that time the site was reorganized into a condominium form of ownership so that each facility is a condominium unit and the balance of the site is a “common element” to be used in common by all three units.

The first two Cedar projects (Cedars Care Center and Atrium) impacted wetlands and a Tier II wetlands permit was issued by DEP/ACE subject to on-site provision of three mitigation parcels identified as Parcels A, B and C. The assisted living development approved in 2005 was constructed over part of Mitigation Parcel B and an underground storm water detention/treatment system was incorporated into the project on the side nearest Ocean Avenue. The most recent development (the assisted living facility) triggered a Tier III review and was permitted by the MDEP.

In 2008, The Planning Board considered a conditional use application submitted by The Cedars to renovate the rehabilitation center located on the first floor on the westerly side of the Cedars Care Center.

The above listed background was identified and described in a prior Planning Board report written for the conditional use application heard by the Planning Board back in 2008 and can reviewed in greater detail under Attachment 8.

#### V. PROPOSED DEVELOPMENT

The applicant proposes to demolish the single-family structure at the northeast corner of the site, as well as a portion of the parking area located north of the internal driveway. The existing curb cut which serves the single-family structure will be closed and the existing sidewalk along Ocean Avenue will be reconstructed to be continuous between the principal site entrance and the intersection of Ocean Avenue and Rainbow Mall Road. In place of the single-family structure, the applicant is proposing to construct a new three-story institutional building with approximately 45,000 square feet of floor area.

The project is largely driven by the evolution of the care model with a shift towards the household model of care delivery and private rooms for residents. The existing long-term care facility at the Hoffman Center has semi-private rooms and will be converted into three households with private rooms. The 40 displaced beds will be moved to the proposed new facility and two households will be created, occupying two floors of the building. A new 20 bed assisted living memory care household will occupy the first floor of the new facility as well.

The parking area located to the north of the internal driveway is being reconfigured to incorporate additional parking spaces in accordance with the city’s off-street parking standards. This parking area will extend farther west by approximately 90 feet and will involve some tree clearing and regrading. An additional 14 parking spaces are being constructed farther west within the applicant’s property and includes a space for motorcycle parking. Altogether, the project results in a net gain of 13 parking spaces from what currently exists.

Other site improvements include landscaping, consisting of trees, shrubs, ornamental grasses and lawn areas, proposed around the perimeter of the newly proposed building and along the property’s Ocean Avenue frontage. The existing drainage system will largely remain in place and will feature minimal upgrades, including revisions to the existing detention basins, new underdrained soil filters and new storm drain structures to accommodate the site revisions and new facility.

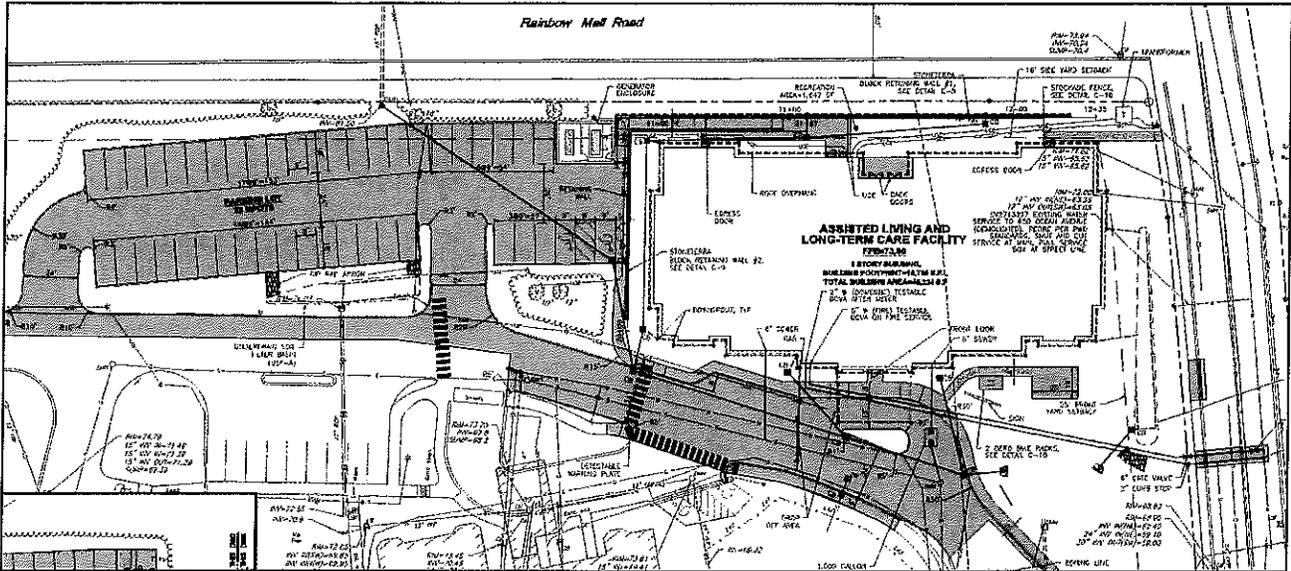


Figure 4: Proposed site plan showing parking lot reconfiguration, utility connections and pedestrian infrastructure improvements



Figure 5: Proposed building elevation (front). Note, the building is oriented inward to the site, away from Ocean Avenue.

VI. PUBLIC COMMENT & NEIGHBORHOOD MEETING

The Planning Division has received two written comments in regards to this project as of the writing of this report. These comments have raised concerns regarding previous blasting work that was carried out in previous projects at The Cedars facility, and concerns related generally to site grading and stormwater runoff.

City staff, in a meeting with the applicant on January 30<sup>th</sup>, discussed these public comments and raised questions regarding the potential for blasting work to occur. At that time, a geotechnical had not yet been received and it was not known whether or not blasting would be required. We informed the applicant of blasting requirements within the City, with which the applicant has agreed to comply. A neighborhood meeting for this project was held on January 29<sup>th</sup> (Attachment X)

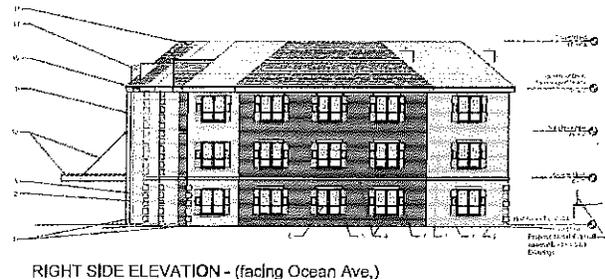


Figure 6: Proposed side elevation which is oriented towards Ocean Avenue.

VII. PLANNING BOARD WORKSHOP

A Planning Board workshop was held on February 13, 2018. At this meeting, the primary focus of the discussion was in regards to the proposed building's height, design of the building, and the impacts that required blasting work would have on surrounding properties. Members of the public universally claimed that the building was too tall and given its prominent location very close to both Rainbow Mall Road and Ocean Avenue, that it would overwhelm surrounding properties. Members of the Board also questioned whether or not the building's false roof should be measured as a Mansard roof. In addition to concerns regarding the building's height, the staff also raised a number of concerns with the building's design, particularly that the design was not contextual and overly complicated. Members of the public were also concerned that new blasting would cause additional damage to building foundations and disrupt existing drainage patterns. As a result of this, a member of the Board asked that a condition of approval be drafted requiring the applicant to expand the noticing buffer for the pre-blast survey.

Following this workshop, the applicant met with City staff to discuss potential changes to the plans and updated their proposal to lower the height of the false roof, slightly shift the building's footprint away from the street, bolster site landscaping, significantly simplify the building's design, and provide context views of the building. At this meeting, staff asked that the building include just one façade material. The applicant has indicated that they would prefer an all brick building, though if the cost proves prohibitive, they discussed the option of an all clapboard building instead. Both options have been included with the updated plans, and the applicant has asked that a condition of approval be drafted stating that in the event the all brick building proves infeasible, that the clapboard option may be reviewed administratively by staff.

#### VIII. RIGHT, TITLE, & INTEREST

The applicant has provided a deed demonstrating ownership of the subject property (Attachment E).

#### IX. FINANCIAL & TECHNICAL CAPACITY

The Cedars, a non-profit organization, will be utilizing three sources of funding for the project, that include fundraising, Cedars social impact bonds and bank financing. The Cedars is working with a fundraising consultant, Steve Braverman, to guide their capital campaign which they have set a goal to raise \$10 million in donations and \$10 million in social impact bonds. With the help of an investment banker, the Cedars will be negotiating with their current lender Bangor Savings Bank to borrow any additional necessary funds, anticipated not to exceed \$10 - \$12 million. It is anticipated that the fundraising and bank lending will be in place by April 2018. (Attachment H).

In regards to Technical Capacity, the applicant has provided resumes for their consulting team demonstrating necessary expertise to complete this project.

#### X. ZONING ANALYSIS

The proposed project is located within both the R-3 and R-5 Residential zones and as such, is subject to the standards of the more restrictive zone, that being the R-3 zone. The proposed use, "institutional long-term care" is identified as a conditional use, and is subject to the conditional use standards listed under Section 14-474. Discussion of compliance with applicable conditional use standards can be found on the next page of this report.

In regards to dimensional standards, the proposed expansion was found to meet all applicable standards. The proposed building height, which reaches a maximum peak of approximately 50' feet above grade, was determined to meet the city's requirements given the proposed roof type and measurement criteria for mansard roofs, which are measured from the deck of the roof. The City's Zoning Administrator, Ann Machado, reviewed the proposal and found it to be satisfactory (Attachment V).

The applicant has revised the building elevations and reduced the height of the building parapet by approximately 3' feet and changed the pitch of the roof to a 12/10 pitch, which is more contextual to other nearby properties and is responsive to Board and staff feedback.

| <b>Cedars Site Plan Dimensional Requirements</b> |                        |                   |                                       |                                 |
|--|------------------------|-------------------|---------------------------------------|---------------------------------|
| <b>Code</b>                                      | <b>Item</b>            | <b>Proposed</b>   | <b>Conditions R-5</b>                 | <b>Conditions R-3</b>           |
| 14-87, 14-88(c)2.a.                              | Permitted Uses         | Institutional     | Allowed with conditional permit       | Allowed with conditional permit |
| 14-90  | Dimensions             |                   |                                       |                                 |
| a  | Lot Size               | 10.5 acres        | 2 acres                               | 2 acres                         |
| e  | Frontage               | 378 feet          | 50                                    | 50 Feet                         |
| d  | Front Setback          | 25                | 20                                    | 25                              |
|  | Side Setback (Street)  | 20                | 20                                    | 20                              |
|  | Side Setback           | Variable          | 14                                    | 16                              |
|  | Rear Setback           | No Change         |                                       | 25                              |
| e  | Max. Lot Cover         | 20.3%             | 40%                                   | 35%                             |
| f  | Min Lot Width          | Varies; over 400' | 90 feet                               | 65 feet                         |
| g  | Max Str. Height        | 35'               | 35 feet                               | 35 feet                         |
| h  | Units/Building         | N/A               | 12 max                                | 2 max                           |
| i-q  | N/A                    | N/A               |                                       | N/A                             |
| 14-91  | Others                 |                   |                                       |                                 |
| a  | Parking                | 0                 | (See Div 20)                          | (See Div 20)                    |
| e  | N/A                    | N/A               | N/A                                   | N/A                             |
| 14-92-6  | N/A                    | N/A               | N/A                                   | N/A                             |
|  | N/A                    | N/A               | N/A                                   | N/A                             |
| <b>Parking</b>                                   |                        |                   | <b>From Division 20</b>               |                                 |
| <b>Off-Street</b>                                | <b>Residential Use</b> | N/A               | <b>2/Dwelling Unit</b>                |                                 |
|  | LT Care                | 4                 | 4; 1/5 Beds                           |                                 |
|  | LT Care                | 9                 | 9; 1/Employee during day shift        |                                 |
| 14-526A  | Bike Parking           | 4                 | 2.6; 2/10 new required parking spaces |                                 |
|  | Motor/Scooter          | 1                 | 1                                     |                                 |

Conditional Use Review

Sec. 14-88 (c) Conditional Uses

- a. In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or building and will not cause significant physical encroachment into established residential areas.

The proposed expansion is located on a parcel dedicated as a long-term care facility and does not encroach upon existing residential areas within the vicinity. The existing single-family structure has been utilized as administrative offices since 1991 and is physically located on the parcel occupied by The Cedars Long-Term Care Facility.

- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter.

The proposed use will displace a residential structure that has been used as administrative offices by the Cedars since approximately 1991. It is not clear when this structure was last used as a residence. Further, the proposed three-story building cannot be located elsewhere on the Cedars campus without causing significant environmental impacts in the remaining undeveloped portions of the site. The wetland areas located on this parcel are subject to mitigation easements for prior wetland impacts, and they will not be impacted by the proposed redevelopment.

- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative.

The minimum lot size is met.

**Sec. 14-474. Conditional Use Standards**

- d. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone;

The proposed expansion will result in minimal additional traffic, with 20 additional beds and 9 additional staff. The project site is self-contained and no changes are proposed to the existing curb-cut off of Ocean Avenue. Similarly, Ocean Avenue is a minor arterial, with other commercial and institutional uses in the immediate vicinity, and according to the city’s consulting traffic engineer, Ocean Avenue has sufficient capacity to serve this expansion.

- e. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter;

The proposed use, “institutional long-term care” does not inherently create unsanitary or harmful conditions and it is not anticipated that any adverse conditions as stated in this standard will result from the proposed use.

- f. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

As mentioned previously, the Cedars campus is self-contained and largely screened from residential properties and public rights-of-way by means of extensive vegetation located around the perimeter of the site. It is not anticipated that this project will result in any detrimental impacts to surrounding properties beyond what currently exists.

The proposed building differs from other buildings on the campus in that it will be constructed within 25 feet of the property line along Ocean Avenue and will be highly visible from public spaces. The proposed building, while located in close proximity to Ocean Avenue, is not oriented towards the street. As a result, a design review of the project was held, and city staff have requested that the applicant revise the building’s design to be more contextually appropriate and as well, to better screen the street-facing façade by means of vegetation.

**XI. SITE LOCATION OF DEVELOPMENT REVIEW**

**Technical Manual Section 14.3. Standards**

- a. Financial and technical capacity. The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of Portland’s Code of Ordinances . The Planning Board may issue a permit that conditions any site alterations upon a developer providing the Planning Board with evidence that the developer has been granted a line of credit or a loan by a financial institution authorized to do business in this State or with evidence of any other form of financial assurance the Planning Board determines to be adequate. The Planning Board shall also assess any such application in accordance with the standards set forth in Chapter 373 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.

The project application includes a description of financial and technical capacity. The applicant intends to fundraise and utilize bonds to cover the cost of the project. Additional funds required will be secured through financing provided by Gorham Savings Bank. Technical capacity has similarly been provided.

b. Traffic movement. – Not Applicable

c. No adverse effect on the natural environment. The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 375 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.

The applicant has provided documentation regarding identified wetlands on their property as well as areas of the site which drain into Fall Brook. Under this development proposal, those areas will not be impacted.

**XII. SITE PLAN SUBMISSION REQUIREMENTS (Section 14-527)**

Per the city’s land use ordinance, the following materials should be submitted at the time of final review:

- Final plan submittal requirements as noted in 14-527(e) and (f); and
- Information regarding site lighting should be identified on the site plan.

**XIII. SITE PLAN REVIEW**

The final plans for the Cedars Expansion project have been reviewed by staff for conformance with the relevant review standards of the City of Portland’s site plan ordinance. Staff comments are below.

**1. Transportation Standards**

a. **Impact on Surrounding Street Systems**

As stated previously, the proposed expansion is due to changes in industry best practices, where preference has changed from semi-private rooms to private rooms. The new building, while adding some additional capacity, will result in a net increase of just 20 beds and 9 additional employees. Tom Errico, the city’s consulting traffic engineer, has reviewed the applicant’s proposal and has offered the following comment (Attachment 4):

- Based upon the number of new employees and project details the proposed expansion is not expected to generate a significant amount of new traffic. The project is not expected to significantly impact traffic mobility and safety and a traffic study is not required.

b. **Access and Circulation**

Under this application, minimal changes to site circulation and access are proposed. An existing curb cut which serves the single-family structure at the northeast corner of the site is being closed, and the site will now only be accessible via the principal entrance located along Ocean Avenue, and from Byfield Road which is maintained as a fire lane and secondary access point. Interior site circulation remains almost entirely unchanged, with the exception of one reconfigured parking area located north of the existing internal driveway. The proposal also features pedestrian infrastructure improvements, including new ADA accessible sidewalks and crosswalks, and a new, direct sidewalk connection between the proposed building and Ocean Avenue.

City staff in reviewing site circulation and access have confined their review largely to the area of proposed disturbance, however several deficiencies have been identified and brought to the attention of the applicant.

Of particular note is the lack of a sidewalk along Rainbow Mall Road which was found to be a city accepted public street. At present, there is a sidewalk along the northern side of Rainbow Mall Road which extends from Washington Avenue to just south of Ledgewood Drive. Typically, under the site plan ordinance an applicant would be required to install or repair sidewalk along their street frontage in accordance with city standards. However, in this particular case, the applicant's property does not extend all the way to Rainbow Mall Road, and is



Figure 7: Existing extent of sidewalk is shown in blue. The portion of sidewalk not constructed is shown in red.

separated from that right-of-way by a parcel owned by Old Port Realty Company, which measures approximately 10' feet in width closer to the intersection with Ocean Avenue. This parcel eventually widens as one moves closer to Washington Avenue along Rainbow Mall Road. Given this fact, the applicant is not required by the site plan ordinance to provide this improvement, however the City is asking for a financial contribution of \$5,400 to install an ADA accessible crosswalk across Rainbow Mall Road on the north side of Ocean Avenue. The exact request as presented by the Department of Public Works by City Engineer Keith Gray is as follows:

- We ask the applicant to make a contribution in the amount of \$5,400 for the ADA improvements at the intersection of Rainbow Mall Road and Ocean Ave. In addition, we recommend that the applicant consider a contribution for a sidewalk along Rainbow Mall Road. The estimated cost for constructing 850 feet of sidewalk along Rainbow Mall Road is approximately \$36,500. The Department of Public Works will be installing new granite curb and paving Rainbow Mall Road this summer. The construction of the sidewalk is not included in our scope of work. We have previously discussed with the applicant the possibility of a contribution for the sidewalk construction as it would be beneficial to their employees as well as the general public. The Department requests a contribution of \$13,000 for the construction of the sidewalk along Rainbow Mall Road.

Bruce Hyman, Transportation Program Manager in the Planning Office, has reviewed the proposed plans, looking largely at pedestrian infrastructure and offers the following comments (Attachment 5):

- An ADA-compliant pedestrian-way/sidewalk, a minimum of 5' in width, is to be provided on the north side of the driveway from the sidewalk on Ocean Avenue to the proposed new building's entrance - this may require moving the bicycle parking to be adjacent to the sidewalk.

Status: Sidewalk was provided with final plans.

- Efforts should be made to improve the ADA-accessibility of the existing sidewalk route on the south side of the driveway - there appears to be no existing curb ramp connecting a crosswalk across the existing driveway

Status: Resolved, curb ramp provided.

- It would be desirable to have more pedestrian connectivity/facilities between the new parking lot and other buildings without walking within parking lots and within the vehicular paths of driveways.

Status: Not resolved

- Detail Sheet Co7, Crosswalk Layout: The applicant may want to consider a more visible crosswalk pattern similar to the city's standard: 24" stripes in width, 8' in length with 24" of spacing in between stripes - the detail shows 12" wide stripes rather than 24"

Status: Resolved, crosswalk pattern modified.

- General Neighborhood pedestrian circulation: The topic of the lack of a pedestrian route/sidewalk on Rainbow Mall Road was raised at the neighborhood meeting. The applicant does not directly own the frontage on the south side of Rainbow Mall Road but it should collaborate to the extent practicable with the Ledgewood Owners Association on planning for a sidewalk along it at least for the portion from Ocean Avenue to connect to the Ledgewood Drive sidewalk. This would potentially benefit some Cedars residents, staff and visitors to increase access and physical activity opportunities.

Status: A draft condition of approval has been drafted asking that a financial contribution of \$5,400 be provided to construct a crosswalk across Rainbow Mall Road along the west side of Ocean Avenue. Staff understand that the applicant is not required to install a sidewalk along Rainbow Mall Road, but the City Engineer has invited the applicant's participation in an upcoming city project, which involves the installation of curbing along the north side of the street. DPW has requested a voluntary contribution of \$13,000 which would be paired with a City contribution of \$23,500 to construct 850 feet of sidewalk.

c. Public Transit Access

The proposed development is not located along a public transit route.

d. Parking

Division 20 of the land use ordinance requires the provision of one parking space per five beds in a long-term care facility, and one parking space per employee working the daytime shift. The proposed expansion will result in a net gain of 20 new beds and 9 new day-time employees, for a total required parking increase of 13 spaces, which is met with new parking being provided. Tom Errico, has reviewed the plans and has provided the following comment (Attachment 4):

- The applicant is expanding the proposed parking supply by 13 spaces to accommodate 9 additional employees and parking for the 20 residential units. I find the supply increase to be reasonable.

In addition to vehicle parking, the applicant is also providing space to park 4 bicycles and 1 motorcycle or scooter in accordance with site plan standards.

e. Transportation Demand Management

A transportation demand management plan is not technically required given that the project constitutes an expansion of approximately 45,000 square feet and the threshold for TDM is 50,000 square feet for institutional uses. The project total exceeds 50,000 square feet of floor area and would qualify if being developed today, however when the site was initially developed, TDM standards had not yet been adopted and so no plan is required, though we encourage the applicant to pursue TDM best practices.

2. Environmental Quality Standards

a. Preservation of Significant Natural Features

A portion of the applicant’s property, at the southeast corner of the site along Ocean Avenue, is identified as a freshwater wetland community, and is conserved via easement as an undeveloped portion of the site. Under this development proposal, the applicant does not propose to impact any wetland or other significant natural feature.

b. Landscaping and Landscape Preservation

The final plans show site landscaping around the perimeter of the proposed building, and notably a buffer of Karpick Red Maple between the proposed building and Ocean Avenue. The northeast corner of the project site, where the new building is proposed, is currently occupied by a single-family structure and includes extensive existing vegetation between the building and Rainbow Mall Road. A significant portion of that vegetation will be removed under this proposal to accommodate the much larger three-story building institutional building. To compensate for this tree loss, the applicant is proposing a variety of shrubs and trees to be planted at the rear of the building, including American Red Oak and American Hophornbeam.

The applicant does not have frontage along Rainbow Mall Road, as a separate parcel that is owned by Old Port Realty, features an approximately 10’ foot-wide strip of land along the entirety of Rainbow Mall Road. This parcel will remain undisturbed, and will similarly provide a visual buffer between the project site and the proposed building. Following the Planning Board workshop, the applicant met with Ledgewood Condominium Association and executed a Memorandum of Agreement (MOA) regarding maintenance and landscaping of the vegetated area separating the Cedars property from Rainbow Mall Road. This area is to be fully maintained by The Cedars and Ledgewood Condominium Association has agreed to provide an easement for this purpose.

In terms of other site landscaping features, the project is providing additional landscaping elements towards the property entrance and a mixture of shrubs and trees in and around the proposed off-street parking area in accordance with site plan standards.

Jeff Tarling, the City Arborist, has reviewed the preliminary plans and has provided the following comment regarding landscaping and landscape preservation (Attachment 6).

- Entrance-way landscape - how does the existing landscape blend into the new project. The final approval should show the details of the more formal ornamental landscape beds and limit of work

Status: Additional detail has been provided and has been found to be satisfactory.

- Parking lot landscape - ‘should meet parking lot landscape standards’, The parking lot island appears to have a stormwater feature which is good, additional trees and shrubs could be used to meet parking lot standards. There appears to be room for a few trees, recommend Tupelo & or Red Maple 2” caliper size, (Tupelo is a slow growing native tree that tolerates wet conditions) and for shrubs Winterberry, Sweetern for examples. Ideally the island below would contain taller trees mentioned.

Status: Additional parking lot landscaping has been provided

- Rainbow Mall Road edge - The Rainbow Mall Road edge has been an important feature for the Cedar’s since the original approval. The goal is to maintain a tree and vegetated edge that allows window views into to site for safety / security but maintains the wooded feel of the residential properties nearby.

From a quick review, it would be important to establish a limit of work and 'tree save' protection for the vegetation between the proposed project and Rainbow Mall, this should be a condition. The proposed tree and landscape treatment may need to be enhanced with additional trees and shrubs. A condition could be that if existing trees and vegetation is lost that additional plants be added. 'Tree Save' areas should be defined on site and part of the Pre-Construction meeting. This would include the usual requirements of not storing equipment or materials in or near the root zone of the tree save areas. Protection should include temporary construction fencing. The parking lot edge along Rainbow Mall Road could include low wooden guardrail along the edge to reduce vehicle encroachment into the buffer area. The Tree Protection web links below may be useful

Status: The applicant has bolstered the screening vegetation being provided to help off-set the proximity of the new building to the street. The construction management plan identifies tree save protection measures for existing vegetation.

c. Water Quality/Storm Water Management/Erosion Control

According to the applicant's application, the proposed development will result in a net increase in impervious surface of 0.39 acres. The existing site includes buildings, parking and roadway infrastructure, plantings/trees within parking islands, several detention areas and wetlands. The site is located along a ridge, and generally slopes from higher areas in the northern portions of the site towards the south, with a portion of the property conveying surface flows towards the west. The majority of surface runoff flows from the northern edge of the property, is conveyed through a series of drainage pipes into several detention and retention facilities, and then into the wetland complex at the southern portion of the site. From this wetland, surface flows then discharge into Ocean Avenue. The far western portion of the site discharges to Fall Brook and will not be disturbed as part of this project.

The proposed conditions will not substantially alter the existing drainage patterns. The proposed improvements include incorporating two new stormwater treatment measures, and modification to the outlet control structure of one of the existing detention basins.

Lauren Swett, the consulting peer review engineer for this project, has reviewed the applicant's plans and offers the following comments (Attachment 2):

a) Basic Standard: Plans, notes, and details have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in accordance with Appendix A, B, & C of MaineDEP Chapter 500.

b) General Standard: The project will result in an increase in impervious surface of 16,339 square feet and is required to comply with the General Standard. The Applicant is proposing to install underdrain soil filters to provide for adequate treatment. We have the following comment on the proposed design.

- The soil filters do not have defined emergency overflow spillways. USF-A could overflow internal to the site; however, it appears that USF-B may overflow into Ocean Avenue. In the 25-year storm, the peak elevation calculated in the HydroCAD model indicates, that water levels may be higher than the soil filter berm and the elevation of the adjacent section of Ocean Avenue. The Applicant should address peak flow elevations and provide for adequate emergency overflow to prevent the soil filter from draining into Ocean Avenue.

Status: This information has been provided.

c) Flooding Standard: The project will result in an increase in impervious surface of 16,339 square feet and is required to comply with the Flooding Standard. The Applicant's HydroCAD model indicates that the project will adequately manage stormwater to meet the Flooding Standard.

d) Urban Impaired Stream Standard: Portions of the project area are located within the delineated Fall Brook Watershed, which is identified as an Urban Impaired Stream by the Maine DEP; however, the project area discharges outside of the watershed, and is not required to comply with the Urban Impaired Stream Standard.

### 3. Public Infrastructure and Community Safety Standards

#### a. Consistency with Related Master Plans

The project is generally consistent with related master plans.

#### b. Public Safety and Fire Prevention

Mike Thompson, Fire Division Chief, has reviewed the final plans and has found them to be satisfactory, though he has requested that two Knox boxes be provided, one at the front entrance and the other at the rear (utility) entrance (Attachment 7). The applicant has agreed to providing these.

It should be noted that the geotechnical exploration for this project revealed that a large blast, meaning removal of greater than 300 cubic yards of rock material will be required to complete this project. The staff have notified the applicant of required permits available through the Fire Department and have shared relevant sections of the City Code pertaining to explosives and blasting. City regulations require noticing of property owners and a pre-blast survey of properties located within 600 feet of the perimeter of the blasting site. At the Planning Board workshop, a member of the Board requested that the pre-blast survey be extended, and the staff are will provide additional information regarding the impact of expanding the blast survey to either 700 or 800 feet from the blasting area.

#### c. Availability and Capacity of Public Utilities

The applicant proposes a new 2" water service, 6" fire service and 6" wastewater line. A gas line is also being installed and underground electric is proposed. At this time, staff have not received 'ability to serve' letters from Central Maine Power or the Portland Water District. Provision of these letters has been drafted as a condition of approval.

### 4. Site Design Standards

#### a. Massing, Ventilation, and Wind Impact

The maximum building height in both the R-3 and R-5 zones is 35' feet above grade. The peak of the proposed building is approximately 47' feet above grade, roughly 3' feet lower than presented at the workshop. Ann Machado, the zoning administrator has reviewed the building's height and found it to be compliant with zoning. The structure is a flat roofed building built to 35' feet in height, with a parapet in the form of a false roof, extending up to 47' feet. The parapet is designed to screen rooftop mechanical equipment and is similar in nature to the false roofs on other buildings on the Cedars campus. It is not anticipated that the project will result in adverse conditions related to massing, ventilation and wind.

#### b. Shadows

No shadow impacts on publicly accessible open spaces or adjacent properties are anticipated.

#### c. Snow and Ice Loading

The property owner has indicated that this is an existing site and that snow management is already accounted for.

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

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

*Order 266-17/18*  
*Tab 29 6-18-18*  
*Tab 26 7-16-18*

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

**ORDER AMENDING THE BAYSIDE TAX INCREMENT  
FINANCING DISTRICT TO SUPPORT THE ESTABLISHMENT OF AN  
AFFORDABLE HOUSING DISTRICT FOR THE 178 KENNEBEC STREET  
ELDERLY AFFORDABLE HOUSING PROJECT**

**ORDERED**, that the Bayside Tax Increment Financing District approved by City Council Order 135-03/04 and as amended by Orders 255-04/05, 239-05/06, 224-06/07, 242-07/08, 262-08/09, 217-09/10, 86-14/15 AND 13-15/16, is hereby further amended to support the establishment of an Affordable Housing District for the 178 Kennebec Street Elderly Affordable Housing Project, in substantially the form attached hereto; and

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



Economic Development Department  
Gregory A. Mitchell, Director

**MEMORANDUM**

**City Council Agenda Item**

**TO:** Mayor, City Manager, Assistant City Manager, City Attorney, Sonia Bean, Nancy English

**FROM:** Greg Mitchell, Economic Development Director

**DATE:** June 12, 2018

**SUBJECT:** Amendment to the Bayside TIF District to support establishment of an Affordable Housing District for the 178 Kennebec Street Elderly Affordable Housing Project

**SPONSOR:** Councilor Justin Costa, Chair of the Economic Development Committee. This item will be presented to the EDC for their vote on June 19, 2018.

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
1<sup>st</sup> reading: June 18, 2018 2<sup>nd</sup> Reading/Final Action: July 16, 2018

**Can action be taken at a later date:**  No  
Action is needed on July 16, 2018 in order to meet Maine State Housing Authority Program application deadlines for the Proposed Elderly Housing Project.

**PRESENTATION**  
Presenter: Greg Mitchell/5 Minutes

**I. ONE SENTENCE SUMMARY**

Amending the Bayside Tax Increment Financing (TIF) District is proposed to support the establishment of an Affordable Housing District for an elderly affordable housing project located at 178 Kennebec Street.

**II. AGENDA DESCRIPTION**

City Council approval is proposed to amend the Bayside TIF District to establish an Affordable Housing District for the 178 Kennebec Street elderly affordable housing project.

### **III. BACKGROUND**

The sale of City owned 178 Kennebec Street property (former City Public Works property) to Ross Furman with his development partner, the Szanton Company, will result in taxable property with ground level commercial space and an elderly affordable housing project located on upper floors. The proposed project is a two-unit condominium, including ground level commercial space (Unit 1) and upper floor affordable residential units (Unit 2).

The ground level Condominium Unit 1 is proposed to remain in the existing City Council approved Bayside TIF District and Unit 2 (upper floor affordable elderly affordable housing project) is proposed to be included in an Affordable Housing TIF District. The affordable housing project is the subject of an affordable housing TIF District proposal.

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

The intended result is approval of the Bayside TIF District Amendments to support establishment of an Affordable Housing District for the 178 Kennebec Street elderly affordable housing project.

The City goal is to expand the supply of affordable housing.

### **V. FINANCIAL IMPACT**

The proposed sale of City owned (tax exempt) property will result in taxable property which will include ground level space and upper floor residential affordable units. The estimated municipal taxable value of the ground level commercial space is \$550,000 (which would bring in \$11,907 at the FY18 mil rate), and the estimated municipal taxable value of the upper floor residential project is \$4.3 million.

### **VI. STAFF ANALYSIS**

The proposed approach includes amending the Bayside TIF District to allow the commercial portion of the 178 Kennebec Street Project to remain in the Bayside TIF District and support the establishment of an Affordable Housing TIF District on the upper floor residential portion of the project.

### **VII. RECOMMENDATION**

Staff recommends the approval of the Proposed Bayside TIF District Amendments in substantial conformance as presented.

The EDC will hold a public hearing on June 19, 2018 to discuss and take action on the proposed Bayside TIF District Amendments.

### **VIII. LIST ATTACHMENTS**

- Proposed Amendments to the Bayside TIF District are attached:
  - o In Marked Revision Format; and,
  - o Clean Format



Gregory A. Mitchell  
Director, Economic Development Department

## MEMORANDUM

**To:** Mayor and Portland City Council  
**From:** Greg Mitchell, Economic Development Director  
**Date:** July 3, 2018  
**Subject:** Explanation of Tax Increment Financing District Tax Shelter Benefits

This memorandum will provide you an overview of the public benefits associated with using the Tax Increment Financing (TIF) District Program specific to “Tax Shelter Benefits”.

### TAX SHELTER OVERVIEW



## How Does ‘Sheltering’ Work?

- With new investment, real estate valuation goes ↑↑
- As a result, state subsidies go ↓↓ and county taxes go ↑↑
- TIF ‘shelters’ captured new value by excluding it from total municipal value reported to the state for the length of the TIF

Municipalities realize “*savings*” from the tax sheltering effect of TIF Districts. The following direct financial impacts occur when municipal valuations increase:

- *State Education Aid is reduced,*
- *State Municipal Revenue Sharing is reduced,* and,
- *A municipality pays a higher percentage of the County budget.*

The amount of savings for each community varies depending upon each community's financial situation. For the City of Portland, tax shelter savings are conservatively estimated at 29%, meaning that for every new property tax dollar captured in a TIF district, the City saves 29 cents for each property tax dollar which otherwise would be lost.

The City's TIF model has been updated with the most recent formulas for State Aid for Education, Municipal Revenue Sharing, and the County Budget.

### **SPECIFIC TIF DISTRICT EXAMPLES**

The tax shelter savings associated with the three Proposed TIF Districts presented at the July 16, 2018 City Council meeting for action include:

#### **178 Kennebec Street Affordable Housing TIF District (upper floors)**

Total Projected New Property Taxes (30 years captured at 75%) = \$2,889,164  
Total Projected Tax Shelter Benefits (30 years captured at 75%) = \$837,310  
Annual Average Tax Shelter Benefit (30 years): \$27,910

#### **178 Kennebec Street Commercial TIF District (ground floor)**

Total Projected New Property Taxes (14 years captured at 100%) = \$197,894  
Total Projected Tax Shelter Benefits (14 years captured at 100%) = \$74,284  
Annual Average Tax Shelter Benefit (14 years): \$5,306

#### **977 Brighton Avenue Affordable Housing TIF District**

Total Projected New Property Taxes (30 years captured at 75%) = \$1,954,486  
Total Projected Tax Shelter Benefits (30 years captured at 75%) = \$566,431  
Annual Average Tax Shelter Benefit (30 years): \$18,881

I hope this memorandum provides a clearer picture of the public benefits to retain a percentage of new property tax revenue through use of TIF districts. Please refer to each above individual TIF District proposal for more detailed information.

# City of Portland

## Bayside Economic Redevelopment Program and Tax Increment Financing Program

*Prepared by:*

The City of Portland Economic Development Department

### **Enacted by the Portland City Council March 17, 2003**

Amendment #1 from MDECD Includes City Council Actions on:

- July 6, 2005 – Expand Footprint and Amend OAV;
- November 21, 2005 – Reduce Footprint for Pearl Place Affordable Housing TIF;
- June 5, 2006 – Authorizing Credit Enhancement Agreements (CEA) with Capital LLC; and, Southern Maine Student Housing, LLC

Amendment #2 from MDECD Includes City Council Action on:

- June 4, 2007 to Amend CEA with Atlantic Bayside Trust LLC (formerly Capital LLC)

Amendment #3 from MDECD Includes City Council Action on:

- November 17, 2008 to Extend Term additional Ten Years to FY2033, and amended public projects.

Amendment #4 from MDECD Includes City Council Action on:

- May 18, 2009 Amending Captured Value For FY10

Amendment #5 from MDECD Includes City Council Action on:

- May 17, 2010 Amending Captured Value For FY11

Amendment #6 from MDECD Includes City Council Action on:

- November 17, 2014 Expanding Bayside TIF Area

Amendment #7 from MDECD Includes City Council Action on:

- July 20, 2015 Amending Bayside TIF District for expanded Municipal allowable uses for TIF Revenue Investments

Proposed Amendment #8 to City Council 7/16/2018 for Amended District Regarding  
178 Kennebec Street

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### Exhibits:

1. Revised TIF Models
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## **I. Introduction/Updated 20142018**

East and West Bayside continue to be gateways to Portland's peninsula. A lot of changes to East and West Bayside have occurred since the Bayside (West) TIF District was adopted by the City Council on March 17, 2003. Relocation of one scrap yard and the addition of new medical office buildings, new housing for college students, [planned market rate housing and commercial space associated with the Federated Midtown Project](#), two new grocery stores, pharmacies, and financial institutions have transformed West Bayside's industrial heritage to a more compact urban development pattern, which extends the Central Business District to I-295. [Additionally, City Council approval during 2017 and 2018, of the sale of six Bayside properties formerly occupied by the Public Works Department will continue to support area wide economic revitalization.](#)

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### History

In 1996, the process began when the City of Portland obtained funding from the Environmental Protection Agency (EPA) to undertake a Brownfield's Pilot Project in Bayside. The City designated a ten-lot, 14-acre parcel between Oxford Street and Marginal Way as the Bayside Brownfield's Project Area and has since created a \$500,000 loan fund for the express purpose of cleaning up the site to clear the way for future development. The study area was subsequently enlarged to incorporate the area from Congress Street to I-295, and from Franklin Arterial to Forest Avenue, which is approximately 129 acres.

Since 1996, the City of Portland has been working with a team of consultants on planning for opportunities for the reuse of the Bayside land. An extensive public participation process, which involved hundreds of participants, produced a plan entitled "A New Vision for Bayside". The Bayside plan identifies the following eleven development principles and five critical actions in order to transform this area into a vital, productive and diverse urban neighborhood:

#### **Development Principles**

- Urban Gateway
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- Transit Oriented Development
- Multi-level Parking Structures
- A Neighborhood Center
- Recreation and Open Space
- A Social Service Network
- Environmental Remediation
- Scrap yard Redevelopment

#### **Critical Actions**

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels

- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

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## II. Amended Development Program

### A. The Amended Project

With this amended and restated Development Program, the City of Portland seeks to amend the Bayside Redevelopment Tax Increment Financing District to allow for 178 Kennebec Street, Condominium Unit 1 on the ground level/commercial space to remain in the Bayside TIF District; and, Condominium Unit 2, floors above the ground level commercial space, to be an Affordable Housing TIF District.

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add additional m

Municipal uses of TIF revenue consistent *Bayside Vision Plans I and II* as detailed in Table 1 in Section II(D) below.

The success of these efforts will enhance the City’s ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment and housing.

The City’s Economic Development Department will continue to market other~~the~~ City’s land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

*B. The Development District*

Properties that are to be designated as part of the TIF District are shown on the attached map (Exhibit 4), containing approximately 129.18 acres with an original assessed value as shown on Exhibit 11 as \$122,318,180

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

*C. The Amended Development Program*

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will **potentially** capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above and further detailed in Section II(D) below. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

*D. The Projects*

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside, all as more detailed in Table 1 below: See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Table 1

| <b>Municipal Use of TIF Revenues</b>   | <b>Statutory Citation</b>                              | <b>Cost Estimate</b>  |
|--|--|---|
| In District: Create Additional Parking Structures  | (1)(A)   | \$10,000,000  |
| In District: Existing Credit Enhancement Agreements; others as negotiated, executed with public process per Section II A   | (1)(A)   | \$6,000,000 over life of TIF District for existing CEAs                                 |
| In District: Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site  | (1)(A)   | T/B/D   |
| In District: Infrastructure (roadway, sidewalk, and transportation improvement projects) located in District   | (1)(A)   | T/B/D   |
| In District: Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances public Bayside investment   | (1)(A)   | \$6,000,000 over life of TIF District   |
| In District: Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails  | (1)(A)   | T/B/D   |
| In District: Funding the Economic Development Department, including salaries, to market and prepare for Bayside Redevelopment  | (1)(A)   | \$500,000   |
| In and out of District:<br>a.) Cover the City's Economic Development Department costs, including salaries*;<br>b.) Environmental site assessment and remediation to support commercial development;<br>c.) Environmental sea level adaptation planning and public infrastructure to support commercial development | (1)(A) and (1)(C)(1)<br><br>(1)(C)(2)<br><br>(1)(C)(2) | \$250,000/annual or \$4,500,000 over life of TIF District<br><br>\$150,000<br><br>T/B/D |
| <b>Total:</b>  |  | <b>\$27,150,000</b>   |

\*This item is not unique to this TIF District; it is also included in the Riverwalk TIF District and the Waterfront TIF District.

*E. Operational Components*

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, as outlined in Table 1 above.

## 2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land, the latter through the use of CEA as noted II.(D) above.

## 3. Plans for relocation of persons displaced by development activities.

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

## 4. Transportation Improvements

A description of the transportation-related improvements to be financed through this Amended Development Program is set forth above in Table 1 of the Development Program Section II(D).

## 5. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

## 6. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

### **III. Physical Description**

As noted previously, properties that are to be designated as part of the Amended TIF District are shown on the attached map (Exhibit 4), totaling 129.18 acres. The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in Exhibit 6.

[Proposed Amendment #8 does not change the acreage numbers for the Bayside TIF District because the 178 Kennebec Street Unit 1 \(ground level commercial space\) will remain in the Bayside TIF District and Unit 2 \(affordable residential units located in the upper floors\) is proposed to be an Affordable Housing TIF District.](#)

Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality ([see new Exhibit 3\(A\)](#)).
2. Site map showing tax map locations of the Amended TIF District ([see new Exhibit 4\(A\)](#)).

#### **IV. Financial Plan**

##### *A. Costs and Sources of Revenues*

With Amendment #6 to this TIF District, the acreage was increased to 129.18 acres, with an associated OAV set at \$122,318,180 as set forth in Exhibit 11. Exhibit 11 details the OAV from the inception of the Bayside TIF District, to its 1<sup>st</sup> expansion via Amendment 1, and 2nd expansion via Amendment 6. Exhibit 4 is the map which highlights the District encompassing the entire 129.18 acres.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities are included in Table 1, Section II(D) above.

The attached [Exhibit 1](#) details the projections of retained revenues based upon the anticipated assessed value increases within the District. [Exhibit 1](#) is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

##### *B. Development Program Account*

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5227(3).

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. *Financing Plan*

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion (Amendment 1), the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With the additional expansion via Amendment 6 from 62.18 to add 67 acres to the District, for a total of 129.18 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above, for a total OAV of the District at \$122,318,180.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Exhibit 1 to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

**V. Amended Financial Data (See Statutory Requirements & Thresholds, Exhibit 6)**

- A. Estimate of increased assessed value by year after implementation of the development program: See Exhibit 1
- B. Percentage of increased assessed value to be applied to the development program fund: See Exhibit 1
- C. Estimated annual tax increment: \$1,717,654 (Average)
- D. Total average annual value of development program fund: \$1,717,654 (Average)
- E. Annual principal and interest payment of bonded indebtedness: N/A at this time
- F. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

**VI. Tax Shifts (See Exhibit 2)**

A. *Average Annual Amount:*

General Purpose Aid to Education Tax Shift: \$593,812

Municipal Revenue Sharing Tax Shift: \$47,751

County Tax Shift: \$38,745

Total Average Annual Savings: \$680,307

## **VII. Municipal Approvals**

### *A. Public Hearing Notice*

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on July ~~3, 2018~~, ~~2015~~, in a newspaper of general circulation (see new Exhibit 8).

### *B. Public Hearing*

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on July ~~16, 2018~~, ~~2015~~, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as new Exhibit 9.

### *C. Authorizing Votes*

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as new Exhibit 10.

### *D. Assessor's Certification*

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit 11.

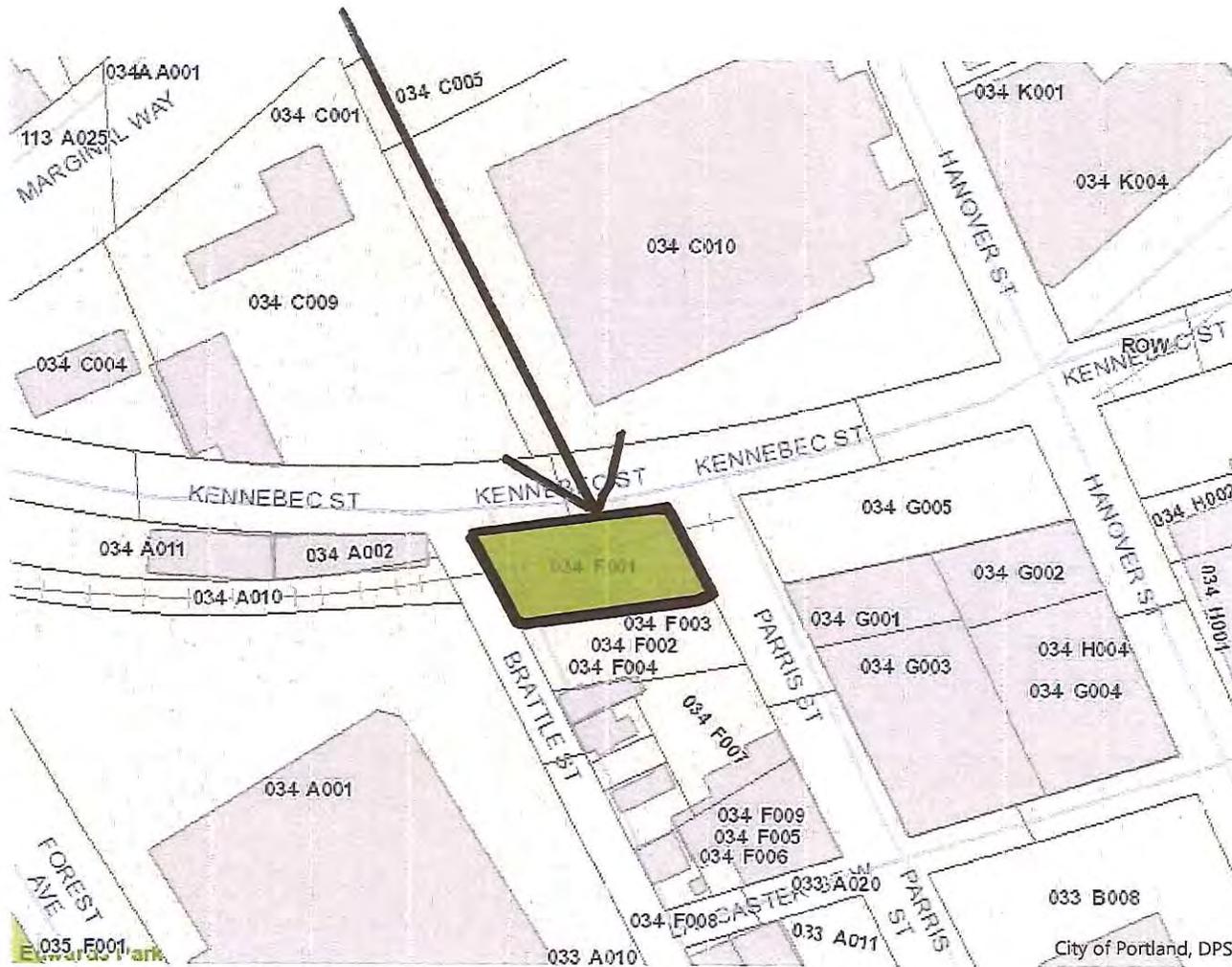
EXHIBIT 3 (A)



Note: Islands not shown to improve map legibility.

PROPOSED  
DISTRICT

Exhibit 4(A)-Site Map showing tax map location of Amended TIF District.



\*Only Unit 1 of the Furman at Bayside Condominium Association is part of this Amended District.

# City of Portland

## Bayside Economic Redevelopment Program and Tax Increment Financing Program

*Prepared by:*

The City of Portland Economic Development Department

### **Enacted by the Portland City Council March 17, 2003**

Amendment #1 from MDECD Includes City Council Actions on:

July 6, 2005 – Expand Footprint and Amend OAV;

November 21, 2005 – Reduce Footprint for Pearl Place Affordable Housing TIF;

June 5, 2006 – Authorizing Credit Enhancement Agreements (CEA) with Capital  
LLC; and, Southern Maine Student Housing, LLC

Amendment #2 from MDECD Includes City Council Action on:

June 4, 2007 to Amend CEA with Atlantic Bayside Trust LLC (formerly  
Capital LLC)

Amendment #3 from MDECD Includes City Council Action on:

November 17, 2008 to Extend Term additional Ten Years to FY2033, and  
amended public projects.

Amendment #4 from MDECD Includes City Council Action on:

May 18, 2009 Amending Captured Value For FY10

Amendment #5 from MDECD Includes City Council Action on:

May 17, 2010 Amending Captured Value For FY11

Amendment #6 from MDECD Includes City Council Action on:

November 17, 2014 Expanding Bayside TIF Area

Amendment #7 from MDECD Includes City Council Action on:

July 20, 2015 Amending Bayside TIF District for expanded Municipal  
allowable uses for TIF Revenue Investments

Proposed Amendment #8 to City Council 7/16/2018 for Amended District Regarding  
178 Kennebec Street

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### *A. The Amended Project*

With this amended and restated Development Program, the City of Portland seeks to amend the Bayside Redevelopment Tax Increment Financing District to allow for 178 Kennebec Street, Condominium Unit 1 on the ground level/commercial space to remain in the Bayside TIF District; and, Condominium Unit 2, floors above the ground level commercial space, to be an Affordable Housing TIF District.

The amendments will exclude all floors above the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 2 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland. Such specified area is referred to below as “178 Kennebec Street Unit 2” or “Unit 2”.

The amendments will provide that the following specified area will remain: the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 1 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland.

Municipal uses of TIF revenue consistent *Bayside Vision Plans I and II* are detailed in Table 1 in Section II(D) below.

The success of these efforts will enhance the City’s ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment and housing.

The City's Economic Development Department will continue to market other City land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

*B. The Development District*

Properties that are to be designated as part of the TIF District are shown on the attached map (Exhibit 4), containing approximately 129.18 acres with an original assessed value as shown on Exhibit 11 as \$122,318,180

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

*C. The Amended Development Program*

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above and further detailed in Section II(D) below. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

*D. The Projects*

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside, all as more detailed in Table 1 below: See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Table 1

| <b>Municipal Use of TIF Revenues</b>   | <b>Statutory Citation</b> | <b>Cost Estimate</b>                                      |
|--|---------------------------|---|
| In District: Create Additional Parking Structures  | (1)(A)                    | \$10,000,000  |
| In District: Existing Credit Enhancement Agreements; others as negotiated, executed with public process per Section II A             | (1)(A)                    | \$6,000,000 over life of TIF District for existing CEAs   |
| In District: Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site                          | (1)(A)                    | T/B/D   |
| In District: Infrastructure (roadway, sidewalk, and transportation improvement projects) located in District                         | (1)(A)                    | T/B/D   |
| In District: Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances public Bayside investment | (1)(A)                    | \$6,000,000 over life of TIF District                     |
| In District: Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails                    | (1)(A)                    | T/B/D   |
| In District: Funding the Economic Development Department, including salaries, to market and prepare for Bayside Redevelopment        | (1)(A)                    | \$500,000   |
| In and out of District:  | (1)(A) and (1)(C)(1)      | \$250,000/annual or \$4,500,000 over life of TIF District |
| a.) Cover the City's Economic Development Department costs, including salaries*;   |                           |   |
| b.) Environmental site assessment and remediation to support commercial development;   | (1)(C)(2)                 | \$150,000   |
| c.) Environmental sea level adaptation planning and public infrastructure to support commercial development                          | (1)(C)(2)                 | T/B/D   |
| <b>Total:</b>  |                           | <b>\$27,150,000</b>                                       |

\*This item is not unique to this TIF District; it is also included in the Riverwalk TIF District and the Waterfront TIF District.

*E. Operational Components*

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, as outlined in Table 1 above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land, the latter through the use of CEA as noted II.(D) above.

3. Plans for relocation of persons displaced by development activities.

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Transportation Improvements

A description of the transportation-related improvements to be financed through this Amended Development Program is set forth above in Table 1 of the Development Program Section II(D).

5. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

6. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

### III. Physical Description

As noted previously, properties that are to be designated as part of the Amended TIF District are shown on the attached map (Exhibit 4), totaling 129.18 acres. The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in Exhibit 6.

Proposed Amendment #8 does not change the acreage numbers for the Bayside TIF District because the 178 Kennebec Street Unit 1 (ground level commercial space) will remain in the Bayside TIF District and Unit 2 (affordable residential units located in the upper floors) is proposed to be an Affordable Housing TIF District.

Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (see new Exhibit 3(A)).
2. Site map showing tax map locations of the Amended TIF District (see new Exhibit 4(A)).

#### **IV. Financial Plan**

##### *A. Costs and Sources of Revenues*

With Amendment #6 to this TIF District, the acreage was increased to 129.18 acres, with an associated OAV set at \$122,318,180 as set forth in Exhibit 11. Exhibit 11 details the OAV from the inception of the Bayside TIF District, to its 1<sup>st</sup> expansion via Amendment 1, and 2<sup>nd</sup> expansion via Amendment 6. Exhibit 4 is the map which highlights the District encompassing the entire 129.18 acres.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities are included in Table 1, Section II(D) above.

The attached Exhibit 1 details the projections of retained revenues based upon the anticipated assessed value increases within the District. Exhibit 1 is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

##### *B. Development Program Account*

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5227(3).

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. *Financing Plan*

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion (Amendment 1), the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With the additional expansion via Amendment 6 from 62.18 to add 67 acres to the District, for a total of 129.18 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above, for a total OAV of the District at \$122,318,180.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Exhibit 1 to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

**V. Amended Financial Data (See Statutory Requirements & Thresholds, Exhibit 6)**

- A. Estimate of increased assessed value by year after implementation of the development program: See Exhibit 1
- B. Percentage of increased assessed value to be applied to the development program fund: See Exhibit 1
- C. Estimated annual tax increment: \$1,717,654 (Average)
- D. Total average annual value of development program fund: \$1,717,654 (Average)
- E. Annual principal and interest payment of bonded indebtedness: N/A at this time
- F. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

**VI. Tax Shifts (See Exhibit 2)**

A. *Average Annual Amount:*

General Purpose Aid to Education Tax Shift: \$593,812

Municipal Revenue Sharing Tax Shift: \$47,751

County Tax Shift: \$38,745

Total Average Annual Savings: \$680,307

## **VII. Municipal Approvals**

### *A. Public Hearing Notice*

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on July 3, 2018, in a newspaper of general circulation (see new Exhibit 8).

### *B. Public Hearing*

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on July 16, 2018, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as new Exhibit 9.

### *C. Authorizing Votes*

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as new Exhibit 10.

### *D. Assessor's Certification*

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit 11.

EXHIBIT 3 (A)



*Note: Islands not shown to improve map legibility.*

PROPOSED  
DISTRICT

Exhibit 4(A)-Site Map showing tax map location of Amended TIF District.



\*Only Unit 1 of the Furman at Bayside Condominium Association is part of this Amended District.

**City of Portland - TIF Values - For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33; UPDATED 6/2018 to include IAV for 178 Kennebec St. Com'l Condo Unit #1 beginning 4/1/2019 - Estimated at \$550,000**

**2nd Expanded Area:**

**67 acres**

**OAV a/o 3/31/2014:**

**\$78,251,800**

**Model Assumes:**

- 1) 1% Yearly Increase in Valuation;
- 2) 2% Yearly Increased in Tax Rate;
- 3) 100% Yearly Capture Rate;
- 4) Model Includes IAV for 178 Kennebec Street Com'l Condo Unit #1 Estimated at \$550,000 Beginning 4/1/2019;
- 5) OAV for 178 Kennebec Street is \$0.

| City of Portland- Expanded Bayside TIF Projection Table; Updated 6/2018 for 178 Kennebec St. |                      |                     |  |                        |                       |  |  |  |   |   |
|--|----------------------|---------------------|--|------------------------|-----------------------|--|--|--|---|---|
| TIF Year   | Tax Year-<br>April 1 | City Fiscal<br>Year | Increased<br>Assessed Value<br>Real Prop. At<br>1%/Yr. | % of Value<br>Captured | Captured<br>Valuation | Projected<br>Mill Rate<br>(inc. 2%/Yr) | Total Projected<br>New Taxes<br>Captured | Captured<br>Revenue to<br>Business<br>Project<br>Account | Captured<br>Revenue to<br>Municipal<br>Project<br>Account | City Non-<br>Captured<br>General Fund<br>Revenues |
| 13   | 2015                 | 2015/2016           | \$782,518  | 100.00%                | \$782,518             | 20.20                                  | \$15,804                                 | \$0  | \$15,804  | \$0   |
| 14   | 2016                 | 2016/2017           | \$1,572,861  | 100.00%                | \$1,572,861           | 20.60                                  | \$32,401                                 | \$0  | \$32,401  | \$0   |
| 15   | 2017                 | 2017/2018           | \$2,371,108  | 100.00%                | \$2,371,108           | 21.01                                  | \$49,822                                 | \$0  | \$49,822  | \$0   |
| 16   | 2018                 | 2018/2019           | \$3,177,337  | 100.00%                | \$3,177,337           | 21.43                                  | \$68,097                                 | \$0  | \$68,097  | \$0   |
| 17   | 2019                 | 2019/2020           | \$4,541,628  | 100.00%                | \$4,541,628           | 21.86                                  | \$99,284                                 | \$0  | \$99,284  | \$0   |
| 18   | 2020                 | 2020/2021           | \$5,369,563  | 100.00%                | \$5,369,563           | 22.30                                  | \$119,731                                | \$0  | \$119,731   | \$0   |
| 19   | 2021                 | 2021/2022           | \$6,205,776  | 100.00%                | \$6,205,776           | 22.74                                  | \$141,144                                | \$0  | \$141,144   | \$0   |
| 20   | 2022                 | 2022/2023           | \$7,050,352  | 100.00%                | \$7,050,352           | 23.20                                  | \$163,560                                | \$0  | \$163,560   | \$0   |
| 21   | 2023                 | 2023/2024           | \$7,903,373  | 100.00%                | \$7,903,373           | 23.66                                  | \$187,016                                | \$0  | \$187,016   | \$0   |
| 22   | 2024                 | 2024/2025           | \$8,764,925  | 100.00%                | \$8,764,925           | 24.14                                  | \$211,551                                | \$0  | \$211,551   | \$0   |
| 23   | 2025                 | 2025/2026           | \$9,635,092  | 100.00%                | \$9,635,092           | 24.62                                  | \$237,205                                | \$0  | \$237,205   | \$0   |
| 24   | 2026                 | 2026/2027           | \$10,513,961   | 100.00%                | \$10,513,961          | 25.11                                  | \$264,018                                | \$0  | \$264,018   | \$0   |
| 25   | 2027                 | 2027/2028           | \$11,401,619   | 100.00%                | \$11,401,619          | 25.61                                  | \$292,034                                | \$0  | \$292,034   | \$0   |
| 26   | 2028                 | 2028/2029           | \$12,298,153   | 100.00%                | \$12,298,153          | 26.13                                  | \$321,298                                | \$0  | \$321,298   | \$0   |
| 27   | 2029                 | 2029/2030           | \$13,203,653   | 100.00%                | \$13,203,653          | 26.65                                  | \$351,853                                | \$0  | \$351,853   | \$0   |
| 28   | 2030                 | 2030/2031           | \$14,118,207   | 100.00%                | \$14,118,207          | 27.18                                  | \$383,749                                | \$0  | \$383,749   | \$0   |
| 29   | 2031                 | 2031/2032           | \$15,041,907   | 100.00%                | \$15,041,907          | 27.72                                  | \$417,034                                | \$0  | \$417,034   | \$0   |
| 30   | 2032                 | 2032/2033           | \$15,974,844   | 100.00%                | \$15,974,844          | 28.28                                  | \$451,757                                | \$0  | \$451,757   | \$0   |
| <b>18 Year TIF Total</b>   |                      |                     | <b>\$149,926,879</b>                                   |                        | <b>\$149,926,879</b>  |  | <b>\$3,807,357</b>                       | <b>\$0</b>   | <b>\$3,807,357</b>  | <b>\$0</b>  |
| <b>18 Year Averages</b>  |                      |                     |  |                        |                       |  | <b>\$211,519.81</b>                      |  | <b>\$211,519.81</b>                                       |   |

O:\TIF\Bayside\Amended TIF Re 178 Kennebec St - 2018\Bayside TIF Model For FY16 to FY33 - Expanded Area Only w OAV of \$78,251,800 ao 3-31-2014w178 IAV

**City of Portland - TIF Tax Shifts For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33; UPDATED to Include IAV for 178 Kennebec Com'l Condo Unit #1 beginning 4/1/2019, Estimated at \$550,000**

**2nd Expanded Area:  
OAV a/o 3/31/2014:**

**67 acres  
\$78,251,800**

**Model Assumes:**

- 1) 1% Yearly Increase in Valuation;
- 2) 2% Yearly Increased in Tax Rate;
- 3) 100% Yearly Capture Rate;
- 4) Model Includes IAV for 178 Kennebec Street Com'l Condo Unit #1 Estimated at \$550,000 Beginning 4/1/2019;
- 5) OAV of 178 Kennebec Street is \$0.

| <b>Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: TIF Projection Model</b> |                      |                     |                          |                        |  |   |                                   |                          |  |
|--|----------------------|---------------------|--------------------------|------------------------|--|---|-----------------------------------|--------------------------|--|
| TIF Year   | Tax Year-<br>April 1 | City Fiscal<br>Year | Total Added<br>Valuation | Sheltered<br>Valuation | Avoided Formula Impacts from Sheltering of Valuation |   |                                   |                          |  |
|  |                      |                     |                          |                        | Avoided Loss of<br>State Aid to for<br>Education     | Avoided Loss of<br>State Municipal<br>Revenue Sharing | Avoided Increase<br>in County Tax | Total Avoided<br>Impacts |  |
| 13   | 2015                 | 2015/2016           | \$782,518                | \$782,518              | \$6,338  | \$510   | \$414                             | \$7,262                  |  |
| 14   | 2016                 | 2016/2017           | \$1,572,861              | \$1,572,861            | \$12,740   | \$1,024   | \$833                             | \$14,597                 |  |
| 15   | 2017                 | 2017/2018           | \$2,371,108              | \$2,371,108            | \$19,206   | \$1,544   | \$1,255                           | \$22,006                 |  |
| 16   | 2018                 | 2018/2019           | \$3,177,337              | \$3,177,337            | \$25,736   | \$2,070   | \$1,682                           | \$29,488                 |  |
| 17   | 2019                 | 2019/2020           | \$4,541,628              | \$4,541,628            | \$36,787   | \$2,958   | \$2,404                           | \$42,149                 |  |
| 18   | 2020                 | 2020/2021           | \$5,369,563              | \$5,369,563            | \$43,493   | \$3,497   | \$2,842                           | \$49,833                 |  |
| 19   | 2021                 | 2021/2022           | \$6,205,776              | \$6,205,776            | \$50,267   | \$4,042   | \$3,285                           | \$57,594                 |  |
| 20   | 2022                 | 2022/2023           | \$7,050,352              | \$7,050,352            | \$57,108   | \$4,592   | \$3,732                           | \$65,432                 |  |
| 21   | 2023                 | 2023/2024           | \$7,903,373              | \$7,903,373            | \$64,017   | \$5,148   | \$4,183                           | \$73,348                 |  |
| 22   | 2024                 | 2024/2025           | \$8,764,925              | \$8,764,925            | \$70,996   | \$5,709   | \$4,639                           | \$81,344                 |  |
| 23   | 2025                 | 2025/2026           | \$9,635,092              | \$9,635,092            | \$78,044   | \$6,276   | \$5,099                           | \$89,419                 |  |
| 24   | 2026                 | 2026/2027           | \$10,513,961             | \$10,513,961           | \$85,163   | \$6,848   | \$5,564                           | \$97,576                 |  |
| 25   | 2027                 | 2027/2028           | \$11,401,619             | \$11,401,619           | \$92,353   | \$7,426   | \$6,034                           | \$105,813                |  |
| 26   | 2028                 | 2028/2029           | \$12,298,153             | \$12,298,153           | \$99,615   | \$8,010   | \$6,508                           | \$114,134                |  |
| 27   | 2029                 | 2029/2030           | \$13,203,653             | \$13,203,653           | \$106,950  | \$8,600   | \$6,987                           | \$122,537                |  |
| 28   | 2030                 | 2030/2031           | \$14,118,207             | \$14,118,207           | \$114,357  | \$9,196   | \$7,471                           | \$131,024                |  |
| 29   | 2031                 | 2031/2032           | \$15,041,907             | \$15,041,907           | \$121,839  | \$9,798   | \$7,960                           | \$139,597                |  |
| 30   | 2032                 | 2032/2033           | \$15,974,844             | \$15,974,844           | \$129,396  | \$10,405  | \$8,453                           | \$148,255                |  |
| <b>18 Year TIF Total</b>   |                      |                     | <b>\$149,926,879</b>     | <b>\$149,926,879</b>   | <b>\$1,214,408</b>                                   | <b>\$97,655</b>                                       | <b>\$79,344</b>                   | <b>\$1,391,407</b>       |  |
| <b>18 Year TIF Averages</b>  |                      |                     |                          |                        | <b>\$67,467.10</b>                                   | <b>\$5,425.26</b>                                     | <b>\$4,408.02</b>                 | <b>\$77,300.38</b>       |  |

*Order 267-17/18  
Tab 30 6-18-18  
Tab 27 4-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER DESIGNATING 178 KENNEBEC STREET AFFORDABLE HOUSING  
DEVELOPMENT DISTRICT AND TAX INCREMENT FINANCING DISTRICT  
AND ADOPTING THE MUNICIPAL DEVELOPMENT PROGRAM  
FOR THE DISTRICT**

**WHEREAS**, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

**WHEREAS**, there is a need for affordable housing in the City of Portland and the surrounding region; and

**WHEREAS**, Maine Workforce Housing LLC intends to construct certain improvements within the 178 Kennebec Street Affordable Housing Development Tax Increment Financing (“TIF”) District, including 46 units of affordable housing for seniors; and

**WHEREAS**, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

**WHEREAS**, there is a need to provide continuing affordable housing opportunities for the senior citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

**WHEREAS**, the 178 Kennebec Street Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

**WHEREAS**, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

**WHEREAS**, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

**WHEREAS**, the City desires to designate the 178 Kennebec Street Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

**WHEREAS**, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 178 Kennebec Street Affordable Housing Development TIF District, if any; and

**WHEREAS**, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 178 Kennebec Street Affordable Housing Development TIF District and Development Program for the District;

**NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:**

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled "178 Kennebec Street Affordable Housing Development District" as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

**BE IT FURTHER ORDERED**, that the area of the City of Portland entitled "178 Kennebec Street Affordable Housing Development District" as more particularly described in said Development Program is hereby designated

as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

**BE IT FURTHER ORDERED**, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

**BE IT FURTHER ORDERED**, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the "178 Kennebec Street Affordable Housing Development District" and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

**BE IT FURTHER ORDERED**, that the City's Planning and Urban Development Director is authorized to submit annual reports on the status of the "178 Kennebec Street Affordable Housing Development District" on behalf of the municipal legislative body; and

**BE IT FURTHER ORDERED**, that upon approval of the Director of the Maine State Housing Authority, the City Manager is hereby authorized and directed on behalf of the City of Portland to execute and deliver a Credit Enhancement Agreement substantially in the form attached to the Development Program hereby approved, with such changes thereto as deemed appropriate by the City Manager.

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

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

**FROM:** Planning and Urban Development Department  
Housing and Community Development Division

**DATE:** June 12, 2018 **REVISED 06/28/2018**

**SUBJECT:** **(1) Order Designating 178 Kennebec Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District**

**(2) Order Approving Credit Enhancement Agreement with 100 Parris Street, LP**

**SPONSOR:** Jill Duson, Chair                      Justin Costa, Chair  
Housing Committee                      Economic Development Committee

**(At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and Economic Development Committee (3-0) voted to recommend approval of this request.)**

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
**1<sup>st</sup> reading June 18, 2018    Final Action July 16, 2018**

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

In order for the developer to maximize the projects competitiveness in the Low Income Housing Tax Credit application, the TIF application must be filed with Maine State Housing Authority no later than August 6, 2018. A Notice of Public Hearing must be published 10 days before the date of the hearing on July 16.

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

Mary Davis, Housing & Community Development Division Director will be available for questions.

**I.     ONE SENTENCE SUMMARY**

Maine Workforce Housing (MWH) is proposing to construct 46 1-bedroom units for seniors (55+) on a site located at 178 Kennebec Street. MWH is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$96,305 annually over 30 years.

## II. AGENDA DESCRIPTION

**At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and Economic Development Committee (3-0) voted to recommend approval of this request.**

Maine Workforce Housing (MWH) is proposing to construct 46 1-bedroom units for seniors (55+) on a site located at 178 Kennebec Street. MWH is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$96,305 annually over 30 years.

The developer has requested two forms of financial assistance.

(1) HOME funds request: \$400,000; At their June 27, 2018 meeting the Housing Committee did not recommend HOME funding for this project.

(2) Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$96,305, with an estimated total of \$2,889,164 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable, with an estimated annual assessment of \$4,300,000 and estimated annual tax of \$93,095. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo. Maine Workforce Housing is proposing to construct 46 1-bedroom units for seniors (55+). The development will include:

| 178 Kennebec Street  |                                    |   |
|----------------------|------------------------------------|---|
| 1-Bedroom Units (46) | at or below 40% area median income | 0 |
|                      |                                    | 1 |
|                      | at or below 50% area median income | 5 |
|                      |                                    | 2 |
|                      | at or below 60% area median income | 1 |
|                      | 1                                  |   |
|                      | Market Rate                        | 0 |
|                      |                                    | 4 |
| Total Units          |                                    | 6 |

As stated in the developer's application, the project:

*"...includes ground-level retail and/or artist studio space with 46 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+.*



When completed, this project's new assessed value is estimated at \$4.3 million, which will yield the same amount in increased annual assessed property value as the project is currently city-owned property. Seventy-Five (75%) percent of the increased tax revenue will be captured revenue returned to the developer. The remaining 25% will be general fund revenue.

A Credit Enhancement Agreement will return approximately \$2,889,164 in captured revenue to the project (averaged at \$96,305 annually over thirty years) to off-set project operating costs. The proposed project will be taxable. TIF projections and proposed district map are included in the backup to this memo.

Total development costs are estimated at \$11.9 million. At full build out, the development is projected to pay an average \$96,305 annually in projected new taxes captured. Non-captured general fund revenues are estimated at an average \$32,102 annually.

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$27,910+, or \$837,310 + over the life of the district. These numbers were determined utilizing an updated TIF projection model.

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

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of all requests for City funding (local and federal resources), including Affordable Housing Tax Increment Financing requests. The third party analysis shows a positive recommendation for the TIF investment.

Public Benefits In reviewing this TIF request, staff notes the public benefit associated with the TIF District of 46 units of 55+ housing, seventy-eighty percent (78%) of which will be affordable to households at or below sixty percent (60%) of the area median income. Additionally, the TIF will create tax-sheltering benefits estimated at an average \$27,910 annually.

## **VII. RECOMMENDATION**

Staff is requesting City Council (1) approve the establishment of the 178 Kennebec Street Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with **100 Parris Street, LP** and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed.

## **VIII. LIST ATTACHMENTS**

78 Kennebec Street Affordable Housing Tax Increment Financing Development Program  
Credit Enhancement Agreement  
Declaration of Covenants  
TIF Projection Table  
TIF District Map

Applicant Request  
Underwriting Report  
City's TIF Policy

Prepared by: Mary P. Davis  
Bean/agendarequestmemo/rev 1/23/2017

Date: June 12, 2018 updated June 28, 2018



Gregory A. Mitchell  
Director, Economic Development Department

## MEMORANDUM

**To:** Mayor and Portland City Council  
**From:** Greg Mitchell, Economic Development Director  
**Date:** July 3, 2018  
**Subject:** Explanation of Tax Increment Financing District Tax Shelter Benefits

This memorandum will provide you an overview of the public benefits associated with using the Tax Increment Financing (TIF) District Program specific to “Tax Shelter Benefits”.

### TAX SHELTER OVERVIEW



## How Does ‘Sheltering’ Work?

- With new investment, real estate valuation goes ↑↑
- As a result, state subsidies go ↓↓ and county taxes go ↑↑
- TIF ‘shelters’ captured new value by excluding it from total municipal value reported to the state for the length of the TIF

Municipalities realize “*savings*” from the tax sheltering effect of TIF Districts. The following direct financial impacts occur when municipal valuations increase:

- *State Education Aid is reduced,*
- *State Municipal Revenue Sharing is reduced,* and,
- *A municipality pays a higher percentage of the County budget.*

The amount of savings for each community varies depending upon each community's financial situation. For the City of Portland, tax shelter savings are conservatively estimated at 29%, meaning that for every new property tax dollar captured in a TIF district, the City saves 29 cents for each property tax dollar which otherwise would be lost.

The City's TIF model has been updated with the most recent formulas for State Aid for Education, Municipal Revenue Sharing, and the County Budget.

### **SPECIFIC TIF DISTRICT EXAMPLES**

The tax shelter savings associated with the three Proposed TIF Districts presented at the July 16, 2018 City Council meeting for action include:

#### **178 Kennebec Street Affordable Housing TIF District (upper floors)**

Total Projected New Property Taxes (30 years captured at 75%) = \$2,889,164  
Total Projected Tax Shelter Benefits (30 years captured at 75%) = \$837,310  
Annual Average Tax Shelter Benefit (30 years): \$27,910

#### **178 Kennebec Street Commercial TIF District (ground floor)**

Total Projected New Property Taxes (14 years captured at 100%) = \$197,894  
Total Projected Tax Shelter Benefits (14 years captured at 100%) = \$74,284  
Annual Average Tax Shelter Benefit (14 years): \$5,306

#### **977 Brighton Avenue Affordable Housing TIF District**

Total Projected New Property Taxes (30 years captured at 75%) = \$1,954,486  
Total Projected Tax Shelter Benefits (30 years captured at 75%) = \$566,431  
Annual Average Tax Shelter Benefit (30 years): \$18,881

I hope this memorandum provides a clearer picture of the public benefits to retain a percentage of new property tax revenue through use of TIF districts. Please refer to each above individual TIF District proposal for more detailed information.

**CITY OF PORTLAND**  
**178 KENNEBEC STREET UNIT 2 AFFORDABLE HOUSING DEVELOPMENT DISTRICT**  
**DEVELOPMENT PROGRAM**

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#### Exhibits

- Exhibit A Estimated Allocation of Tax Increment and Estimated Tax Increment Revenues
- Exhibit B Estimated Development Costs
- Exhibit C Property Description and Configuration of the District
- Exhibit D Certificate of Assessor
- Exhibit E Credit Enhancement Agreement
- Exhibit F Tax Shift Computations
- Exhibit G Notice of Public Hearing
- Exhibit H City Council Orders
- Exhibit I Declaration of Covenants, Conditions and Restrictions
- Exhibit J District Narrative

**178 Kennebec Street Unit 2 Affordable Housing Development District Development Program**

**Article I. Introduction and Summary of Benefits.**

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District consisting of the following specified area: all floors above the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer of the project described below to declare this specified area as Unit 2 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland. Such specified area is referred to below as “178 Kennebec Street Unit 2” or “Unit 2”. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

**Article II. Development Program Narrative and Designation of the District.**

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 178 Kennebec Street Unit 2 Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”)

similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by 100 Parris Street, LP, its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E hereto from the District available to the Developer pursuant to such Credit Enhancement Agreement (the “Credit Enhancement Agreement”). These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31<sup>st</sup> prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 178 Kennebec Street Unit 2 involves the redevelopment of approximately 0.22 acres, into an affordable housing neighborhood. The objective of the project is that 78% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of 46 units of rental housing for households aged 55+, the targeting for those units will be 21 of the units at 60% Area Median Income, 15 of the units at 50% Area Median Income and 10 of the units at market rate. The zoning for the project assures that this number of units and this affordability objective will be met.

The project includes 46 apartments, all of which will be newly constructed units.

The 178 Kennebec Street Unit 2 project is projected to have a total local increased assessed valuation at build out of approximately \$4,300,000 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will pay approximately a thirty year annual average of \$96,305 in increased property taxes to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$96,305 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay operating costs for the project at 178 Kennebec Street Unit 2. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. Businesses or persons currently residing in the property will be temporarily displaced or relocated as a result of the development activities proposed in the District. A relocation plan will be established to ensure that no business or person will be asked to relocate, either temporarily to another on-site or off-site unit during the development activities or permanently to a newly renovated unit, unless a suitable unit in decent, safe and sanitary condition is available for the business or person. No businesses or persons will be permanently displaced or relocated as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years from the effective date of the approval of the District by the Director of the Maine State Housing Authority.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately 0.22 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts in the City (which combined total is 603.95 acres) is 4.87%, which includes 3.65% included in two exempt districts, a transit oriented district and a downtown/transit oriented district, of the total acreage of the City and thus does not exceed 5% of the total acreage of the City; the total area of all existing and proposed affordable housing development districts in the City is 0.032% of the total acreage of the City and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and proposed affordable housing development districts within the

City is \$1,533,510 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of April 1st preceding the date of the designation of the District;

(iv) The aggregate value of municipal general obligation indebtedness financed by the proceeds from affordable housing development districts within Cumberland County does not exceed \$50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average from January 1, 2002 to the date of calculation; and

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Housing Plan and Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 years for rental units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development on which at least 78% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 178 Kennebec Street Unit 2 Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

### **Article III. Financial Plan.**

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2018; (tax year April 1, 2017, Fiscal Year 2018). Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be the entire amount of the 75% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. § 5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior years level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following

implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

The amount of the Tax Increment Revenues on the Increased Assessed Value of all property in the District for each year during the term of the District to be allocated and paid to the Developer each year pursuant to the Credit Enhancement Agreement shall be equal to the product for each year during the term of the District of (a) the relevant Developers Percentage Allocation of the Tax Increment (Developer Share) for each year as computed as described above, times (b) the actual amount of the Tax Increment Revenues each year. Such percentage allocations shall apply regardless of whether the actual Tax Increment Revenues each year are more or less than the Tax Increment Revenues as estimated or projected in Exhibit A of this Development Program, provided that in no fiscal year will the Developer's Share be less than 75% of the captured revenue through the term of the District.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account shall consist of the Developer's Project Cost Account (the "Developer's Project Cost Account"). The Developer's Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Developer's Project Cost Account according to the terms of the Credit Enhancement Agreement that portion of each payment constituting the percentage of total actual Tax Increment for such year equal to the Tax Increment Revenues (Developer's Share). The amounts in the Developer's Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District, as provided in such Credit Enhancement Agreement.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 178 Kennebec Street Unit 2 project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$22.08/\$1000 for the first year of the District. The amount of

property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

#### **Article IV. Municipal Approvals.**

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on July 5, 2018, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on July 16, 2018. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on July 16, 2018 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: July \_\_\_\_\_, 2018

\_\_\_\_\_  
Jon P. Jennings, City Manager, City of Portland

## CREDIT ENHANCEMENT AGREEMENT

This Credit Enhancement Agreement, dated as of \_\_\_\_\_, 2018, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and 100 Parris Street, LP, a Maine limited partnership (the “Developer”).

### WITNESSETH THAT

WHEREAS, the City designated the 178 Kennebec Street Unit 2 Affordable Housing Development District (the “District”) pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting held on July 16, 2018 and pursuant to the same City Council Meeting action adopted a development program and financial plan for the District (the “Development Program”), and

WHEREAS, the Director of the Maine State Housing Authority has reviewed and approved the District and the Development Program, and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to such City Council Meeting approval and a resolution of the Municipal Officers, adopted July 16, 2018 by vote of the City Council and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

### ARTICLE I: DEFINITIONS

Section 1.1. Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Affordable Housing Development Program Fund” means the Affordable Housing Development Program Fund described in Article III of the Development Program and established and maintained pursuant to Article II hereof.

“Agreement” means this Credit Enhancement Agreement between the City and the Developer.

“Captured Assessed Value” means the amount, stated as percentages or stated sums, of the Increased Assessed Value that is utilized from year to year to finance the Capital Program and Public Improvements described in the Development Program; the Captured Assessed Value of the District shall be 75% of the Increased Assessed Value.

“City” means the City of Portland, Maine, a municipality duly organized and existing under the laws of the State of Maine, its successors and assigns.

“Current Assessed Value” means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect.

“Developer” means 100 Parris Street, LP, its successors and assigns.

“Development Program” means the Development Program for the District as adopted by the City at a meeting of the City Council held on July 16, 2018.

“District” means the 178 Kennebec Street Unit 2 Affordable Housing Development District designated by the City pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of its City Council at a meeting held on July 16, 2018.

“Financial Plan” means the financial plan described in Article III of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may establish.

“Increased Assessed Value” means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

“Original Assessed Value” means the assessed value of the District as of March 31, 2018, which amount was zero Dollars (\$0.00).

“Project” means the design, planning, development, acquisition, construction, financing and installation of the Development Program as described in Section 2.03 of said Development Program.

“Project Costs” means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249 of title 30-A of the Maine Revised Statutes and included in the Development Program.

“Project Cost Account” means the Developer’s Project Cost Account described in Article III of the Development Program and established and maintained pursuant to Article II of this Agreement.

“Property Taxes” means any and all ad valorem property taxes levied, charged or assessed against real estate in the District by the City or on its behalf.

“Qualified Investments” means any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

“Tax Increment” means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District.

“Tax Increment Revenues (Developer’s Share)” means that percentage of the Tax Increment with respect to real estate now or hereafter located in the District retained pursuant to the terms of the Development Program to pay Project Costs of the Capital Program, and which amount is to be deposited each year during the term of this Agreement in the Developer’s Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer’s Share) is seventy-five percent (75%). The Tax Increment Revenues (Developer’s Share) will be calculated each year as more particularly described herein and in Exhibit A of the Development Program and will be based on the Increased Assessed Value of the District which percentage or amount shall be captured and retained to pay to the Developer the costs of the Capital Program described in the Development Program.

"Tax Shift" means the sum of the following amounts as calculated under the Tax Shift Formulas, as hereafter defined: (a) the difference between (i) the county tax payable by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of County Tax were included in the City's valuation in calculating the county tax, and (ii) the county tax payable by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating the county tax; plus (b) the difference between (i) the State aid to education that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State aid to education were included in the City's valuation in calculating State aid to education, and (ii) the State aid to education that received by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating such amounts of State aid to education; plus (c) the difference between (i) the State revenue sharing that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State revenue sharing were included in the City's valuation in calculating the amount of State revenue sharing, and (ii) the State revenue sharing received each year to the extent that the Captured Assessed Value is excluded in the City's valuation in calculating such amounts of revenue sharing. Examples of the calculation of the estimated Tax Shifts based on the current Tax Shift Formulas are attached as Exhibit F to the Development Program.

"Tax Shift Formulas" means the formulas utilized by the State of Maine in calculating (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

"Tax Payment Date" means the date(s) on which Property Taxes levied by the City are due and payable from owners of property located within the City.

Section 1.2. Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(e) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time. All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) If any clause, provision, Article or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, Article or Section shall not affect any of the remaining provisions hereof.

**ARTICLE II: DEVELOPER'S PROJECT COST ACCOUNT OF THE  
AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING  
REQUIREMENTS**

Section 2.1. Creation of Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City hereby confirms the creation and establishment of (a) the 178 Kennebec Street Unit 2 Affordable Housing Development District Affordable Housing Development Program Fund; and (b) a segregated fund in the name of the City designated as the "178 Kennebec Street Unit 2 Affordable Housing Development District Developer's Project Cost Account of the Affordable Housing Development Program Fund" (the "Developer's Project Cost Account") pursuant to, and in accordance with the terms and conditions of the Development Program. The Affordable Housing Development Program Fund shall consist of the Developer's Project Cost Account as described in the Development Program.

Section 2.2. Deposits into Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City shall deposit into the Developer's Project Cost Account contemporaneously with each payment of Property Tax by owners of property in District during the term of the District an amount equal to that portion thereof constituting the Tax Increment Revenues (Developer's Share) for the period or year to which the payment relates and shall allocate the amount so deposited to fund fully and pay the payments due to Developer under Article III of this Agreement.

Section 2.3. Use of Monies in Developer's Project Cost Account of the Affordable Housing Development Program Fund. Monies deposited in the Developer's Project Cost Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof.

Section 2.4. Monies Held in Trust. All monies required to be deposited with or paid into the Developer's Project Cost Account to fund payments of the Developer under the provisions hereof and the provisions of the Development Program, shall be held by the City in trust, for the benefit of the Developer.

Section 2.5. Investments. The monies in the Developer's Project Cost Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Developer's Project Cost Account.

Section 2.6. Liens. The City shall not hypothecate or grant or create any liens, security interests, encumbrances, or other interests of any nature whatsoever, with respect to the Developer's Project Cost Account or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

### **ARTICLE III: PAYMENT OBLIGATIONS**

Section 3.1. Credit Enhancement Payments. (a) The term of this Agreement shall be for the period beginning on the effective date of the approval of the District by the Director of the Maine State Housing Authority and continuing for thirty (30) years as described below. Subject to the conditions set forth below, the City agrees to pay to the Developer within 30 days of the end of each fiscal year (ends June 30 each year) this Agreement is in effect payments equal to the Tax Increment Revenues (Developer's Share) beginning with the designation and approval of the District by the Director of the Maine State Housing Authority, that being the City Tax Year beginning April 1, 2018 and ending March 31, 2019, which is Fiscal Year beginning July 1, 2018 and ending June 30, 2019 (TY18/FY19) and continuing with each Fiscal Year of the City thereafter through and including June 30, 2049 (FY49). The City shall make all such payments of the Tax Increment Revenues (Developer's Share) to the Developer, its successors and assigns according to Exhibit A of the Development Program, based upon the corresponding fiscal year's projected allocation percentage for each payment. The Developer's share will be 100% of the captured revenue (based on 75% of the value captured) as indicated on Exhibit A. The obligation of the City to make such payments shall be a limited obligation payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, whether or not actually deposited into the Developer's Project Cost Account, and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the owner or owners of property in the District fail(s) to pay any portion of the Property Taxes assessed by the City, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to such Tax Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

(c) Annually, Developer will provide operating cash flow statements as back-up documentation of Projects Costs for its TIF payments, which documentation will be kept confidential by the City.

Section 3.2. Prior to receiving the first payment under this Agreement:

(a) Developer shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

(b) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1 - 12 of the Portland City Code, whichever is greater. The City will provide the Developer with information that the Developer must include in all bid materials that the Developer provides to prospective contractors who may bid on the project to ensure that the wage requirements set forth in this section are met.

(c) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with City's Green Building Code set forth in the Chapter 6, Article VII, of the Portland City Code.

Section 3.3. Failure to Make Payment. In the event the City should fail to, or be unable to, make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid and the City agrees to pay the same with interest thereon at the rate equal to the interest rate per annum payable by owners of property in the City on Property Taxes that are not paid when due, but only from Tax Increment Revenues (Developer's Share) paid to the City by the Developer from time to time, and any earnings thereon, whether or not deposited into the Developer's Project Cost Account of the Affordable Housing Development Program Fund. Payments shall be applied first against accrued interest and then against principal. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit all Tax Increment Revenues (Developer's Share) to the Developer's Project Cost Account and its obligation to make payments to the Developer.

Section 3.4. Manner of Payments. The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its own use and benefit, for qualified Project Costs.

Section 3.5. Obligations Unconditional. The obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer. The City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

Section 3.6. Limited Obligation. The City's obligations of payment hereunder shall be limited obligations of the City payable solely from monies on deposit in the Developer's Project Cost Account, and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, and any earnings thereon, whether or not actually deposited into the Developer's Project Cost Account. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the City's obligation to levy Property Taxes upon the property in the District and the pledge of the Tax Increment Revenues (Developer's Share), and earnings thereon, established under this Agreement.

Section 3.7. Nondiscrimination. The Developer and its contractors employed in the construction phase the Project shall adhere to a policy of non-discrimination in all employment actions, practices, policies, procedures, phases, and conditions of employment. All employment-related decisions (including but not limited to hiring, discharge, transfers, promotions, discipline, training, job opportunities, and wage and salary levels) will be made without discrimination based on an individual's race or color, religion, age, sex (including pregnancy), sexual orientation, gender

identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of a claim or right under Maine's Workers' Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law. Provisions in applicable laws providing for bona fide occupational qualifications, business necessity, or age limitations will be adhered to by the developer and its contractors where appropriate. This policy shall not be construed to prohibit any employment action or policy which is required by federal law, rule or executive order.

#### **ARTICLE IV: PLEDGE AND SECURITY INTEREST**

Section 4.1. Pledge of Developer's Project Cost Account. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Developer the Developer's Project Cost Account to the extent of Developer's Rights under this Agreement to receive funds from the Developer's Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2. Perfection of Interest. The City authorizes the Developer to file and, if necessary, shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Developer's Project Cost Account to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder. To the extent deemed necessary by the Developer, the City will at such time and from time to time as requested by Developer establish the Developer's Project Cost Account as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

Section 4.3. Further Instruments. The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City.

Section 4.4. No Disposition of Developer's Project Cost Account. Except as permitted hereunder, the City shall not sell, lease, pledge, grant a security interest in, assign or otherwise dispose, encumber or hypothecate any interest in the Developer's Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer's Project Cost Account shall at all reasonable times be open to inspection by the Developer, its agents, lenders, designees and employees.

#### **ARTICLE V: DEFAULTS AND REMEDIES**

Section 5.1. Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default:”

(a) any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) any failure by the City to make deposits into the Affordable Housing Development Program Fund or the Developer’s Project Cost Account as and when due;

(c) any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or the Developer to be observed or performed, provided, however, that failure of Developer or any other owner of property in the District to pay Property Taxes when due shall not constitute an event of default hereunder; or

(d) if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City’s affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation, the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) the Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default be continued or repeated.

Section 5.4. Agreement to Pay Attorneys’ Fees and Expenses. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Developer herein contained, the

defaulting party shall, on demand thereof pay to the non-defaulting party the reasonable attorneys fees, costs and expenses so incurred by the non-defaulting party.

Section 5.5. Disputes. The parties agree that in the event of any dispute or disagreement hereunder the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism. The City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

#### **ARTICLE VI: EFFECTIVE DATE, TERM AND TERMINATION**

Section 6.1. Effective Date and Term. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof for the entire term of this Agreement and shall expire upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the City and the Developer hereunder.

Section 6.2. Cancellation and Expiration of Term. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

#### **ARTICLE VII: ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

Section 7.1. Consent to Pledge and/or Assignment. The City hereby acknowledges that it is the intent of the Developer to pledge and assign and to grant security interests in and to this Agreement and the amounts payable to Developer hereunder and Developer's right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge or to grant such security interests. Recognizing this intention, the City does hereby consent and agree to the grant of such security interests and to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness and other obligations or otherwise, on one or more occasions during the term hereof.

Section 7.2. Pledge, Assignment or Security Interest. The City hereby consents to the pledge, assignment or granting of a security interest by the Developer (or the pledge and assignment by any one Developer) of its right, title and interest in, to and under this Agreement. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective secured party, pledgee or assignee, including without limitation, recognition of the secured party, pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such secured party, pledgee or assignee the position of such secured party, assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the secured party, pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. Assignment. Except as provided in this Article VII, the Developer shall not have the right to transfer and assign to any person or entity all or any portion of its rights in, to and under this

Agreement; provided however, that any transfer of the real property within the District shall carry with it the benefit of this Agreement so long as (i) the portion of the rental units within the District which are required to be affordable under the Declaration of Covenants, Conditions and Restrictions executed by the Developer and the City remain affordable after such transfer; (ii) the prospective owner establishes to the reasonable satisfaction of the City that the financial benefits provided by this Agreement are still necessary to maintain the viability of the Project and (iii) the City Council approves the transfer.

#### **ARTICLE VIII: MISCELLANEOUS**

Section 8.1. Successors. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.3. No Personal Liability of Officials of the City. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his individual capacity and neither the members of the City Council of the City nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.5. Governing Law. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.6. Notices. All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid, addressed as follows:

If to the City:                   City Manager  
  City Portland  
  389 Congress Street  
  Portland, Maine 04101

If to the Developer:           100 Parris Street, LP  
  c/o Maine Workforce Housing/The Szanton Company  
  482 Congress Street Suite 203  
  Portland, ME 04101

Any of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.7. Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.8. Net Agreement. This Agreement shall be deemed and construed to be a “net agreement,” and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without any abatement, deductions or setoffs.

Section 8.9. Benefit of Assignees or Pledges. The City agrees that this Agreement is executed in part to induce secured parties, assignees or pledges to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such secured parties, assignee or pledgee from time to time of the Developer’s right, title and interest herein.

Section 8.10. Maine Housing Rules and Requirements. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable. The parties shall comply with the rule provisions for recovery of public revenue if conditions for approval of the District are not maintained for the duration of the District, as provided by rules adopted by the Maine State Housing Authority in accordance with applicable law. The Developer agrees to provide all information as required by the City to satisfy its reporting obligations.

Section 8.11. Affordability Covenants. The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration which is substantially in the same form as the “Declaration of Covenants, Conditions and Restrictions” which is attached to the Development Program as Exhibit I.

Section 8.12. Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates, estimated amounts of the Increased Assessed Value and the Tax Increment, estimated amounts of the Tax Increment Revenues (Developer’s Share), estimated development costs and other estimates. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise with respect to Developer’s property for purposes of ad valorem property taxation or any tax abatement proceeding or (b) modify or change in any way the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.13. Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS

CITY OF PORTLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings, Its City Manager

100 PARRIS STREET, LP

BY: \_\_\_\_\_,  
Its General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Nathan Szanton, Manager

C:\Users\mpd\Desktop\2018 AHTIF\Docs Submitted for Review xx.xx.18\02 178 Kennebec Street CEA Draft.docx

DRAFT

**CITY OF PORTLAND**  
**Declaration of Covenants, Conditions and Restrictions for the 977 Brighton Avenue**  
**Apartments Affordable Housing Tax Increment Financing District**

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and Avesta 977 Brighton LP, a Maine limited partnership with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (“Developer”).

**WITNESSETH**

**WHEREAS**, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of forty (40) units of rental housing located at 977 Brighton Avenue, Portland, Maine (the “Development”); and

**WHEREAS** the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

**WHEREAS**, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

**NOW THEREFORE**, City and the Developer agree as follows:

1. **Term**. The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).
2. **Enforceability of Covenants**. The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may

enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, or the repayment of the AHTIF, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance, provided that the AHTIF is repaid within a reasonable period of time after such involuntary loss or substantial destruction.

3. **Covenants**. Developer hereby covenants and represents to the City as follows:

- a. **Development**. The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of forty (40) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the nature, size, number or location of the units in the Development and the facilities in the units.
- b. **Use**. The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
- c. **Low Income Units**. For a period of thirty (30) years at least thirty-four (34) of the units will be occupied by households with incomes at or below sixty percent (60%) (collectively referred to as the "Low Income Units"). The remaining four (4) units will be market rate units.
  - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, ("Section 42") and income limits shall be adjusted for family size.
  - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the "Determination").
  - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household's income may exceed the Applicable Income Limit, adjusted for family size, at the time of the most recent Determination, if after such Determination, but before the next Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.

d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:

- i. For a unit without a separate bedroom, one individual.
- ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.

Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.

e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.

4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.

5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants

herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications**. This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability**. The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns**. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law**. This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices**. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer simultaneously to the Limited Partners at c/o Northern New England Housing Investment Fund, 75 Market Street, Suite 201, Portland, ME 04101, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor**. This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, Avesta 977 Brighton LP, and Avesta Housing Development Corporation [**construction lender and any other entities providing financing will also be parties**] dated \_\_\_\_\_, 2018 to be recorded in the Cumberland County Registry of Deeds herewith.

*Signature page follows.*

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of \_\_\_\_\_, 2018.

**CITY OF PORTLAND**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Jon P. Jennings  
Its City Manager

**AVESTA 977 BRIGHTON LP**  
BY: Pinecone Housing Corporation, its General Partner

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Dana Totman, Its President

**State of Maine**  
**Cumberland, ss.** \_\_\_\_\_, 2018

Personally appeared the above named Dana Totman, President of Pinecone Housing Corporation, General Partner of Avesta 977 Brighton LP, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation and limited partnership.

Before me,  
  
\_\_\_\_\_  
Notary Public/Attorney-at-Law  
\_\_\_\_\_  
(Print or type name)

**State of Maine**  
**Cumberland, ss.** \_\_\_\_\_, 2018

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,  
  
\_\_\_\_\_  
Notary Public/Attorney-at-Law  
\_\_\_\_\_  
(Print or type name)

City of Portland - TIF Model of 5/16/2018

OAV: \$0 as of 4/1/2017

CBL: 34-F-1

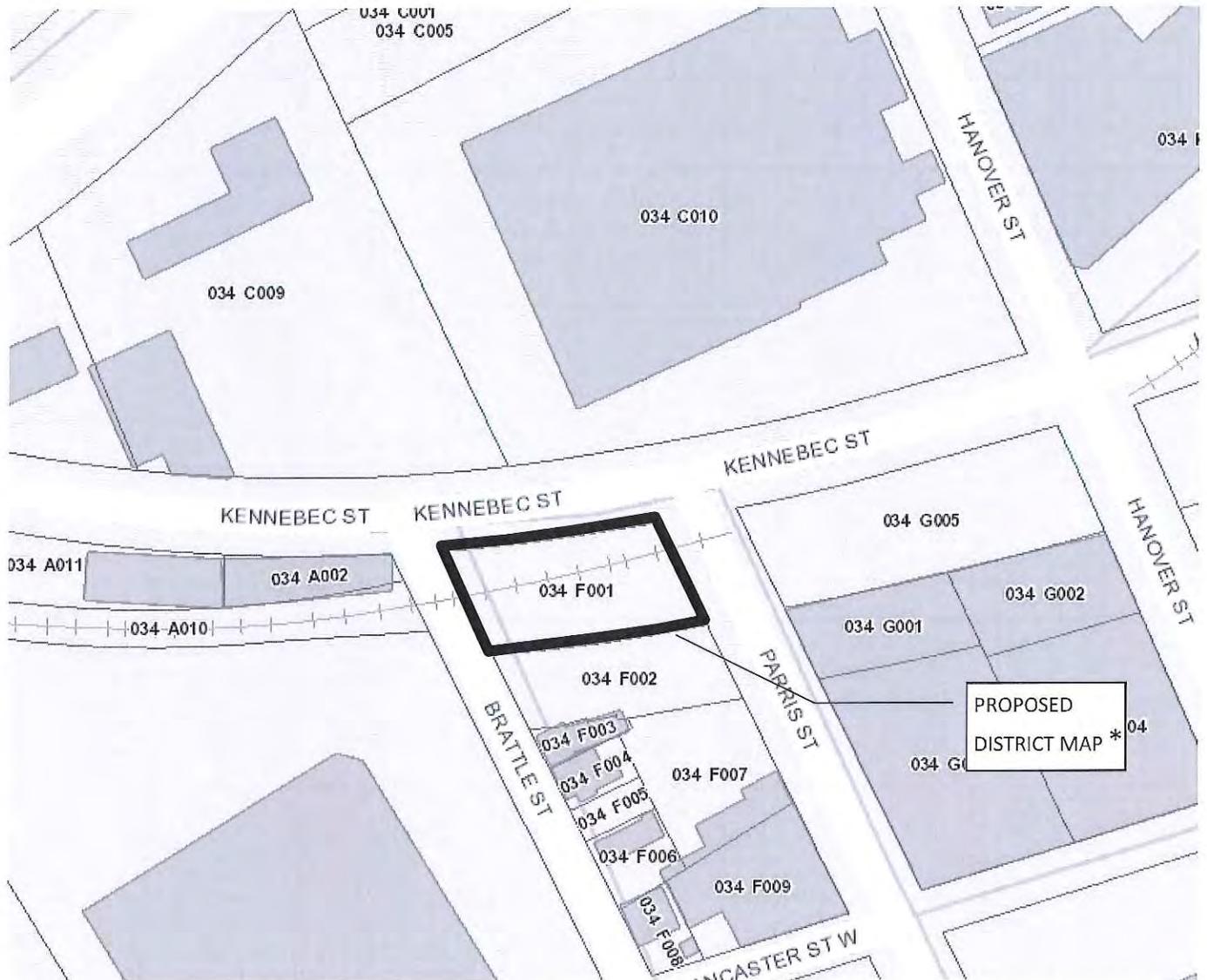
| City of Portland- TIF Projection Table - 178 Kennebec Street |                      |   |                        |                       |                        |  |  |   |   |
|--|----------------------|---|------------------------|-----------------------|------------------------|--|--|---|---|
| TIF Year   | Tax Year-<br>April 1 | Increased<br>Assessed Value<br>Real Prop. | % of Value<br>Captured | Captured<br>Valuation | Projected<br>Mill Rate | Total Projected<br>New Taxes<br>Captured | Captured<br>Revenue to<br>Business<br>Project<br>Account | Captured<br>Revenue to<br>Municipal<br>Project<br>Account | City Non-<br>Captured<br>General Fund<br>Revenues |
| 1  | 2019                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 22.08                  | \$71,218                                 | \$71,218   | \$0   | \$23,739  |
| 2  | 2020                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 22.52                  | \$72,642                                 | \$72,642   | \$0   | \$24,214  |
| 3  | 2021                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 22.98                  | \$74,095                                 | \$74,095   | \$0   | \$24,698  |
| 4  | 2022                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 23.43                  | \$75,577                                 | \$75,577   | \$0   | \$25,192  |
| 5  | 2023                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 23.90                  | \$77,088                                 | \$77,088   | \$0   | \$25,696  |
| 6  | 2024                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 24.38                  | \$78,630                                 | \$78,630   | \$0   | \$26,210  |
| 7  | 2025                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 24.87                  | \$80,203                                 | \$80,203   | \$0   | \$26,734  |
| 8  | 2026                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 25.37                  | \$81,807                                 | \$81,807   | \$0   | \$27,269  |
| 9  | 2027                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 25.87                  | \$83,443                                 | \$83,443   | \$0   | \$27,814  |
| 10   | 2028                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 26.39                  | \$85,112                                 | \$85,112   | \$0   | \$28,371  |
| 11   | 2029                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 26.92                  | \$86,814                                 | \$86,814   | \$0   | \$28,938  |
| 12   | 2030                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 27.46                  | \$88,550                                 | \$88,550   | \$0   | \$29,517  |
| 13   | 2031                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 28.01                  | \$90,321                                 | \$90,321   | \$0   | \$30,107  |
| 14   | 2032                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 28.57                  | \$92,128                                 | \$92,128   | \$0   | \$30,709  |
| 15   | 2033                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 29.14                  | \$93,970                                 | \$93,970   | \$0   | \$31,323  |
| 16   | 2034                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 29.72                  | \$95,850                                 | \$95,850   | \$0   | \$31,950  |
| 17   | 2035                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 30.32                  | \$97,767                                 | \$97,767   | \$0   | \$32,589  |
| 18   | 2036                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 30.92                  | \$99,722                                 | \$99,722   | \$0   | \$33,241  |
| 19   | 2037                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 31.54                  | \$101,716                                | \$101,716  | \$0   | \$33,905  |
| 20   | 2038                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 32.17                  | \$103,751                                | \$103,751  | \$0   | \$34,584  |
| 21   | 2039                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 32.81                  | \$105,826                                | \$105,826  | \$0   | \$35,275  |
| 22   | 2040                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 33.47                  | \$107,942                                | \$107,942  | \$0   | \$35,981  |
| 23   | 2041                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 34.14                  | \$110,101                                | \$110,101  | \$0   | \$36,700  |
| 24   | 2042                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 34.82                  | \$112,303                                | \$112,303  | \$0   | \$37,434  |
| 25   | 2043                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 35.52                  | \$114,549                                | \$114,549  | \$0   | \$38,183  |
| 26   | 2044                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 36.23                  | \$116,840                                | \$116,840  | \$0   | \$38,947  |
| 27   | 2045                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 36.95                  | \$119,177                                | \$119,177  | \$0   | \$39,726  |
| 28   | 2046                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 37.69                  | \$121,560                                | \$121,560  | \$0   | \$40,520  |
| 29   | 2047                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 38.45                  | \$123,992                                | \$123,992  | \$0   | \$41,331  |
| 30   | 2048                 | \$4,300,000                               | 75.00%                 | \$3,225,000           | 39.22                  | \$126,472                                | \$126,472  | \$0   | \$42,157  |
| <b>30 Year TIF Total</b>                                     |                      | <b>\$129,000,000</b>                      |                        | <b>\$96,750,000</b>   |                        | <b>\$2,889,164</b>                       | <b>\$2,889,164</b>                                       | <b>\$0</b>  | <b>\$963,055</b>                                  |
| <b>30 Year Average</b>                                       |                      |   |                        |                       |                        | <b>\$96,305</b>                          | <b>\$96,305</b>  | <b>\$0</b>  | <b>\$32,102</b>                                   |

**Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model -  
178 Kennebec Street**

**75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund**

| TIF Year                 | Tax Year-<br>April 1 | Total Added<br>Valuation | Sheltered<br>Valuation | Avoided Formula Impacts from Sheltering of Valuation |   |                                   |                          |
|--------------------------|----------------------|--------------------------|------------------------|--|---|-----------------------------------|--------------------------|
|                          |                      |                          |                        | Avoided Loss of<br>State Aid to for<br>Education     | Avoided Loss of<br>State Municipal<br>Revenue Sharing | Avoided Increase<br>in County Tax | Total Avoided<br>Impacts |
| 1                        | 2019                 | \$4,300,000              | \$3,225,000            | \$0  | \$1,887   | \$1,781                           | \$3,667                  |
| 2                        | 2020                 | \$4,300,000              | \$3,225,000            | \$0  | \$1,887   | \$1,781                           | \$3,667                  |
| 3                        | 2021                 | \$4,300,000              | \$3,225,000            | \$0  | \$1,887   | \$1,781                           | \$3,667                  |
| 4                        | 2022                 | \$4,300,000              | \$3,225,000            | \$13,722   | \$1,887   | \$1,781                           | \$17,390                 |
| 5                        | 2023                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 6                        | 2024                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 7                        | 2025                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 8                        | 2026                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 9                        | 2027                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 10                       | 2028                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 11                       | 2029                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 12                       | 2030                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 13                       | 2031                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 14                       | 2032                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 15                       | 2033                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 16                       | 2034                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 17                       | 2035                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 18                       | 2036                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 19                       | 2037                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 20                       | 2038                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 21                       | 2039                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 22                       | 2040                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 23                       | 2041                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 24                       | 2042                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 25                       | 2043                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 26                       | 2044                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 27                       | 2045                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 28                       | 2046                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 29                       | 2047                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| 30                       | 2048                 | \$4,300,000              | \$3,225,000            | \$27,445   | \$1,887   | \$1,781                           | \$31,112                 |
| <b>30 Year TIF Total</b> |                      | <b>\$129,000,000</b>     | <b>\$96,750,000</b>    | <b>\$727,286</b>                                     | <b>\$56,605</b>                                       | <b>\$53,419</b>                   | <b>\$837,310</b>         |
| <b>30 Year Average</b>   |                      |                          |                        | <b>\$24,243</b>                                      | <b>\$1,887</b>  | <b>\$1,781</b>                    | <b>\$27,910</b>          |

178 Kennebec Street Unit 2 Affordable Housing Tax Increment Financing District Map



\* All floors above the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the "Developer"), together with all rights appurtenant thereto including without limitation in the land comprising said parcel (which includes its undivided interest in the common elements of the entire condominium). It is the intention of the Developer of the project to declare this specified area as Unit 2 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland. Such specified area is referred to as "178 Kennebec Street Unit 2" or "Unit 2". This area is being designated as the affordable housing district, consistent with 33 MRSA Sec. 1601-105, which provides that a condominium together with its appurtenant interests constitute for all purposes a separate parcel of real estate.



Note: Islands not shown to improve map legibility.

PROPOSED  
DISTRICT

**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.

Google Maps 174 Kennebec St



Image capture: Aug 2017 © 2018 Google

Portland, Maine



Street View - Aug 2017









## 178 Kennebec Timeline

April 2018 – July 2018

- Full Site Plan and Subdivision Approval
- City HOME Application
- City Tax Increment Financing Application
- Market study

September 2018

- Submit Affordable Housing Tax Credit Application to MaineHousing

November 2018 – May 2019 (if successful on MaineHousing Application):

- Full design
- Finalize investor agreement
- Finalize construction loan

June 2019:

- Close and begin construction

Summer 2020:

- Open for occupancy

178 Kennebec Street  
 Portland, Maine  
 Developer: Maine Workforce Housing, LLC (Nathan S. Szanton  
 and Robert C.S. Monks, Principals)

04/27/18

46 Resident Units  
 36 Low-Income Units  
 10 Market-Rate Units  
 5 Residential Stories

**DEVELOPMENT BUDGET - SOURCES OF FUNDS**

**Sources of Funds**

|  |                   |       |               |          |   |   |
|--|-------------------|-------|---------------|----------|---|---|
| Equity Raise from Sale of LIHTC              | 6,192,000         |       |               |          |   |   |
| MaineHousing Mortgage - Interest Only        | 2,646,603         | 6.00% | Interest Only | 30 years |   |   |
| MaineHousing Deferred Debt                   | 1,080,000         |       |               |          | 0% int. principal and interest deferred until sale or transfer. | 30,000 per unit. 1,200,000 per project cap. |
| Deferred Developer Fee                       | 758,262           |       |               |          | Net Fee = 774,939   | \$34,939                                    |
| City HOME                                    | 400,000           |       |               |          |   |   |
| Furman LLL Buyout of Commercial Space at PLC | 829,943           |       |               |          | 30-year deferred loan, in 2nd position                          |   |
| GAP (EXCESS)                                 | <u>0</u>          |       |               |          |   |   |
| TOTAL  | <b>11,906,808</b> |       |               |          |   |   |

178 Kennebec Street  
Portland, Maine

Developer: Maine Workforce Housing, LLC (Nathan S. Szanton  
and Robert C.S. Monks, Principals)

46 Resident Units  
36 Affordable  
10 Market-Rate

Constr. cost/sq. ft. - finished space (not counting demolition, sitework, and contingency)  
46,669 Number of square feet of space in building  
41,215 Number of square feet of space - finished residential  
5,454 Number of square feet of space - vanilla box commercial  
Residential square footage, buildout at \$ 175.00 psf Commercial at \$ 132.00 psf  
7,932,553 Total Construction Cost (not including construction contingency)  
\$156,796 per residential unit of construction cost

DEVELOPMENT BUDGET - USES OF FUNDS

|   | Total Funds       | Retail Unit Costs | Notes  |
|---|-------------------|-------------------|--|
| Land Acquisition                              | 215,000           |                   | 4,674 per unit   |
| Parking requirement buy-out                   | 80,800            |                   | 33% 2 points Need to be less than 3,500 to get 3 points  |
| Demolition                                    | 0                 |                   | Assuming a need for 0.5 space per unit (23), less the 10 we have onsite (Housing only)   |
| Site Preparation                              | 0                 |                   | Existing building, landscaping, etc.   |
| Off-Site Improvements (paid by Owner)         | 0                 |                   | Included in Construction Cost  |
| Construction of finished space                | 7,932,553         | 709,020           | Includes utility hook-ups and all construction except demolition & site work. See note above re assumed cost per sq. ft.                 |
| Construction Contingency                      | 396,628           | 35,451            | 5.0% of finished construction cost.  |
| Utility Back-Charges                          | 40,000            | 3,575             |  |
| Furnishings, Fixtures & Equipment             | 85,000            |                   | Common area furnishings, laundry equipment, signage, wi-fi equipment, surveillance cameras, wall hangings, etc.                          |
| Architectural and Engineering                 | 299,000           | 26,725            | 6,500 per unit 3.77%   |
| Civil Engineering                             | 45,000            | 4,022             | Not included in architect's contract   |
| Landscape Architecture                        | 0                 | 0                 | Included in Civil Eng. Contract  |
| Geoengineering                                | 10,000            | 894               | Not included in architect's contract. Includes test borings, test pits, soil test processing and report preparations.                    |
| Testing and Special Inspections               | 15,000            | 1,341             |  |
| Legal and Title, Non-TC Related               | 82,000            | 7,329             | Negotiated fee: land use and title opinions; services in connection with land acquisition; etc. Additional \$15K for condo documentation |
| Legal, TC Syndication-Related                 | 33,000            |                   | Negotiated fee: creation of all documents, provision of due diligence, and conducting closings of LIHTC-related matters                  |
| Title Insurance                               | 20,000            |                   | Based on our negotiated rate with TICOR title insurance agency for simultaneous owner's and lender's coverage.                           |
| Cost Certification/Audit                      | 8,500             |                   | Budgeting \$1,000 for Carryover Allocation certification and \$5,500 for final cost certification  |
| Appraisal                                     | 7,500             |                   |  |
| Surveyor                                      | 5,600             | 501               | To establish boundaries  |
| Market Study                                  | 6,500             |                   | To substantiate demand and determine proper rent levels.   |
| Environmental Testing & Remediation           | 8,000             | 715               |  |
| City and State Permits and Fees               | 50,000            | 4,469             |  |
| MSHA Financing Application Fee                | 2,500             |                   |  |
| MSHA Financing Commitment Fee                 | 2,000             |                   | Non-refundable, due at execution of commitment   |
| MSHA Financing Fee                            | 52,932            |                   | 2% of tax-exempt debt amount, due at construction loan close.  |
| MSHA Review Fee                               | 2,500             |                   |  |
| Tax Credit Monitoring Fee                     | 36,000            |                   | \$1,000 per tax credit unit paid before issuance of an 8609.   |
| Tax Credit Allocation Fee                     | 54,000            |                   | 7.5% annual allocation of 720,000 798,887  |
| Soft Cost Contingency                         | 50,000            | 4,469             | For unforeseen and/or underbudgeted soft costs   |
| Developer Overhead and Fee (Gross)            | 1,533,201         |                   | MSHA Net Fee formula: \$17,500 for first 20 units, & \$15,000 each unit thereafter Net: 740000   |
| Tax and Insurance Reserve Pre-Funding         | 64,393            |                   | Six months of property taxes and insurance premium expense.  |
| Rent-up Deficit Reserve                       | 46,000            |                   | MSHA Max = \$1,000 per unit NTE \$50,000   |
| Operating Reserve                             | 286,500           |                   | MSHA requirement. 8 months of operating and residential debt service   |
| Pre-Funding of Replacement Reserve            | 72,235            |                   | 1% of cost of construction   |
| City of Portland Legal Fees                   | 15,000            |                   | TIF / CEA documents  |
| Construction Loan Orig. Fee                   | 16,298            | 1,457             | 0.2% of construction loan but not less than 16,000   |
| Construction Loan Interest                    | 235,168           | 21,020            | Based on loan of \$8.149 million at 4.5% for 14 months (12 month construction)   |
| Letter of Credit Fee for Performance Guaranty | 5,000             | 447               | Based on LOC value of \$500,000 at 1%  |
| Constr. Lender, Equity Provider Legal Fees    | 27,000            | 2,413             |  |
| Constr. Lender Plan Review, Inspection        | 9,200             | 822               | \$600/inspection for 12 inspections plus \$2000 for plans review   |
| Construction Period Insurance                 | 55,000            | 4,916             | Builder's Risk and General Liability Insurance   |
| Construction Period Taxes                     | 4,000             | 358               | 15 months of pre-construction assessment   |
| <b>TOTALS</b>                                 | <b>11,906,808</b> | <b>829,943</b>    |  |

**178 Kennebec Street**

Portland, Maine

Developer: Maine Workforce Housing, LLC (Nathan S. Szanton  
and Robert C.S. Monks, Principals)

|        |             |
|--------|-------------|
| 50%    | 32.6%       |
| 60%    | 45.7%       |
| market | 21.7%       |
|        | <u>100%</u> |

**OPERATING INCOME SCHEDULE**

**Income From Units**

| Unit Type  | # of Units | Square Footage | Gross Rent | Less Utility Allowance | Net Rent | Gross Potential Monthly Revenue From These Units |
|--|------------|----------------|------------|------------------------|----------|--|
| 0-BR LIHTC unit at/below 50% of AMI  | 0          | 500            | 788        | -30                    | 758      | -  |
| 1-BR LIHTC unit at/below 50% of AMI  | 15         | 650            | 845        | -40                    | 805      | 12,075   |
| 0-BR LIHTC unit at/below 60% of AMI  | 0          | 500            | 946        | -30                    | 916      | -  |
| 1-BR LIHTC unit at/below 60% of AMI  | 21         | 650            | 1,014      | -40                    | 974      | 20,454   |
| 0-BR Market Rate unit (avg. market rate rent for all 1-BR units within the bldg) | 0          | 500            |            |                        | 925      | -  |
| 1-BR Market Rate unit (avg. market rate rent for all 1-BR units within the bldg) | 10         | 650            |            |                        | 1195     | 11,950   |
| <b>Total Units</b>   | <b>46</b>  | <b>29,900</b>  |            |                        |          | <b>44,479</b>                                    |

(note that total number of units may not appear to equal the sum of the unit types due to formula rounding)

x 12 months =

**Gross Annual Revenue from Unit Rents**      **533,748**

**Laundry Income**

Based on experience at 53 Danforth at \$15 per unit per month      **8,280**

**SUMMARY OF INCOME**

|   |                |     |     |
|---|----------------|-----|-----|
| Gross Potential Annual Unit Rental Income   | 533,748        |     |     |
| Gross Potential Annual Laundry Income       | 8,280          |     |     |
| <b>Total Gross Potential Annual Income</b>  | <b>542,028</b> |     |     |
| Less Vacancy & Collection Loss at 5%        | -26,687        |     |     |
| Property Taxes Returned from The City (TIF) | 52,110         | 75% | CEA |
| <b>Net Annual Revenue</b>                   | <b>567,450</b> |     |     |

**178 Kennebec Street**

Portland, Maine

Developer: Maine Workforce Housing, LLC (Nathan S. Szanton  
and Robert C.S. Monks, Principals)**46 Resident Units**

41,215 sq. ft. of finished space

**OPERATING EXPENSE SCHEDULE****Administrative Expenses**

|                                |        |          |  |
|--------------------------------|--------|----------|--|
| Management Fee                 | 42,086 | 8.30%    | of gross receipts  |
| Marketing                      | 1,012  | \$22     | per unit per year.   |
| Legal                          | 2,300  | \$50     | per unit per year One eviction costs \$650-\$800. Appeals are more.                                      |
| Management Software Fees       | 1,557  | \$2.8    | per unit per month   |
| Audit                          | 6,600  |          | For annual audit of the project in MSHA format and tax return in format required by tax credit investor. |
| Telemedicine Room              | 1,800  |          | For dedicated phone service and upgraded internet for the Telemedicine Room                              |
| Resident Services Coordination | 32,120 | Based on | 16 hours per week \$35 /hr to the project, 52 weeks per year. Plus \$250/mo for supplies.                |
| Portland Fire Inspection Fee   | 1,610  | \$35     | per unit per year **additional RSC hours due to homeless set-aside management                            |

**Utilities**

|                            |        |       |  |
|----------------------------|--------|-------|--|
| Fuel                       | 34,500 | \$750 | per unit per year  |
| Common Area Electricity    | 16,100 | \$350 | pupy. Elevator, laundries, corridor & garage lights.                   |
| Water and Sewer            | 16,100 | \$350 | per unit per year  |
| On-site phone and internet | 8,000  |       | Phone service for elevator/office/alarm and internet access for office |

**Maintenance Expenses**

|                       |        |       |   |
|-----------------------|--------|-------|---|
| Elevator Maintenance  | 6,000  |       |   |
| Contract Maintenance  | 23,000 | \$500 | per unit per year. Includes pest control, electrical, plumbing & HVAC repair. |
| Common Area Cleaning  | 16,100 | \$350 | per unit per year 1342 per month  |
| Trash Removal         | 11,500 | \$250 | per unit per year 958 per month   |
| Snow Removal          | 5,000  |       |   |
| Work Orders/Turnovers | 29,900 | \$650 | per unit per year   |
| Parking Lease         | 18,000 | \$150 | per unit per month for 10 spaces  |
| Maintenance Supplies  | 3,450  | \$75  | per unit per year   |

**Taxes, Insurance, Other**

|   |                |       |                                   |
|---|----------------|-------|-----------------------------------|
| Taxes   | 73,600         |       |                                   |
| Insurance - Property and Liability & Umbrella | 13,800         | \$300 | pupy.                             |
| LIHTC Monitoring Fee                          |                |       | Prepaid as a development expense. |
| Replacement Reserve                           | 20,700         | \$450 | pupy.                             |
| <b>Real Estate Expenses w/o Debt Service</b>  | <b>384,835</b> |       |                                   |

|  |         |           |               |       |          |          |            |
|--|---------|-----------|---------------|-------|----------|----------|------------|
| Annual Debt Service - Amortizing Loan    |         | 0         | Amortizing    | 6.0%  | 20 years | \$0      | per month. |
| Annual Debt Service - Interest Only Loan | 158,796 | 2,646,603 | Interest Only | 6.00% | 30 years | \$13,233 | per month. |

**TOTAL REAL ESTATE EXPENSES 543,631****TOTAL ANNUAL REAL ESTATE INCOME 567,450**

|   |        |  |                                      |
|---|--------|--|--------------------------------------|
| Annual Cash Flow from Real Estate           | 23,819 | Cash flow of   | 500 PUPY minimum is required by MSHA |
| MH Debt Service Coverage Ratio              | 1.150  | Debt Service Coverage Ratio of 1.15 is required by MSHA.   |                                      |
| Annual Real Estate Operating Cost Per Unit  | 7,916  | Not including debt service and replacement reserve, but includes resident services coordination. |                                      |
| Monthly Real Estate Operating Cost Per Unit | 660    | Not including debt service and replacement reserve, but includes resident services coordination. |                                      |



**To:** Mary Davis, City of Portland  
**From:** Anne Boynton, Urban Ventures, Inc.  
**Re:** 178 Kennebec St  
Maine Workforce Housing, LLC (Szanton & Monk)  
**Date:** 6/4/18

### Executive Summary

178 Kennebec is a proposed new construction project which will provide 46 one bedroom senior apartments above a ground floor of artist studio space or retail. The project is being developed by Maine Workforce Housing as part of the comprehensive redevelopment of the Bayside neighborhood. This is envisioned as one of several projects moving forward at the start of the transformation of a marginal area into a thriving pedestrian friendly neighborhood of mixed residential and neighborhood retail. The developer requests \$400,000 in HOME funding and a 75% TIF. The unit mix will be 78% affordable units – 15 units below 50% AMI, 21 units below 60% AMI, including 4 units reserved for homeless households -- and 22% market rate units (10 units).

### Sources and Uses

|                               |                  |                     |                    |
|-------------------------------|------------------|---------------------|--------------------|
| Maine Housing 1 <sup>st</sup> | \$2,646,603      | Acquisition:        | \$295,600          |
| Maine Housing Deferred Debt   | \$1,080,000      | Hard Construction:  | \$8,329,181        |
| LIHTC Equity                  | \$6,192,000      | Soft & Misc Costs:  | \$859,100          |
| Sale of Commercial Unit       | \$829,943        | Financing Costs:    | \$400,598          |
| City of Portland HOME         | \$400,000        | Prefunded Reserves: | \$469,128          |
| Deferred Developer Fee:       | <u>\$758,262</u> | Developer Fee:      | <u>\$1,533,201</u> |
| Total Sources:                | \$11,906,808     | Total Uses:         | \$11,886,808       |

The difference between sources and uses seems to be a summation error in the developer's statement of uses, which reflects \$20,000 more in costs than is listed.

Letters of interest, intent, or commitment are not available for the sources. This is very early in project development, and the Maine Housing LIHTC application is the critical path for this financing structure. The developer has a track record of success applying for LIHTCs – of the 8 projects for which they have requested LIHTCs, they have received funding for all projects, with 7 out of 8 projects funded in the first application.

The developer is committing to defer 50% of their developer fee. The total fee is calculated at the maximum allowed by Maine Housing, and is 15.4% of Total Development Costs excluding reserves and developer fee. Fifteen percent is the upper end of industry standard. However, the cashflow does not look strong enough to retire the developer fee loan over 15 years. This is unlikely to be acceptable to the equity investor.

For analysis of "Uses," see Development Budget.



## Development Budget

### *Construction Costs:*

Construction costs are based on an estimate provided by Wright-Ryan. Given the conceptual designs, this is based on a per square foot cost only, with residential construction estimated at \$172/sq foot and commercial (shell) at \$132/sq foot. Information on site conditions is limited – this estimate assumes the need for pilings for the foundation and that there is no contaminated soil which needs removal, but both of these assumptions must be investigated and will impact costs. Modest finishes are budgeted consistent with typical affordable housing construction. No mention is made of differentiating finishes for market rate units.

### *Soft Costs:*

Most soft costs on a per unit basis are in the typical range for Portland area affordable housing projects. The developer fee, calculated at the maximum allowable, is the most significant outlier. At \$33,000 per unit, this is roughly twice other recent developer fees per unit. This concern is mitigated somewhat by the deferred developer fee loan, though since cashflow does not support the full repayment of that loan in 15 years, a developer fee loan of that size is unlikely to be allowed by the syndicator.

### *Contingency:*

Hard cost contingency is budgeted at 5%. This is typical for new construction and generally appropriate when close to closing. However, site conditions are unknown here and pose a significant potential to drive up costs. The estimate is based on current prices without an inflator. Since this project is in the very early stages of development, construction cost inflation will also drive up construction prices.

Soft cost contingency is \$50,000, or 2.62% of total soft costs. This is very thin for this stage of the development.

### *Acquisition:*

This site is being acquired as part of a larger package being transferred from the City of Portland to Rob Furman. Furman's purchase price for this site is \$250,000. Furman is selling to the developer for \$233,700. Furman is also expected to buy back the ground floor retail unit which he will manage as rental space for artist studio spaces or retail.

The site plan as currently configured includes no parking on the lot itself. Instead, as part of the Purchase Agreement with Furman, the developer will rent 19 spaces on the adjacent lot which is owned by Furman for at least 30 years. The price for the parking rent is not specified in the Purchase Agreement. The budget includes an \$80,600 line item called "Parking Requirement Buy -Out."

## Operating Budget & 20 Year Cashflow Projection

### *Project Income:*

There is no market study yet to confirm the appropriateness of the projected rents. The developer states there will be more than sufficient demand for these units based on the lengthy waiting lists for their three other rental properties in Portland. Without more information about the existing developments (for instance: location, unit size and amenities, age and/or income restrictions, rent rates



for market rate units if any) the existence of waiting lists does not demonstrate effective demand for this project.

The projected 50% AMI rents are consistent with the Front Street PHA project, so presumably are set at the maximum allowable for tax credit units restricted to households at 50% AMI. The 10 market rate units are budgeted at \$1,195 per month, much higher than Front Street market rate units (\$990), but substantially less than the Avesta Deering Place market rate of \$1,350. An industry standard 5% vacancy is budgeted for all unit types.

Since the ground floor unit is expected to be sold to an unrelated entity, this project does not bear the financial risk of retail vacancy.

### **Operating Expense**

Total operating expense per unit is in the high range of typical for affordable housing, \$7,166 once the TIF is accounted for, and is 12% higher than the next highest applicant in this round. Comparing the operating costs by line item, the cost differential is in maintenance which at \$2,455/unit is very high for newly constructed, one bedroom units occupied by seniors. All those characteristics should push maintenance down.

### **20 Year Cashflow & Debt Service Coverage Ratio (DSCR)**

Other than elevated maintenance expense, this project is not particularly fat. The developer has provided a 17 year cashflow projection which shows an acceptable 1.15 DSCR in year one, rising slightly to 1.17 in year in year 9, then slowly falling to 1.14 in year 17. A continuation of the developer's cashflow to year 20 would show a lower final year DSCR, which might explain why the developer provided only a 17 year projection. Due to slight differences in calculations, my estimate is slightly more optimistic, reflecting a 1.15 DSCR in year 20.

If the market does not support rents at \$1,195 for the market rate units, but those units rent instead for rates more consistent with the Front Street market rate units at around \$1,000, the projected cashflow is almost eliminated. However, there IS still a small cashflow, and the operating cost projections are high enough to provide some cushion in case of unexpected expenses.

### **Developer Financials**

Maine Workforce Housing LLC has submitted unaudited balance sheet and operating expenses statements plus their annual tax return for 2015, 2016 and 2017. What we see in these statements is that Maine Workforce Housing is not an entity with significant assets, owning and operating real estate. Instead it is a vehicle for managing some development funds and particularly for receiving and distributing developer fees to the principals. The principals may have significant resources they can bring to bear in the event a project experiences difficulties, but the organization itself does not.

For the year ending 12/31/17 the organization reported \$38,963 in cash and cash equivalents and accounts payable of \$11,248, for a net cash position of \$27,715. That is not much working capital for a development of almost \$12 million. And the organization is currently in the development process with two additional projects in Maine.



For the three reported years, the organization has seen growth in fee income – 2015 \$609,573, 2016 \$604,199 and 2017 \$1,246,472. Developer fee income is typically quite volatile for developers operating at this scale, and very sensitive to timing of deal closings. Unlike organizations whose revenue is primarily rental income, high 2017 developer fee income is not necessarily a predictor of high 2018 income.

## Recommendations

Subject to the availability of funds, I recommend a loan in the amount of \$400,000, zero percent interest, with repayment from cashflow, and a TIF at 75% over 30 years, with the following conditions prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.
2. Commitment of all sources on terms and conditions acceptable to City of Portland, including cashflow waterfall, raise rate, evidence of purchaser for commercial space, and a cashflow projection which shows retirement of developer fee loan;
3. Clean Phase I or Phase II if appropriate, and incorporation of all needed environmental remediation into the project budget;
4. explanation of the sales price of the site as it changes hands through the development process;
5. explanation of parking requirements and written agreements documenting how parking requirements will be met;
6. satisfactory market study which supports the projected unit mix and rent rates;
7. explanation of "Other Current Assets;" and evidence of satisfactory working capital and margin in case of cost over runs. This might come in the form of personal guarantees or prefunding a project specific development account.

# Development Budget with Permanent Sources

Date 5/29/2018  
 Project Name Kennebec St  
 Project Address 178 Kennebec St  
 Developer/Sponsor Maine Workforce Housing LLC (Szanton & Monk, Principals)

Total Units 46  
 Total Square Feet 47,325

|   | <u>Total</u>        | <u>Per Unit</u>  | <u>Per Sq Ft</u> |
|---|---------------------|------------------|------------------|
| <b>Sources of Funds</b>                           |                     |                  |                  |
| Permanent Financing - 1st Lien Maine Housing      | \$2,646,603         | \$57,535         | \$56             |
| Permanent Financing - Maine Housing Deferred Debt | \$1,080,000         | \$23,478         | \$23             |
| Equity (LIHTC/tenant contributions)               | \$6,192,000         | \$134,609        | \$131            |
| Deferred development fee                          | \$758,262           | \$16,484         | \$16             |
| Other -- City of Portland HOME                    | \$400,000           | \$8,696          | \$8              |
| Other -- Sale of Commercial Space                 | \$829,943           | \$18,042         | \$18             |
| <b>Total Sources of Funds</b>                     | <b>\$11,906,808</b> | <b>\$258,844</b> | <b>\$252</b>     |

## Uses of Funds

|  |                    |                  |              |
|--|--------------------|------------------|--------------|
| <b>Hard Costs</b>  |                    |                  |              |
| Site Improvements  | \$0                | \$0              | \$0          |
| Rehabilitation   | \$0                | \$0              | \$0          |
| New Construction   | \$7,932,553        | \$172,447        | \$168        |
| Contractor's Profit, Overhead, & Gen. Requirements       | #DIV/0!            | \$0              | \$0          |
| Hazardous Materials abatement (if contracted separately) |                    | \$0              | \$0          |
| Demolition Cost (if contracted separately)               |                    | \$0              | \$0          |
| Bond Premium   |                    | \$0              | \$0          |
| Other  |                    | \$0              | \$0          |
| Hard Cost Contingency (% of hard costs)                  | 5.0%               | \$396,628        | \$8,622      |
| <b>Total Hard Costs</b>                                  | <b>\$8,329,181</b> | <b>\$181,069</b> | <b>\$176</b> |

|  |                  |                 |             |
|--|------------------|-----------------|-------------|
| <b>Soft Costs</b>  |                  |                 |             |
| Building Permit & Fees + "Utility Back-Charges"            | \$90,000         | \$1,957         | \$2         |
| Survey & Engineering                                       | \$60,600         | \$1,317         | \$1         |
| Design & Permitting (% of const exp)                       | 4.5%             | \$299,000       | \$6,500     |
| Borrower Legal (all closings, excluding syndication legal) |                  | \$0             | \$0         |
| Title & Recording  | \$102,000        | \$2,217         | \$2         |
| Accounting & Cost Certification                            | \$6,500          | \$141           | \$0         |
| Construction Period Taxes                                  | \$4,000          | \$87            | \$0         |
| Construction Period Insurance                              | \$55,000         | \$1,196         | \$1         |
| Other: FF&E, Security                                      | \$65,000         | \$1,413         | \$1         |
| Other Testing = 15k  | \$15,000         | \$326           | \$0         |
| <b>Total Soft Costs</b>                                    | <b>\$697,100</b> | <b>\$15,154</b> | <b>\$15</b> |

| <b>Financing Costs</b>                             |                  |                |            |
|--|------------------|----------------|------------|
| Construction Loan Origination Fees                 | \$16,298         | \$354          | \$0        |
| Construction Period Interest                       | \$235,168        | \$5,112        | \$5        |
| Lender Inspection Fees                             | \$9,200          | \$200          | \$0        |
| Letter of Credit Fee                               | \$5,000          | \$109          | \$0        |
| Permanent Loan Fees/MSHA Fees                      | \$59,932         | \$1,303        | \$1        |
| Construction Lender Legal                          | \$27,000         | \$587          | \$1        |
| Other Legal, syndication = \$33k; City legal \$15k | \$48,000         | \$1,043        | \$1        |
| <b>Total Financing Costs</b>                       | <b>\$400,598</b> | <b>\$8,709</b> | <b>\$8</b> |

| <b>Miscellaneous</b>                                 |                  |                |             |
|--|------------------|----------------|-------------|
| Market Survey  | \$6,500          | \$141          | \$0         |
| Appraisal  | \$7,500          | \$163          | \$0         |
| Environmental Study                                  | \$8,000          | \$174          | \$0         |
| LIHTC Fees -- prepaid monitoring & allocation fee    | \$90,000         | \$1,957        | \$2         |
| Other: Commissioning                                 |                  | \$0            | \$0         |
| Relocation Costs                                     |                  | \$0            | \$0         |
| Other  | \$0              | \$0            | \$0         |
| Soft Cost Contingency (% of soft costs excl Dev Fee) | 2.62%            | \$50,000       | \$1,087     |
| <b>Total Miscellaneous:</b>                          | <b>\$162,000</b> | <b>\$3,522</b> | <b>\$12</b> |

| <b>Acquisition</b>                  |                  |                |            |
|-------------------------------------|------------------|----------------|------------|
| Acquisition: Buildings              | \$0              | \$0            | \$0        |
| Acquisition: Land                   | \$215,000        | \$4,674        | \$5        |
| Acquisition: Legal                  | \$0              | \$0            | \$0        |
| Other Parking Requirement "buy-out" | \$80,600         | \$1,752        | \$2        |
| <b>Total Acquisition</b>            | <b>\$295,600</b> | <b>\$6,426</b> | <b>\$6</b> |

| <b>Reserves and Developer Fee</b>       |                   |                    |             |
|---|-------------------|--------------------|-------------|
| Operating Deficit Escrow                | \$286,500         | \$6,228            | \$6         |
| Prefunded Replacement Reserve           | \$72,235          | \$1,570            | \$2         |
| Taxes & Insurance Escrow                | \$64,393          | \$1,400            | \$1         |
| Developer Overhead                      | \$1,533,201       | \$33,330           | \$32        |
| Developer Profit                        |                   | \$0                | \$0         |
| Rent Up Reserve & Marketing             | \$46,000          | \$1,000            | \$1         |
| Other                                   | \$0               | \$0                | \$0         |
| <b>Total Reserves and Developer Fee</b> | <b>\$ 469,128</b> | <b>\$2,002,329</b> | <b>\$42</b> |

| <b>Total Uses of Funds</b> |                     |                  |              |
|----------------------------|---------------------|------------------|--------------|
|                            | <b>\$11,886,808</b> | <b>\$258,409</b> | <b>\$260</b> |
|                            |                     | \$20,000         |              |

Developer Fee Analysis: Total Fees: \$1,533,201  
Percent of TDC: 15.44% (excluding reserves & developer fee)

# Project Operating Pro Forma

Date May 29, 2018  
 Project Name 178 Kennebec St  
 Project Address 178 Kennebec St  
 Developer/Sponsor Maine Workforce Housing LLC (Szanton & Monk, Principals)

## Rental Income

| Unit Type     | Number of Units | Per Unit Sq Ft | Total Sq Ft  | Restriction on % Median Inc. | Per Unit Monthly Gross Rent | Utility Deductions | Rent Subsidy | Per Unit Monthly Net Rent | Per Unit Net Rent Per Sq Ft | Total Monthly Net Income | Total Annual Net Rent |
|---------------|-----------------|----------------|--------------|------------------------------|-----------------------------|--------------------|--------------|---------------------------|-----------------------------|--------------------------|-----------------------|
| 0 BR          |                 |                | 0            | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 0 BR          |                 |                | 0            | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 1 BR          | 15              | 650            | 9750         | 50%                          | \$845                       | \$40               |              | \$805                     | 1.24                        | \$12,075                 | \$144,900             |
| 1 BR          | 21              | 650            | 13650        | 60%                          | \$1,014                     | \$40               |              | \$974                     | 1.50                        | \$20,454                 | \$245,448             |
| 1 BR          | 10              | 650            | 6500         | market                       | \$1,195                     | \$0                |              | \$1,195                   | 1.84                        | \$11,950                 | \$143,400             |
| 2 BR          |                 |                | 0            | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 3 BR          |                 |                | 0            | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 3 BR          |                 |                | 0            | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 4 BR          |                 |                | 0            | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 4 BR          |                 |                | 0            | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| Other         |                 |                | 0            | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| Other         |                 |                | 0            | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| <b>Total:</b> | <b>46</b>       |                | <b>29900</b> |                              |                             |                    |              |                           |                             | <b>\$44,479</b>          | <b>\$533,748</b>      |

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

Note: Year 1 is the first full year of stabilized operations

|                                 | Year 1    | Year 1/Unit      | Year 2          | Year 3           | Year 4           | Year 5           | Year 6           | Year 7           | Year 8           | Year 9           | Year 10          |
|---------------------------------|-----------|------------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
|                                 |           |                  | 2021            | 2022             | 2023             | 2024             | 2025             | 2026             | 2027             | 2028             | 2029             |
| <b>Income</b>                   |           |                  |                 |                  |                  |                  |                  |                  |                  |                  |                  |
| Sch. Gross Income - Residential | \$533,748 | \$11,603         | \$544,423       | \$555,311        | \$566,418        | \$577,746        | \$589,301        | \$601,087        | \$613,109        | \$625,371        | \$637,878        |
| Vacancy Loss                    | 5.0%      | (\$26,687)       | (\$580)         | (\$27,221)       | (\$27,766)       | (\$28,321)       | (\$28,887)       | (\$29,465)       | (\$30,054)       | (\$30,655)       | (\$31,269)       |
| Other income (laundry)          | \$8,280   | \$180            | \$8,446         | \$8,615          | \$8,787          | \$8,963          | \$9,142          | \$9,325          | \$9,511          | \$9,701          | \$9,895          |
| TIF (75% TIF requested)         | 3%        | \$52,110         | \$1,133         | \$53,673         | \$55,283         | \$56,942         | \$58,650         | \$60,410         | \$62,222         | \$64,089         | \$66,011         |
| <b>Effective Gross Income</b>   |           | <b>\$567,451</b> | <b>\$12,336</b> | <b>\$579,321</b> | <b>\$591,444</b> | <b>\$603,826</b> | <b>\$616,472</b> | <b>\$629,387</b> | <b>\$642,579</b> | <b>\$656,053</b> | <b>\$669,815</b> |
| <b>Administrative</b>           | 8.30%     |                  | 8.30%           |                  |                  |                  |                  |                  |                  |                  |                  |
| Management Fee                  | 8.30%     | \$42,086         | \$915           | \$42,928         | \$43,786         | \$44,662         | \$45,555         | \$46,466         | \$47,396         | \$48,344         | \$49,310         |
| Management Charges              |           | \$0              | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Marketing Expense               |           | \$1,012          | \$22            | \$1,042          | \$1,074          | \$1,106          | \$1,139          | \$1,173          | \$1,208          | \$1,245          | \$1,282          |
| Legal                           |           | \$2,300          | \$50            | \$2,369          | \$2,440          | \$2,513          | \$2,589          | \$2,666          | \$2,746          | \$2,829          | \$2,914          |
| Audit & Accounting              |           | \$6,600          | \$143           | \$6,798          | \$7,002          | \$7,212          | \$7,428          | \$7,651          | \$7,881          | \$8,117          | \$8,361          |
| Admin Other                     |           | \$4,967          | \$108           | \$5,116          | \$5,269          | \$5,428          | \$5,590          | \$5,758          | \$5,931          | \$6,109          | \$6,292          |
| <b>Total Administrative</b>     |           | <b>\$56,965</b>  | <b>\$1,238</b>  | <b>\$58,253</b>  | <b>\$59,571</b>  | <b>\$60,921</b>  | <b>\$62,302</b>  | <b>\$63,715</b>  | <b>\$65,162</b>  | <b>\$66,643</b>  | <b>\$68,159</b>  |
| <b>Supportive Services</b>      |           | <b>\$32,120</b>  | <b>\$698</b>    | <b>\$33,084</b>  | <b>\$34,076</b>  | <b>\$35,098</b>  | <b>\$36,151</b>  | <b>\$37,236</b>  | <b>\$38,353</b>  | <b>\$39,504</b>  | <b>\$40,689</b>  |
| <b>Utilities</b>                |           |                  |                 |                  |                  |                  |                  |                  |                  |                  |                  |
| Fuel Oil                        |           | \$34,500         | \$750           | \$35,535         | \$36,601         | \$37,699         | \$38,830         | \$39,995         | \$41,195         | \$42,431         | \$43,704         |
| Natural Gas                     |           | \$0              | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Electric                        |           | \$16,100         | \$350           | \$16,583         | \$17,080         | \$17,593         | \$18,121         | \$18,664         | \$19,224         | \$19,801         | \$20,395         |
| Water / Sewer                   |           | \$16,100         | \$350           | \$16,583         | \$17,080         | \$17,593         | \$18,121         | \$18,664         | \$19,224         | \$19,801         | \$20,395         |
| Other                           |           | \$8,000          | \$174           | \$8,240          | \$8,487          | \$8,742          | \$9,004          | \$9,274          | \$9,552          | \$9,839          | \$10,134         |
| <b>Total Utilities</b>          |           | <b>\$74,700</b>  | <b>\$1,624</b>  | <b>\$76,941</b>  | <b>\$79,249</b>  | <b>\$81,627</b>  | <b>\$84,076</b>  | <b>\$86,598</b>  | <b>\$89,196</b>  | <b>\$91,872</b>  | <b>\$94,628</b>  |

| Maintenance                    | Year 1           | Year 1/Unit    | Year 2           | Year 3           | Year 4           | Year 5           | Year 6           | Year 7           | Year 8           | Year 9           | Year 10          |
|--------------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Grounds                        | \$5,000          | \$109          | \$5,150          | \$5,305          | \$5,464          | \$5,628          | \$5,796          | \$5,970          | \$6,149          | \$6,334          | \$6,524          |
| Janitorial                     | \$16,100         | \$350          | \$16,583         | \$17,080         | \$17,593         | \$18,121         | \$18,664         | \$19,224         | \$19,801         | \$20,395         | \$21,007         |
| Trash Removal                  | \$11,500         | \$250          | \$11,845         | \$12,200         | \$12,566         | \$12,943         | \$13,332         | \$13,732         | \$14,144         | \$14,568         | \$15,005         |
| Security                       |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Equipment & Supplies           | \$3,450          | \$75           | \$3,554          | \$3,660          | \$3,770          | \$3,883          | \$3,999          | \$4,119          | \$4,243          | \$4,370          | \$4,501          |
| Maintenance                    | \$29,900         | \$650          | \$30,797         | \$31,721         | \$32,673         | \$33,653         | \$34,662         | \$35,702         | \$36,773         | \$37,876         | \$39,013         |
| Maintenance contracts (HVAC, e | \$29,000         | \$630          | \$29,870         | \$30,766         | \$31,689         | \$32,640         | \$33,619         | \$34,628         | \$35,666         | \$36,736         | \$37,838         |
| Other Parking Lease            | \$18,000         | \$391          | \$18,540         | \$19,096         | \$19,669         | \$20,259         | \$20,867         | \$21,493         | \$22,138         | \$22,802         | \$23,486         |
| <b>Total Maintenance</b>       | <b>\$112,950</b> | <b>\$2,455</b> | <b>\$116,339</b> | <b>\$119,829</b> | <b>\$123,424</b> | <b>\$127,126</b> | <b>\$130,940</b> | <b>\$134,868</b> | <b>\$138,914</b> | <b>\$143,082</b> | <b>\$147,374</b> |

| Taxes & Insurance   |                 |                |                 |                 |                 |                 |                  |                  |                  |                  |                  |
|---|-----------------|----------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|------------------|------------------|
| Real Estate Taxes or PILOT                                    | \$73,600        | \$1,600        | \$75,808        | \$78,082        | \$80,425        | \$82,837        | \$85,323         | \$87,882         | \$90,519         | \$93,234         | \$96,031         |
| Payroll Taxes / Fidelity Bond /<br>Workers Comp / Health Ins. |                 | \$0            | \$0             | \$0             | \$0             | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              |
| Insurance (property, liability)                               | \$13,800        | \$300          | \$14,214        | \$14,640        | \$15,080        | \$15,532        | \$15,998         | \$16,478         | \$16,972         | \$17,481         | \$18,006         |
| Other   |                 | \$0            | \$0             | \$0             | \$0             | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Taxes &amp; Insurance</b>                            | <b>\$87,400</b> | <b>\$1,900</b> | <b>\$90,022</b> | <b>\$92,723</b> | <b>\$95,504</b> | <b>\$98,369</b> | <b>\$101,321</b> | <b>\$104,360</b> | <b>\$107,491</b> | <b>\$110,716</b> | <b>\$114,037</b> |

|                             |          |       |          |          |          |          |          |          |          |          |          |
|-----------------------------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>Replacement Reserves</b> | \$20,700 | \$450 | \$21,321 | \$21,961 | \$22,619 | \$23,298 | \$23,997 | \$24,717 | \$25,458 | \$26,222 | \$27,009 |
| <b>Operating Reserves</b>   |          | \$0   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Total Expenses</b> | <b>\$384,835</b> | <b>\$8,366</b> | <b>\$395,959</b> | <b>\$407,409</b> | <b>\$419,193</b> | <b>\$431,322</b> | <b>\$443,806</b> | <b>\$456,656</b> | <b>\$469,882</b> | <b>\$483,495</b> | <b>\$497,506</b> |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

|                             |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Net Operating Income</b> | <b>\$182,616</b> | <b>\$3,970</b> | <b>\$183,361</b> | <b>\$184,035</b> | <b>\$184,632</b> | <b>\$185,149</b> | <b>\$185,581</b> | <b>\$185,923</b> | <b>\$186,171</b> | <b>\$186,320</b> | <b>\$186,365</b> |
|-----------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

| Debt Service                         |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|--------------------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| First Lien                           | \$158,796        | \$3,452        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        |
| Second Lien                          |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Other                                |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Debt Service (Must Pay)</b> | <b>\$158,796</b> | <b>\$3,452</b> | <b>\$158,796</b> |

|                                    |             |       |             |             |             |             |             |             |             |             |             |
|------------------------------------|-------------|-------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Cash Flow (after Must Pay Debt)    | \$23,820    | \$518 | \$24,565    | \$25,239    | \$25,836    | \$26,353    | \$26,785    | \$27,127    | \$27,375    | \$27,524    | \$27,569    |
| <b>Debt Service Coverage Ratio</b> | <b>1.15</b> |       | <b>1.15</b> | <b>1.16</b> | <b>1.16</b> | <b>1.17</b> | <b>1.17</b> | <b>1.17</b> | <b>1.17</b> | <b>1.17</b> | <b>1.17</b> |

| Cash Flow Debt Payments              |                |             |                |                |                |                |                |                |                |                |                |
|--------------------------------------|----------------|-------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| City of Portland                     | 0.0%           | \$0         | \$0            | \$0            | \$0            | \$0            | \$0            | \$0            | \$0            | \$0            | \$0            |
| Developer Fee Loan                   | 95.0%          | \$22,629    | \$492          | \$23,337       | \$23,977       | \$24,545       | \$25,036       | \$25,446       | \$25,771       | \$26,007       | \$26,191       |
| <b>Cash Flow Retained by Project</b> | <b>\$1,191</b> | <b>\$26</b> | <b>\$1,228</b> | <b>\$1,262</b> | <b>\$1,292</b> | <b>\$1,318</b> | <b>\$1,339</b> | <b>\$1,356</b> | <b>\$1,369</b> | <b>\$1,376</b> | <b>\$1,378</b> |
| Retained Cash Flow %                 | 0%             | \$757,071   | \$733,734      | \$709,757      | \$685,212      | \$660,176      | \$634,731      | \$608,960      | \$582,953      | \$556,805      | \$530,614      |

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

|                                 | Year 11          | Year 12          | Year 13          | Year 14          | Year 15          | Year 16          | Year 17          | Year 18          |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Income                          | \$2,030          | \$2,031          | 2032             | 2033             | 2034             | 2035             | 2036             | 2037             |
| Sch. Gross Income - Residential | \$650,636        | \$663,649        | \$676,922        | \$690,460        | \$704,269        | \$718,355        | \$732,722        | \$747,376        |
| Vacancy Loss                    | 5.0%             | (\$32,532)       | (\$33,182)       | (\$33,846)       | (\$34,523)       | (\$35,213)       | (\$36,636)       | (\$37,369)       |
| Other income (laundry)          | \$10,093         | \$10,295         | \$10,501         | \$10,711         | \$10,925         | \$11,144         | \$11,367         | \$11,594         |
| TIF                             | \$70,031         | \$72,132         | \$74,296         | \$76,525         | \$78,821         | \$81,186         | \$83,621         | \$86,130         |
| <b>Effective Gross Income</b>   | <b>\$698,229</b> | <b>\$712,894</b> | <b>\$727,873</b> | <b>\$743,173</b> | <b>\$758,802</b> | <b>\$774,766</b> | <b>\$791,073</b> | <b>\$807,731</b> |

| <b>Administrative</b>       |                 |                 |                 |                 |                 |                 |                 |                 |
|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Management Fee              | \$51,303        | \$52,329        | \$53,375        | \$54,443        | \$55,532        | \$56,642        | \$57,775        | \$58,931        |
| Management Charges          | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Marketing Expense           | \$1,360         | \$1,401         | \$1,443         | \$1,486         | \$1,531         | \$1,577         | \$1,624         | \$1,673         |
| Legal                       | \$3,091         | \$3,184         | \$3,279         | \$3,378         | \$3,479         | \$3,583         | \$3,691         | \$3,802         |
| Audit & Accounting          | \$8,870         | \$9,136         | \$9,410         | \$9,692         | \$9,983         | \$10,283        | \$10,591        | \$10,909        |
| Admin Other                 | \$6,675         | \$6,875         | \$7,082         | \$7,294         | \$7,513         | \$7,738         | \$7,971         | \$8,210         |
| <b>Total Administrative</b> | <b>\$71,299</b> | <b>\$72,925</b> | <b>\$74,589</b> | <b>\$76,293</b> | <b>\$78,037</b> | <b>\$79,823</b> | <b>\$81,652</b> | <b>\$83,523</b> |

|                            |                 |                 |                 |                 |                 |                 |                 |                 |
|----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Supportive Services</b> | <b>\$43,167</b> | <b>\$44,462</b> | <b>\$45,795</b> | <b>\$47,169</b> | <b>\$48,584</b> | <b>\$50,042</b> | <b>\$51,543</b> | <b>\$53,089</b> |
|----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|

| <b>Utilities</b>       |                  |                  |                  |                  |                  |                  |                  |                  |
|------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Fuel Oil               | \$46,365         | \$47,756         | \$49,189         | \$50,664         | \$52,184         | \$53,750         | \$55,362         | \$57,023         |
| Electric               | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Gas                    | \$21,637         | \$22,286         | \$22,955         | \$23,643         | \$24,353         | \$25,083         | \$25,836         | \$26,611         |
| Water / Sewer          | \$21,637         | \$22,286         | \$22,955         | \$23,643         | \$24,353         | \$25,083         | \$25,836         | \$26,611         |
| Other                  | \$10,751         | \$11,074         | \$11,406         | \$11,748         | \$12,101         | \$12,464         | \$12,838         | \$13,223         |
| <b>Total Utilities</b> | <b>\$100,391</b> | <b>\$103,402</b> | <b>\$106,504</b> | <b>\$109,699</b> | <b>\$112,990</b> | <b>\$116,380</b> | <b>\$119,872</b> | <b>\$123,468</b> |

| <b>Maintenance</b>             | <b>Year 11</b>   | <b>Year 12</b>   | <b>Year 13</b>   | <b>Year 14</b>   | <b>Year 15</b>   | <b>Year 16</b>   | <b>Year 17</b>   | <b>Year 18</b>   |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Janitorial                     | \$6,720          | \$6,921          | \$7,129          | \$7,343          | \$7,563          | \$7,790          | \$8,024          | \$8,264          |
| Exterminating                  | \$21,637         | \$22,286         | \$22,955         | \$23,643         | \$24,353         | \$25,083         | \$25,836         | \$26,611         |
| Trash Removal                  | \$15,455         | \$15,919         | \$16,396         | \$16,888         | \$17,395         | \$17,917         | \$18,454         | \$19,008         |
| Security                       | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Grounds                        | \$4,637          | \$4,776          | \$4,919          | \$5,066          | \$5,218          | \$5,375          | \$5,536          | \$5,702          |
| Maintenance                    | \$40,183         | \$41,389         | \$42,630         | \$43,909         | \$45,226         | \$46,583         | \$47,981         | \$49,420         |
| Elevator, HVAC, pool contracts | \$38,974         | \$40,143         | \$41,347         | \$42,587         | \$43,865         | \$45,181         | \$46,536         | \$47,933         |
| Other                          | \$24,190         | \$24,916         | \$25,664         | \$26,434         | \$27,227         | \$28,043         | \$28,885         | \$29,751         |
| <b>Total Maintenance</b>       | <b>\$151,795</b> | <b>\$156,349</b> | <b>\$161,040</b> | <b>\$165,871</b> | <b>\$170,847</b> | <b>\$175,972</b> | <b>\$181,252</b> | <b>\$186,689</b> |

| <b>Taxes &amp; Insurance</b>                               |                  |                  |                  |                  |                  |                  |                  |                  |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Real Estate Taxes or PILOT                                 | \$98,912         | \$101,880        | \$104,936        | \$108,084        | \$111,327        | \$114,666        | \$118,106        | \$121,650        |
| Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins. | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Insurance (property, liability)                            | \$18,546         | \$19,102         | \$19,676         | \$20,266         | \$20,874         | \$21,500         | \$22,145         | \$22,809         |
| Other  | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Taxes &amp; Insurance</b>                         | <b>\$117,458</b> | <b>\$120,982</b> | <b>\$124,612</b> | <b>\$128,350</b> | <b>\$132,200</b> | <b>\$136,166</b> | <b>\$140,251</b> | <b>\$144,459</b> |

|                             |          |          |          |          |          |          |          |          |
|-----------------------------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>Replacement Reserves</b> | \$27,819 | \$28,654 | \$29,513 | \$30,399 | \$31,311 | \$32,250 | \$33,217 | \$34,214 |
| <b>Operating Reserves</b>   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Total Expenses</b> | <b>\$511,929</b> | <b>\$526,773</b> | <b>\$542,053</b> | <b>\$557,781</b> | <b>\$573,970</b> | <b>\$590,634</b> | <b>\$607,787</b> | <b>\$625,442</b> |
|-----------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

|                             |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Net Operating Income</b> | <b>\$186,300</b> | <b>\$186,120</b> | <b>\$185,820</b> | <b>\$185,392</b> | <b>\$184,832</b> | <b>\$184,132</b> | <b>\$183,287</b> | <b>\$182,289</b> |
|-----------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

| <b>Debt Service</b>                  |                  |                  |                  |                  |                  |                  |                  |                  |
|--------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| First Lien                           | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        | \$158,796        |
| Second Lien                          | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Other                                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Debt Service (Must Pay)</b> | <b>\$158,796</b> |

|                                    |             |             |             |             |             |             |             |             |
|------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Cash Flow (after Must Pay Debt)    | \$27,504    | \$27,324    | \$27,024    | \$26,596    | \$26,036    | \$25,336    | \$24,491    | \$23,493    |
| <b>Debt Service Coverage Ratio</b> | <b>1.17</b> | <b>1.17</b> | <b>1.17</b> | <b>1.17</b> | <b>1.16</b> | <b>1.16</b> | <b>1.15</b> | <b>1.15</b> |

| <b>Cash Flow Debt Payments</b>       |                |                |                |                |                |                |                |                |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| DHCD                                 | 0.0%           | \$0            | \$0            | \$0            | \$0            | \$0            | \$0            | \$0            |
| Developer Fee Loan                   | 95.0%          | \$26,129       | \$25,958       | \$25,672       | \$25,266       | \$24,734       | \$24,069       | \$23,318       |
| <b>Cash Flow Retained by Project</b> | <b>\$1,375</b> | <b>\$1,366</b> | <b>\$1,351</b> | <b>\$1,330</b> | <b>\$1,302</b> | <b>\$1,267</b> | <b>\$1,225</b> | <b>\$1,175</b> |
| Retained Cash Flow %                 | 0%             | \$504,485      | \$478,527      | \$452,855      | \$427,589      | \$402,855      | \$378,785      | \$355,519      |

# PORTLAND TIF POLICY

November 20, 2017

## **I. INTRODUCTION**

Tax Increment Financing (TIF) is an economic development program authorized under state law to support municipal projects. The TIF program allows municipalities to provide financial assistance to local economic development projects and programs – from infrastructure, municipal economic development programs and staff, to business expansions - by using new property taxes that result from new commercial or residential investment associated with the corresponding increase in property value.

Portland TIF Policy supports investment in municipal economic development programs, infrastructure investment (which is generally through the establishment of area wide or neighborhood TIF districts) and individual project site specific TIF districts to support either infrastructure or individual private project financing needs.

The City is committed to invest in infrastructure located within the public rights-of-way that encourage economic development. Use of TIF investment to invest in infrastructure recognizes the savings which occurs through the TIF Program tax sheltering benefits.

“Infrastructure” is defined, but not limited to: traffic upgrades, public parking facilities, roadway improvements, lighting, sidewalks, water and sewer utilities, storm water management improvements and placing above ground overhead electric and telecommunications lines underground.

## **II. STATE TIF LIMITATION**

There are acreage and value caps limitations for municipalities to establish TIF along with term limits. Term limits include bonds which may be issued for a maximum of 20 years (anticipation notes for three years). TIF districts may be designated for a maximum of 30 years.

## **III. PURPOSE**

The primary purposes of the TIF Policy include:

- A. To support Portland Economic Development and Housing Plans and Policies;
- B. To stimulate expansion of the City's commercial and industrial tax base;
- C. To stimulate new affordable and market rate housing investment;
- D. To retain and create quality employment;
- E. To support Portland's Capital Improvement Plan; and,
- F. To establish standards upon which the City Council will authorize TIF.

#### **IV. GENERAL PRINCIPLES**

The three primary general principles for the City Council to establish TIF districts include:

##### **A. Investment**

***Minimum Real Property Investment.*** A minimum of \$1 million in new taxable investment property value for commercial and industrial development and \$500,000 for affordable housing development is needed to qualify for a TIF. This is the minimum amount which makes practical sense to consider use of the TIF program due to the amount of new municipal property tax revenue generated from new private investment.

##### **B. Jobs Associated with Commercial and Industrial Development**

Applicants for TIF participation will be required to provide a plan outlining the number and quality of jobs retained or created associated with each TIF district. While there is not a specific formula for the numbers of jobs associated with the amount of TIF financial assistance, the number and quality of the jobs will be taken into consideration for each TIF district. It is recognized that housing projects do not create many permanent jobs.

##### **C. Maximize Tax Sheltering Benefits**

A municipality's total equalized assessed value is used to calculate General Purpose Aid to Education (subsidy), State Revenue Sharing (subsidy) and County taxes (expense). When a municipality's equalized assessed value increases, State Aid for Education decreases, municipal revenue sharing decreases, and the municipality pays a greater portion of County taxes. TIF allows municipalities to "shelter" new value resulting from private investment from the calculation of its State subsidies (education and revenue sharing) and County taxes. In other words, specific municipal shelter benefits, for the term of the TIF, include:

- 1) No reduction in State aid for education,
- 2) No reduction in municipal revenue sharing and
- 3) No increase in County taxes.

Annually, the Council Committee with jurisdiction over housing and community development and City Council will evaluate available TIF district capacity related to State acreage and value limitations to determine whether existing TIF districts need amending and/or new TIF district establishment. Scheduled public infrastructure investments included in the City's Capital Improvement Plan will inform decisions about adjustments to existing TIF districts or establishment of new TIF districts.

**V. APPROACH, POLICY, and TERM REQUIREMENTS**

Must meet or exceed the below requirements.

**A. Approach**

There are three approaches to consider establishing TIF districts. They include:

- 1) ***Municipal Economic Development Programs funded directly through a pay-as-you-go approach.***

Examples of municipal economic development programs include paying for economic development staff, annual funding to Creative Portland for city marketing/branding, and other TIF law allowable activities.

- 2) ***Area wide TIF districts financed by City Bond/Debt Issuance***

Issuance of municipal general obligation bonds or limited obligation bonds is a mechanism that may be used to fund a TIF district program. Allowable uses are spelled out in state TIF law. Generally, municipalities will issue debt to cover the cost of infrastructure investment.

- 3) ***Individual Site Specific TIF districts utilizing Credit Enhancement Agreements (CEAs)***

A CEA is a contract between a municipality and developer to assist an individual development project by using a percentage or all of the tax revenue generated by the investment to pay certain authorized project costs which could include site specific infrastructure or private individual project financing needs. Allowable project costs are spelled out in state TIF law.

**B. Policy for the Three Approaches**

1. **Policy for Municipal Economic Development Programs.**

Requires annual review and City Council financial appropriations.

2. **Policy for Area wide TIF District Locations (for City Bond/Debt Issuance)**

- a) Area wide TIF will be established for infrastructure investment which has applications beyond one individual project.
- b) City TIF emphasis will be placed upon the following general "Priority Revitalization Areas" to support commercial development, housing development, redevelopment, or to support buildings in need to redevelopment, address blight or historic preservation:

- Affordable housing projects off peninsula;
- Riverside Street commercial and industrial zoned areas;
- Forest Avenue corridor from I-295 to Woodfords Corner;
- Washington Avenue corridor from Congress Street to I-295;
- Portland Technology Park ;
- Areas in which future significant wastewater and/or stormwater infrastructure investments are planned;
- West Commercial Street vacant property;
- Libbytown;
- St. Johns Street Valley;
- Other areas based upon scheduled public infrastructure investment included in the City's Capital Improvement Plan.

The above list of general priority revitalization areas serve as guides to establish specific boundaries for TIF districts at time of district establishment.

- c) Market Rate Housing. Market rate rental housing projects must be located in priority revitalization areas to stimulate housing investment for the purpose of attracting 24/7 pedestrian activity. Pursuant to State Law, TIF for condominium projects are not allowed.
- d) Affordable Housing. Affordable Housing TIF (AHTIF) may be designated on an area wide or site specific basis.

The relevant City Council Committee will complete an annual assessment of housing needs and priorities. This assessment will include a determination regarding designation of an area wide AHTIF. Site specific AHTIF requests submitted by developers will be considered on a case-by-case basis. Area wide or site specific AHTIF designations must address an identified community need.

State law requires that at least 25% of the district area must be suitable for residential use, development must be primarily residential, and at least 1/3 of the units must be for households at or below 120% of area median income which allows for individual mixed income projects or area wide affordable housing TIF districts.

Allowable uses of AHTIF revenues are defined by State law.

- e) City preference is to invest in area wide public infrastructure TIF districts versus establishing individual private site specific TIF districts.

- f) Area wide TIF districts also should seek to maximize the benefit of downtown and transit oriented development (TOD) districts which are exempt from State TIF law for acreage and value limitations.
- g) Terms for area wide TIF districts will be considered for up to 100% of new tax revenue and upwards of thirty (30) years, the maximum allowed by State law, due to the long-term need to invest in neighborhood infrastructure.

**NOTE 1:** As of this Amended TIF Policy date, there are two existing area wide TIF Districts, i.e., Bayside and Waterfront TIF Districts.

**NOTE 2:** As of this Amended TIF Policy date, there also exists two Transit Oriented Development (TOD) District, namely the Thompson Point TOD TIF District and the Downtown TOD TIF District to support new or expanded transit services and improved transit connections between the Portland Transportation Center, Jetport and Downtown.

### **3. Policy for Individual Site Specific TIF Districts Utilizing Credit Enhancement Agreements (CEAs)**

- a) CEAs for individual site specific TIF districts will be considered for investment in infrastructure or project financing need and cannot be applied to any agreed upon public infrastructure improvements associated with a City Council approved conditional rezone agreement. Additional provisions related to CEAs include:

- i) City Green Building Code

Compliance with the City's Green Building Code is required when TIF assistance is provided to individual private project CEAs.

- ii) Affordable Housing

Affordable Housing TIF (AHTIF) may be designated on an area wide or site specific basis. Developments are encouraged to promote economic diversity.

The City Council Committee will complete an annual assessment of housing needs and priorities. This assessment will include a determination regarding designation of an area wide AHTIF. Site specific AHTIF requests submitted by developers will be considered on a case-by-case basis. Area wide or site specific AHTIF designations must address an identified community need.

State law requires that at least 25% of the district area must be suitable for residential use, development must be primarily residential, and at least 1/3 of the units must be for households at or below 120% of area median income which allows for individual mixed income projects or area wide AHTIF districts.

Allowable uses of AHTIF revenues are defined by State law.

(iii) State Prevailing Wage Requirement

Any firms employed in the construction phase of a TIF-assisted project must compensate all employees the current wage rates and fringe benefits as required under applicable state prevailing wage law under 26 M.R.S.A. §1306, or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater.

City staff shall provide to the relevant City Council Committee an annual update on:

- a) the impact of this prevailing wage requirements on CEAs;
- b) feasibility of construction firms to pay prevailing wages and benefits; and
- c) compliance with this section.

(iv) Equal Employment Opportunities and Nondiscrimination

The developer and its contractors employed in the construction phase of a TIF-assisted project shall adhere to a policy of non-discrimination in all employment actions, practices, policies, procedures, phases, and conditions of employment. All employment-related decisions (including but not limited to hiring, discharge, transfers, promotions, discipline, training, job opportunities, and wage and salary levels) will be made without discrimination based on an individual's race or color, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of a claim or right under Maine's Workers' Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law. Provisions in applicable laws providing for bona fide occupational qualifications, business necessity, or age limitations will be adhered to by the developer and its contractors where appropriate. This policy shall not be construed to prohibit any employment action or policy which is required by federal law, rule or executive order.

b) Applicants for CEA participation must demonstrate and pay the following:

i) Financial Necessity.

The applicant must demonstrate the City's participation is financially necessary in order for the project to proceed.

ii) Financial Capacity.

The applicant must demonstrate financial capacity to support their project.

iii) Fees

A financial underwriting analysis will be conducted by a third party on all projects requesting CEA participation. Applicants for CEA assistance will be responsible for reimbursing the City for all project third party legal and financial underwriting costs.

### **C. Terms for CEA Projects**

1) Maximum Percentages.

A maximum average percentage of 65% for the entire term associated with individual project CEAs. Notwithstanding the previous sentence, the maximum average percentage for the entire term associated with individual project CEAs for affordable housing shall be 75%. For the purposes of this policy, the term affordable housing shall be defined as in "V. Approach, Policy, and Term Requirements" Section B(2)(d) (Affordable Housing) of the Portland TIF Policy.

2) Maximum Number of Years.

Up to twenty (20) years to match individual private sector commercial financing terms; for Affordable Housing projects, up to thirty (30) years. The term of a TIF may start upon agreed trigger event, such as an increased assessed value. This would be included in a CEA on that negotiated triggering event.

3) Use of Maine Services for CEA Projects Encouraged.

## **VI. TIF APPLICATION AND ADMINISTRATION PROCESS**

### **A. Application Information and Contact.**

The Economic Development Department and the Housing and Community Development Division (for affordable housing projects) handle all TIF inquires and processes requests for TIF. An applicant must submit a letter to either the Economic Development Department for commercial projects or the Housing and Community Development Division for affordable housing projects outlining the proposed project, including TIF project financial information, a plan outlining both the number of permanent and construction jobs associated with the proposed project, as well as a demonstrated ability to meet the requirements under Section B(3)(a) of this policy.

### **B. Approval Process.**

There is a two step approval process which includes obtaining a recommendation from the City Council Committee and City Council approval. Two meetings (or readings) by the City Council are needed. The City Council vote on the TIF occurs at the second meeting.

### **C. Post-Construction Report to City Council.**

The Economic Development Department and the Housing and Community Development Division shall provide a post-construction report to the City Council Committee and City Council regarding each TIF-assisted project which shall include, but not be limited to, an analysis of the adherence to Section (V)(B)(3)(a) of this policy.

### **D. Annual Report to City Council.**

The Economic Development Department and the Housing and Community Development Division shall provide annual reports to the City Council Committee and City Council regarding TIF district activity.

*Order 268-17/18*  
~~*Sub 316-18-18*~~  
*Sub 28 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO  
THE CREDIT ENHANCEMENT AGREEMENT WITH 100 PARRIS STREET, LP**

**ORDERED**, that the attached credit enhancement agreement between the City of Portland and 100 Parris Street, LP related to the 178 Kennebec Street Affordable Housing Tax Increment Financing District is hereby approved; and

**BE IT FURTHER ORDERED**, that and the City Manager is authorized to sign the agreement in substantially the form attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

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

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

*Order 269 - 1/18*  
*Tab 32 6-18*  
*Tab 29 7-16-18*

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

**ORDER DESIGNATING THE 977 BRIGHTON AVENUE APARTMENTS  
AFFORDABLE HOUSING DEVELOPMENT DISTRICT AND  
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE  
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

**WHEREAS**, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

**WHEREAS**, there is a need for affordable housing in the City of Portland and the surrounding region; and

**WHEREAS**, Avesta Housing Development Corporation intends to construct certain improvements within the 977 Brighton Avenue Apartments Affordable Housing Development Tax Increment Financing ("TIF") District, including 40 units of affordable housing; and

**WHEREAS**, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

**WHEREAS**, there is a need to provide continuing affordable housing opportunities for the senior citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

**WHEREAS**, the 977 Brighton Avenue Apartments Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

**WHEREAS**, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

**WHEREAS**, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

**WHEREAS**, the City desires to designate the 977 Brighton Avenue Apartments Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

**WHEREAS**, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 977 Brighton Avenue Apartments Affordable Housing Development TIF District, if any; and

**WHEREAS**, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 977 Brighton Avenue Apartments Affordable Housing Development TIF District and Development Program for the District;

**NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:**

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “977 Brighton Avenue Apartments Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

**BE IT FURTHER ORDERED**, that the area of the City of Portland entitled “977 Brighton Avenue Apartments Affordable Housing Development District” as more particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

**BE IT FURTHER ORDERED**, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

**BE IT FURTHER ORDERED**, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “977 Brighton Avenue Apartments Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

**BE IT FURTHER ORDERED**, that the City’s Planning and Urban Development Director is authorized to submit annual reports on the status of the “977 Brighton Avenue Apartments Affordable Housing Development District” on behalf of the municipal legislative body; and

**BE IT FURTHER ORDERED**, that upon approval of the Director of the Maine State Housing Authority, the City Manager is hereby authorized and directed on behalf of the City of Portland to execute and deliver a Credit Enhancement Agreement substantially in the form attached to the Development Program hereby approved, with such changes thereto as deemed appropriate by the City Manager.

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

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

**FROM:** Planning and Urban Development Department  
Housing and Community Development Division

**DATE:** June 12, 2018 **REVISED 06/28/2018**

**SUBJECT:** (1) Order Designating 977 Brighton Avenue Apartments Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District  
  
(2) Order Approving Credit Enhancement Agreement with Avesta 977 Brighton LP

**SPONSOR:** Jill Duson, Chair                      Justin Costa, Chair  
Housing Committee                      Economic Development Committee

**(At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and Economic Development Committee (3-0) voted to recommend approval of this request.)**

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
**1<sup>st</sup> reading June 18, 2018    Final Action July 16, 2018**

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

In order for the developer to maximize the projects competitiveness in the Low Income Housing Tax Credit application, the TIF application must be filed with Maine State Housing Authority no later than August 6, 2018. A Notice of Public Hearing must be published 10 days before the date of the hearing on July 16.

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

Mary Davis, Housing & Community Development Division Director will be available for questions.

**I.     ONE SENTENCE SUMMARY**

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue. AHDC is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a

Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$65,150 annually over 30 years.

## II. AGENDA DESCRIPTION

**At a joint meeting held on June 5, 2018, both the Housing Committee (3-0) and Economic Development Committee (3-0) voted to recommend approval of this request.**

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue.

AHDC is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$65,150 annually over 30 years.

AHDC has requested two forms of financial assistance.

(1) HOME funds request: \$300,000; At their June 27, 2018 meeting the Housing Committee voted 3-0 to recommend HOME funding in the amount of \$300,000 for this project. The recommendation will appear as a first read on the July 16, 2018 Council Agenda.

(1) Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30 year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

The development will include:

| 977 Brighton Avenue  |                                    |    |
|----------------------|------------------------------------|----|
| 1-Bedroom Units (40) | at or below 50% area median income | 24 |
|                      | at or below 60% area median income | 10 |
|                      | Market Rate                        | 6  |
| Total Units          |                                    | 40 |

Eight (8) units will have project based rental assistance. As stated in the developer's application:

*"The 0.73 acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project consists of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot of 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents."*



A Credit Enhancement Agreement will return approximately \$1,954,486 in captured revenue to the project (averaged at \$65,150 annually over thirty years) to off-set project operating costs. The proposed project will be taxable. TIF projections and proposed district map are included in the backup to this memo.

Total development costs are estimated at \$8.2 million. At full build out, the development is projected to pay an average \$65,150 annually in projected new taxes captured. Non-captured general fund revenues are estimated at an average \$21,717 annually.

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$18,881+, or \$566,431 + over the life of the district. These numbers were determined utilizing an updated TIF projection model.

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

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of all requests for City funding (local and federal resources), including Affordable Housing Tax Increment Financing requests. The third party analysis shows a positive recommendation for the TIF investment.

Public Benefits In reviewing this TIF request, staff notes the public benefit associated with the TIF District of 40 units of 55+ housing, eighty-five percent (85%) of which will be affordable to households at or below sixty percent (60%) of the area median income. Additionally, the TIF will create tax sheltering benefits estimated at an average \$18,881 annually.

## **VII. RECOMMENDATION**

Staff is requesting City Council (1) approve the establishment of the 977 Brighton Avenue Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with Avesta 977 Brighton LP and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed.

## **VIII. LIST ATTACHMENTS**

977 Brighton Avenue Apartments Affordable Housing Tax Increment Financing Development Program  
Credit Enhancement Agreement  
Declaration of Covenants  
TIF Projection Table  
TIF District Map  
Applicant Request  
Underwriting Report  
City's TIF Policy



Gregory A. Mitchell  
Director, Economic Development Department

## MEMORANDUM

**To:** Mayor and Portland City Council  
**From:** Greg Mitchell, Economic Development Director  
**Date:** July 3, 2018  
**Subject:** Explanation of Tax Increment Financing District Tax Shelter Benefits

This memorandum will provide you an overview of the public benefits associated with using the Tax Increment Financing (TIF) District Program specific to “Tax Shelter Benefits”.

### TAX SHELTER OVERVIEW



## How Does ‘Sheltering’ Work?

- With new investment, real estate valuation goes ↑↑
- As a result, state subsidies go ↓↓ and county taxes go ↑↑
- TIF ‘shelters’ captured new value by excluding it from total municipal value reported to the state for the length of the TIF

Municipalities realize “*savings*” from the tax sheltering effect of TIF Districts. The following direct financial impacts occur when municipal valuations increase:

- *State Education Aid is reduced,*
- *State Municipal Revenue Sharing is reduced, and,*
- *A municipality pays a higher percentage of the County budget.*

The amount of savings for each community varies depending upon each community's financial situation. For the City of Portland, tax shelter savings are conservatively estimated at 29%, meaning that for every new property tax dollar captured in a TIF district, the City saves 29 cents for each property tax dollar which otherwise would be lost.

The City's TIF model has been updated with the most recent formulas for State Aid for Education, Municipal Revenue Sharing, and the County Budget.

### **SPECIFIC TIF DISTRICT EXAMPLES**

The tax shelter savings associated with the three Proposed TIF Districts presented at the July 16, 2018 City Council meeting for action include:

#### **178 Kennebec Street Affordable Housing TIF District (upper floors)**

Total Projected New Property Taxes (30 years captured at 75%) = \$2,889,164  
Total Projected Tax Shelter Benefits (30 years captured at 75%) = \$837,310  
Annual Average Tax Shelter Benefit (30 years): \$27,910

#### **178 Kennebec Street Commercial TIF District (ground floor)**

Total Projected New Property Taxes (14 years captured at 100%) = \$197,894  
Total Projected Tax Shelter Benefits (14 years captured at 100%) = \$74,284  
Annual Average Tax Shelter Benefit (14 years): \$5,306

#### **977 Brighton Avenue Affordable Housing TIF District**

Total Projected New Property Taxes (30 years captured at 75%) = \$1,954,486  
Total Projected Tax Shelter Benefits (30 years captured at 75%) = \$566,431  
Annual Average Tax Shelter Benefit (30 years): \$18,881

I hope this memorandum provides a clearer picture of the public benefits to retain a percentage of new property tax revenue through use of TIF districts. Please refer to each above individual TIF District proposal for more detailed information.

**CITY OF PORTLAND**

**AVESTA 977 BRIGHTON AVENUE APARTMENTS AFFORDABLE HOUSING  
DEVELOPMENT DISTRICT**

**DEVELOPMENT PROGRAM**

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#### Exhibits

- Exhibit A Estimated Allocation of Tax Increment and Estimated Tax Increment Revenues
- Exhibit B Estimated Development Costs
- Exhibit C Property Description and Configuration of the District
- Exhibit D Certificate of Assessor
- Exhibit E Credit Enhancement Agreement
- Exhibit F Tax Shift Computations
- Exhibit G Notice of Public Hearing
- Exhibit H City Council Orders
- Exhibit I Declaration of Covenants, Conditions and Restrictions
- Exhibit J District Narrative

**Avesta 977 Brighton Avenue Apartments Affordable Housing Development District Development Program**

**Article I. Introduction and Summary of Benefits.**

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 977 Brighton Avenue in Portland. The area includes approximately 0.734 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

**Article II. Development Program Narrative and Designation of the District.**

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the Avesta 977 Brighton Avenue Apartments Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Avesta 977 Brighton LP, its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E hereto from the District available to the Developer pursuant to such Credit Enhancement Agreement (the “Credit Enhancement Agreement”). These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31<sup>st</sup> prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions. A. Project General Description. The Capital Project at Avesta 977 Brighton Avenue Apartments involves the redevelopment of approximately 0.734 acres, into an affordable housing neighborhood. The objective of the project is that 85% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of 40 units of rental housing for households aged 55+, the targeting for those units will be 10 of the units at

60% Area Median Income, 24 of the units at 50% Area Median Income and 6 of the units at market rate. The zoning for the project assures that this number of units and this affordability objective will be met.

The project includes 40 apartments, all of which will be newly constructed units.

The Avesta 977 Brighton Avenue Apartments project is projected to have a total local increased assessed valuation at build out of approximately \$3,200,000 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will pay approximately a thirty year annual average of \$65,150 in increased property taxes to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$65,150 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay operating costs for the project at Avesta 977 Brighton Avenue Apartments. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. Businesses or persons currently residing in the property will be temporarily displaced or relocated as a result of the development activities proposed in the District. A relocation plan will be established to ensure that no business or person will be asked to relocate, either temporarily to another on-site or off-site unit during the development activities or permanently to a newly renovated unit, unless a suitable unit in decent, safe and sanitary condition is available for the business or person. No businesses or persons will be permanently displaced or relocated as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management).

The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years from the effective date of the approval of the District by the Director of the Maine State Housing Authority.

Section 2.09: Approval Considerations and Characteristics of the District. A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately 0.734 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts in the City (which combined total is 603.95 acres) is 4.87%, which includes 3.65% included in two exempt districts, a transit oriented district and a downtown/transit oriented district, of the total acreage of the City and thus does not exceed 5% of the total acreage of the City; the total area of all existing and proposed affordable housing development districts in the City is 0.032% of the total acreage of the City and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and proposed affordable housing development districts within the City is \$1,533,510 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of April 1st preceding the date of the designation of the District;

(iv) The aggregate value of municipal general obligation indebtedness financed by the proceeds from affordable housing development districts within Cumberland County does not exceed \$50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average from January 1, 2002 to the date of calculation; and

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Housing Plan and Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 years for rental units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development on which 85% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the Avesta 977 Brighton Avenue Apartments Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

### **Article III. Financial Plan.**

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2018; (tax year April 1, 2017, Fiscal Year 2018). Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to

Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be the entire amount of the 75% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior years level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

The amount of the Tax Increment Revenues on the Increased Assessed Value of all property in the District for each year during the term of the District to be allocated and paid to the Developer each year pursuant to the Credit Enhancement Agreement shall be equal to the product for each year during the term of the District of (a) the relevant Developers Percentage Allocation of the Tax Increment (Developer Share) for each year as computed as described above, times (b) the actual amount of the Tax Increment for each year. Such percentage allocations shall apply regardless of whether the actual Tax Increment Revenues each year are more or less than the Tax Increment Revenues as estimated or projected in Exhibit A of this Development Program, provided that in no fiscal year will the Developer's Share be less than 75% of the captured revenue through the term of the District.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account shall consist of the Developer's Project Cost Account (the "Developer's Project Cost Account"). The Developer's Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Developer's Project Cost Account according to the terms of the Credit Enhancement Agreement that portion of each payment constituting the percentage of total actual Tax Increment for such year equal to the Tax Increment Revenues (Developer's Share). The amounts in the Developer's Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District, as provided in such Credit Enhancement Agreement.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The Avesta 977 Brighton Avenue Apartments project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$22.08/\$1000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is “sheltered” in a TIF and, therefore, does not get counted in the City’s state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City’s control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

**Article IV. Municipal Approvals.**

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on July 5, 2018, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on July 16, 2018. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on July 16, 2018 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: July \_\_\_\_\_, 2018

\_\_\_\_\_  
Jon P. Jennings, City Manager, City of Portland

## CREDIT ENHANCEMENT AGREEMENT

This Credit Enhancement Agreement, dated as of \_\_\_\_\_, 2018, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the "City"), and Avesta 977 Brighton LP, a Maine limited partnership (the "Developer").

### WITNESSETH THAT

WHEREAS, the City designated the 977 Brighton Avenue Apartments Affordable Housing Development District (the "District") pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting held on July 16, 2018 and pursuant to the same City Council Meeting action adopted a development program and financial plan for the District (the "Development Program"), and

WHEREAS, the Director of the Maine State Housing Authority has reviewed and approved the District and the Development Program, and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to such City Council Meeting approval and a resolution of the Municipal Officers, adopted July 16, 2018 by vote of the City Council and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

### **ARTICLE I: DEFINITIONS**

Section 1.1. Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

"Affordable Housing Development Program Fund" means the Affordable Housing Development Program Fund described in Article III of the Development Program and established and maintained pursuant to Article II hereof.

"Agreement" means this Credit Enhancement Agreement between the City and the Developer.

"Captured Assessed Value" means the amount, stated as percentages or stated sums, of the Increased Assessed Value that is utilized from year to year to finance the Capital Program and Public Improvements described in the Development Program; the Captured Assessed Value of the District shall be 75% of the Increased Assessed Value.

"City" means the City of Portland, Maine, a municipality duly organized and existing under the laws of the State of Maine, its successors and assigns.

"Current Assessed Value" means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect.

“Developer” means Avesta 977 Brighton LP, its successors and assigns.

“Development Program” means the Development Program for the District as adopted by the City at a meeting of the City Council held on July 16, 2018.

“District” means the 977 Brighton Avenue Apartments Affordable Housing Development District designated by the City pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of its City Council at a meeting held on August 3, 2015.

“Financial Plan” means the financial plan described in Article III of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may establish.

“Increased Assessed Value” means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

“Original Assessed Value” means the assessed value of the District as of March 31, 2018, which amount was Two Hundred Ninety-One Thousand One Hundred Dollars (\$291,100.00).

“Project” means the design, planning, development, acquisition, construction, financing and installation of the Development Program as described in Section 2.03 of said Development Program.

“Project Costs” means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249 of title 30-A of the Maine Revised Statutes and included in the Development Program.

“Project Cost Account” means the Developer’s Project Cost Account described in Article III of the Development Program and established and maintained pursuant to Article II of this Agreement.

“Property Taxes” means any and all ad valorem property taxes levied, charged or assessed against real estate in the District by the City or on its behalf.

“Qualified Investments” means any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

“Tax Increment” means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District.

“Tax Increment Revenues (Developer’s Share)” means that percentage of the Tax Increment with respect to real estate now or hereafter located in the District retained pursuant to the terms of the Development Program to pay Project Costs of the Capital Program, and which amount is to be deposited each year during the term of this Agreement in the Developer’s Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer’s Share) is seventy-five percent (75%). The Tax Increment Revenues (Developer’s Share) will be calculated each year as more particularly described herein and in Exhibit A of the Development Program and will be based on the Increased Assessed Value of the District which percentage or amount shall be captured and retained to pay to the Developer the costs of the Capital Program described in the Development Program.

"Tax Shift" means the sum of the following amounts as calculated under the Tax Shift Formulas, as hereafter defined: (a) the difference between (i) the county tax payable by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of County Tax were included in the City's valuation in calculating the county tax, and (ii) the county tax payable by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating the county tax; plus (b) the difference between (i) the State aid to education that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State aid to education were included in the City's valuation in calculating State aid to education, and (ii) the State aid to education that received by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating such amounts of State aid to education; plus (c) the difference between (i) the State revenue sharing that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State revenue sharing were included in the City's valuation in calculating the amount of State revenue sharing, and (ii) the State revenue sharing received each year to the extent that the Captured Assessed Value is excluded in the City's valuation in calculating such amounts of revenue sharing. Examples of the calculation of the estimated Tax Shifts based on the current Tax Shift Formulas are attached as Exhibit F to the Development Program.

"Tax Shift Formulas" means the formulas utilized by the State of Maine in calculating (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

"Tax Payment Date" means the date(s) on which Property Taxes levied by the City are due and payable from owners of property located within the City.

Section 1.2. Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(e) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time. All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) If any clause, provision, Article or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, Article or Section shall not affect any of the remaining provisions hereof.

**ARTICLE II: DEVELOPER'S PROJECT COST ACCOUNT OF THE  
AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING  
REQUIREMENTS**

Section 2.1. Creation of Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City hereby confirms the creation and establishment of (a) the 977 Brighton Avenue Apartments Affordable Housing Development District Affordable Housing Development Program Fund; and (b) a segregated fund in the name of the City designated as the "977 Brighton Avenue Apartments Affordable Housing Development District Developer's Project Cost Account of the Affordable Housing Development Program Fund" (the "Developer's Project Cost Account") pursuant to, and in accordance with the terms and conditions of the Development Program. The Affordable Housing Development Program Fund shall consist of the Developer's Project Cost Account as described in the Development Program.

Section 2.2. Deposits into Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City shall deposit into the Developer's Project Cost Account contemporaneously with each payment of Property Tax by owners of property in District during the term of the District an amount equal to that portion thereof constituting the Tax Increment Revenues (Developer's Share) for the period or year to which the payment relates and shall allocate the amount so deposited to fund fully and pay the payments due to Developer under Article III of this Agreement.

Section 2.3. Use of Monies in Developer's Project Cost Account of the Affordable Housing Development Program Fund. Monies deposited in the Developer's Project Cost Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof.

Section 2.4. Monies Held in Trust. All monies required to be deposited with or paid into the Developer's Project Cost Account to fund payments of the Developer under the provisions hereof and the provisions of the Development Program, shall be held by the City in trust, for the benefit of the Developer.

Section 2.5. Investments. The monies in the Developer's Project Cost Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Developer's Project Cost Account.

Section 2.6. Liens. The City shall not hypothecate or grant or create any liens, security interests, encumbrances, or other interests of any nature whatsoever, with respect to the Developer's Project Cost Account or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

### **ARTICLE III: PAYMENT OBLIGATIONS**

Section 3.1. Credit Enhancement Payments. (a) The term of this Agreement shall be for the period beginning on the effective date of the approval of the District by the Director of the Maine State Housing Authority and continuing for thirty (30) years as described below. Subject to the conditions set forth below, the City agrees to pay to the Developer within 30 days of the end of each fiscal year (ends June 30 each year) this Agreement is in effect payments equal to the Tax Increment Revenues (Developer's Share) beginning with the designation and approval of the District by the Director of the Maine State Housing Authority, that being the City Fiscal Year beginning July 1, 2019 and ending June 30, 2020 (FY20) and continuing with each Fiscal Year of the City thereafter through and including June 30, 2049 (FY49). The City shall make all such payments of the Tax Increment Revenues (Developer's Share) to the Developer, its successors and assigns according to Exhibit A of the Development Program, based upon the corresponding fiscal year's projected allocation percentage for each payment. The Developer's share will be 100% of the captured revenue (based on 75% of the value captured) as indicated on Exhibit A. The obligation of the City to make such payments shall be a limited obligation payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, whether or not actually deposited into the Developer's Project Cost Account, and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the owner or owners of property in the District fail(s) to pay any portion of the Property Taxes assessed by the City, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to such Tax Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

(c) Annually, Developer will provide operating cash flow statements as back-up documentation of Projects Costs for its TIF payments, which documentation will be kept confidential by the City.

Section 3.2. Prior to receiving the first payment under this Agreement:

(a) Developer shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

(b) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1 - 12 of the Portland City Code, whichever is greater. The City will provide the Developer with information that the Developer must include in all bid materials that the Developer provides to prospective contractors who may bid on the project to ensure that the wage requirements set forth in this section are met.

(c) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with City's Green Building Code set forth in the Chapter 6, Article VII, of the Portland City Code.

Section 3.3. Failure to Make Payment. In the event the City should fail to, or be unable to, make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid and the City agrees to pay the same with interest thereon at the rate equal to the interest rate per annum payable by owners of property in the City on Property Taxes that are not paid when due, but only from Tax Increment Revenues (Developer's Share) paid to the City by the Developer from time to time, and any earnings thereon, whether or not deposited into the Developer's Project Cost Account of the Affordable Housing Development Program Fund. Payments shall be applied first against accrued interest and then against principal. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit all Tax Increment Revenues (Developer's Share) to the Developer's Project Cost Account and its obligation to make payments to the Developer.

Section 3.4. Manner of Payments. The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its own use and benefit, for qualified Project Costs.

Section 3.5. Obligations Unconditional. The obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer. The City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

Section 3.6. Limited Obligation. The City's obligations of payment hereunder shall be limited obligations of the City payable solely from monies on deposit in the Developer's Project Cost Account, and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, and any earnings thereon, whether or not actually deposited into the Developer's Project Cost Account. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the City's obligation to levy Property Taxes upon the property in the District and the pledge of the Tax Increment Revenues (Developer's Share), and earnings thereon, established under this Agreement.

Section 3.7. The Developer and its contractors employed in the construction phase the Project shall adhere to a policy of non-discrimination in all employment actions, practices, policies, procedures, phases, and conditions of employment. All employment-related decisions (including but not limited to hiring, discharge, transfers, promotions, discipline, training, job opportunities, and wage and salary levels) will be made without discrimination based on an individual's race or color, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of

a claim or right under Maine's Workers' Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law. Provisions in applicable laws providing for bona fide occupational qualifications, business necessity, or age limitations will be adhered to by the developer and its contractors where appropriate. This policy shall not be construed to prohibit any employment action or policy which is required by federal law, rule or executive order.

#### **ARTICLE IV: PLEDGE AND SECURITY INTEREST**

Section 4.1. Pledge of Developer's Project Cost Account. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Developer the Developer's Project Cost Account to the extent of Developer's Rights under this Agreement to receive funds from the Developer's Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2. Perfection of Interest. The City authorizes the Developer to file and, if necessary, shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Developer's Project Cost Account to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder. To the extent deemed necessary by the Developer, the City will at such time and from time to time as requested by Developer establish the Developer's Project Cost Account as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

Section 4.3. Further Instruments. The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City.

Section 4.4. No Disposition of Developer's Project Cost Account. Except as permitted hereunder, the City shall not sell, lease, pledge, grant a security interest in, assign or otherwise dispose, encumber or hypothecate any interest in the Developer's Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer's Project Cost Account shall at all reasonable times be open to inspection by the Developer, its agents, lenders, designees and employees.

#### **ARTICLE V: DEFAULTS AND REMEDIES**

Section 5.1. Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default:"

(a) any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) any failure by the City to make deposits into the Affordable Housing Development Program Fund or the Developer's Project Cost Account as and when due;

(c) any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or the Developer to be observed or performed, provided, however, that failure of Developer or any other owner of property in the District to pay Property Taxes when due shall not constitute an event of default hereunder; or

(d) if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City's affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation, the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) the Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default be continued or repeated.

Section 5.4. Agreement to Pay Attorneys' Fees and Expenses. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Developer herein contained, the defaulting party shall, on demand thereof pay to the non-defaulting party the reasonable attorneys fees, costs and expenses so incurred by the non-defaulting party.

Section 5.5. Disputes. The parties agree that in the event of any dispute or disagreement hereunder the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism. The City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

#### **ARTICLE VI: EFFECTIVE DATE, TERM AND TERMINATION**

Section 6.1. Effective Date and Term. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof for the entire term of this Agreement and shall expire upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the City and the Developer hereunder.

Section 6.2. Cancellation and Expiration of Term. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

#### **ARTICLE VII: ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

Section 7.1. Consent to Pledge and/or Assignment. The City hereby acknowledges that it is the intent of the Developer to pledge and assign and to grant security interests in and to this Agreement and the amounts payable to Developer hereunder and Developer's right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge or to grant such security interests. Recognizing this intention, the City does hereby consent and agree to the grant of such security interests and to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness and other obligations or otherwise, on one or more occasions during the term hereof.

Section 7.2. Pledge, Assignment or Security Interest. The City hereby consents to the pledge, assignment or granting of a security interest by the Developer (or the pledge and assignment by any one Developer) of its right, title and interest in, to and under this Agreement. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective secured party, pledgee or assignee, including without limitation, recognition of the secured party, pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such secured party, pledgee or assignee the position of such secured party, assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the secured party, pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. Assignment. Except as provided in this Article VII, the Developer shall not have the right to transfer and assign to any person or entity all or any portion of its rights in, to and under this Agreement; provided however, that any transfer of the real property within the District shall carry with it the benefit of this Agreement so long as (i) the rental units within the District remain affordable after such

transfer; (ii) the prospective owner establishes to the reasonable satisfaction of the City that the financial benefits provided by this Agreement are still necessary to maintain the viability of the Project and (iii) the City Council approves the transfer.

## ARTICLE VIII: MISCELLANEOUS

Section 8.1. Successors. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.3. No Personal Liability of Officials of the City. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his individual capacity and neither the members of the City Council of the City nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.5. Governing Law. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.6. Notices. All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid, addressed as follows:

If to the City:                   City Manager  
  City Portland  
  389 Congress Street  
  Portland, Maine 04101

If to the Developer:           Avesta 977 Brighton LP  
  c/o Avesta Housing Development Corporation  
  307 Cumberland Avenue  
  Portland, ME 04101

Any of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.7. Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.8. Net Agreement. This Agreement shall be deemed and construed to be a “net agreement,” and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without any abatement, deductions or setoffs.

Section 8.9. Benefit of Assignees or Pledges. The City agrees that this Agreement is executed in part to induce secured parties, assignees or pledges to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such secured parties, assignee or pledgee from time to time of the Developer’s right, title and interest herein.

Section 8.10. MaineHousing Rules and Requirements. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable. The parties shall comply with the rule provisions for recovery of public revenue if conditions for approval of the District are not maintained for the duration of the District, as provided by rules adopted by the Maine State Housing Authority in accordance with applicable law. The Developer agrees to provide all information as required by the City to satisfy its reporting obligations.

Section 8.11. Affordability Covenants. The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration which is substantially in the same form as the “Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

Section 8.12. Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates, estimated amounts of the Increased Assessed Value and the Tax Increment, estimated amounts of the Tax Increment Revenues (Developer’s Share), estimated development costs and other estimates. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise with respect to Developer’s property for purposes of ad valorem property taxation or any tax abatement proceeding or (b) modify or change in any way the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.13. Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS

CITY OF PORTLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings, Its City Manager

AVESTA 977 BRIGHTON LP

BY: General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Dana Totman, President

C:\Users\mpd\Desktop\2018 AHTIF\Docs Submitted for Review xx.xx.18\02 977 Brighton Avenue CEA Draft.docx

DRAFT

**CITY OF PORTLAND**  
**Declaration of Covenants, Conditions and Restrictions for the 977 Brighton Avenue**  
**Apartments Affordable Housing Tax Increment Financing District**

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and Avesta 977 Brighton LP, a Maine limited partnership with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (“Developer”).

**WITNESSETH**

**WHEREAS**, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of forty (40) units of rental housing located at 977 Brighton Avenue, Portland, Maine (the “Development”); and

**WHEREAS** the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

**WHEREAS**, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

**NOW THEREFORE**, City and the Developer agree as follows:

1. **Term**. The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).
2. **Enforceability of Covenants**. The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may

enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, or the repayment of the AHTIF, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance, provided that the AHTIF is repaid within a reasonable period of time after such involuntary loss or substantial destruction.

3. **Covenants.** Developer hereby covenants and represents to the City as follows:

- a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of forty (40) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the nature, size, number or location of the units in the Development and the facilities in the units.
- b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
- c. **Low Income Units.** For a period of thirty (30) years at least thirty-four (34) of the units will be occupied by households with incomes at or below sixty percent (60%) (collectively referred to as the “Low Income Units”). The remaining four (4) units will be market rate units.
  - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, (“Section 42”) and income limits shall be adjusted for family size.
  - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the “Determination”).
  - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household’s income may exceed the Applicable Income Limit, adjusted for family size, at the time of the most recent Determination, if after such Determination, but before the next Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

- iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.
- d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:
- i. For a unit without a separate bedroom, one individual.
  - ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.

Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.

- e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants

herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications**. This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability**. The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns**. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law**. This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices**. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer simultaneously to the Limited Partners at c/o Northern New England Housing Investment Fund, 75 Market Street, Suite 201, Portland, ME 04101, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor**. This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, Avesta 977 Brighton LP, and Avesta Housing Development Corporation [**construction lender and any other entities providing financing will also be parties**] dated \_\_\_\_\_, 2018 to be recorded in the Cumberland County Registry of Deeds herewith.

*Signature page follows.*

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of \_\_\_\_\_, 2018.

**CITY OF PORTLAND**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Jon P. Jennings  
Its City Manager

**AVESTA 977 BRIGHTON LP**

BY: Pinecone Housing Corporation, its General Partner

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Dana Totman, Its President

**State of Maine  
Cumberland, ss.**

\_\_\_\_\_, 2018

Personally appeared the above named Dana Totman, President of Pinecone Housing Corporation, General Partner of Avesta 977 Brighton LP, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation and limited partnership.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
\_\_\_\_\_  
(Print or type name)

**State of Maine  
Cumberland, ss.**

\_\_\_\_\_, 2018

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
\_\_\_\_\_  
(Print or type name)

EXHIBIT A

City of Portland - TIF Model of 5/16/2018

OAV: \$291,100 as of 4/1/2017

CBL: 275-C-1, 2, 3, 6 to 10

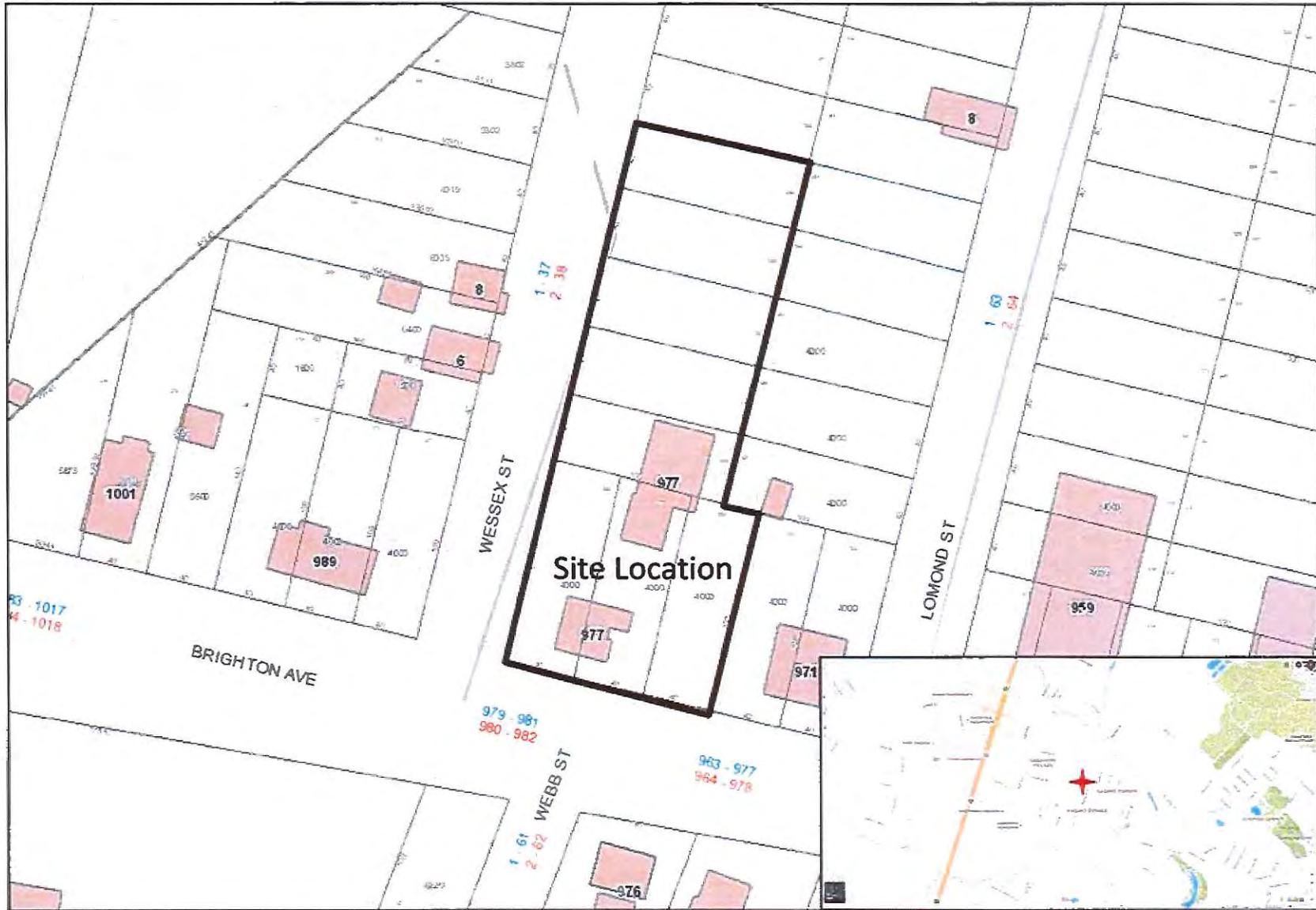
| City of Portland- TIF Projection Table - 977 Brighton Avenue |                   |                                     |                     |                     |                     |                                    |  |   |   |
|--|-------------------|-------------------------------------|---------------------|---------------------|---------------------|------------------------------------|--|---|---|
| TIF Year   | Tax Year- April 1 | Increased Assessed Value Real Prop. | % of Value Captured | Captured Valuation  | Projected Mill Rate | Total Projected New Taxes Captured | Captured Revenue to Business Project Account | Captured Revenue to Municipal Project Account | City Non-Captured General Fund Revenues |
| 1  | 2019              | \$2,908,900                         | 75.00%              | \$2,181,675         | 22.08               | \$48,178                           | \$48,178                                     | \$0   | \$16,059                                |
| 2  | 2020              | \$2,908,900                         | 75.00%              | \$2,181,675         | 22.52               | \$49,141                           | \$49,141                                     | \$0   | \$16,380                                |
| 3  | 2021              | \$2,908,900                         | 75.00%              | \$2,181,675         | 22.98               | \$50,124                           | \$50,124                                     | \$0   | \$16,708                                |
| 4  | 2022              | \$2,908,900                         | 75.00%              | \$2,181,675         | 23.43               | \$51,127                           | \$51,127                                     | \$0   | \$17,042                                |
| 5  | 2023              | \$2,908,900                         | 75.00%              | \$2,181,675         | 23.90               | \$52,149                           | \$52,149                                     | \$0   | \$17,383                                |
| 6  | 2024              | \$2,908,900                         | 75.00%              | \$2,181,675         | 24.38               | \$53,192                           | \$53,192                                     | \$0   | \$17,731                                |
| 7  | 2025              | \$2,908,900                         | 75.00%              | \$2,181,675         | 24.87               | \$54,256                           | \$54,256                                     | \$0   | \$18,085                                |
| 8  | 2026              | \$2,908,900                         | 75.00%              | \$2,181,675         | 25.37               | \$55,341                           | \$55,341                                     | \$0   | \$18,447                                |
| 9  | 2027              | \$2,908,900                         | 75.00%              | \$2,181,675         | 25.87               | \$56,448                           | \$56,448                                     | \$0   | \$18,816                                |
| 10   | 2028              | \$2,908,900                         | 75.00%              | \$2,181,675         | 26.39               | \$57,577                           | \$57,577                                     | \$0   | \$19,192                                |
| 11   | 2029              | \$2,908,900                         | 75.00%              | \$2,181,675         | 26.92               | \$58,729                           | \$58,729                                     | \$0   | \$19,576                                |
| 12   | 2030              | \$2,908,900                         | 75.00%              | \$2,181,675         | 27.46               | \$59,903                           | \$59,903                                     | \$0   | \$19,968                                |
| 13   | 2031              | \$2,908,900                         | 75.00%              | \$2,181,675         | 28.01               | \$61,101                           | \$61,101                                     | \$0   | \$20,367                                |
| 14   | 2032              | \$2,908,900                         | 75.00%              | \$2,181,675         | 28.57               | \$62,323                           | \$62,323                                     | \$0   | \$20,774                                |
| 15   | 2033              | \$2,908,900                         | 75.00%              | \$2,181,675         | 29.14               | \$63,570                           | \$63,570                                     | \$0   | \$21,190                                |
| 16   | 2034              | \$2,908,900                         | 75.00%              | \$2,181,675         | 29.72               | \$64,841                           | \$64,841                                     | \$0   | \$21,614                                |
| 17   | 2035              | \$2,908,900                         | 75.00%              | \$2,181,675         | 30.32               | \$66,138                           | \$66,138                                     | \$0   | \$22,046                                |
| 18   | 2036              | \$2,908,900                         | 75.00%              | \$2,181,675         | 30.92               | \$67,461                           | \$67,461                                     | \$0   | \$22,487                                |
| 19   | 2037              | \$2,908,900                         | 75.00%              | \$2,181,675         | 31.54               | \$68,810                           | \$68,810                                     | \$0   | \$22,937                                |
| 20   | 2038              | \$2,908,900                         | 75.00%              | \$2,181,675         | 32.17               | \$70,186                           | \$70,186                                     | \$0   | \$23,395                                |
| 21   | 2039              | \$2,908,900                         | 75.00%              | \$2,181,675         | 32.81               | \$71,590                           | \$71,590                                     | \$0   | \$23,863                                |
| 22   | 2040              | \$2,908,900                         | 75.00%              | \$2,181,675         | 33.47               | \$73,022                           | \$73,022                                     | \$0   | \$24,341                                |
| 23   | 2041              | \$2,908,900                         | 75.00%              | \$2,181,675         | 34.14               | \$74,482                           | \$74,482                                     | \$0   | \$24,827                                |
| 24   | 2042              | \$2,908,900                         | 75.00%              | \$2,181,675         | 34.82               | \$75,972                           | \$75,972                                     | \$0   | \$25,324                                |
| 25   | 2043              | \$2,908,900                         | 75.00%              | \$2,181,675         | 35.52               | \$77,491                           | \$77,491                                     | \$0   | \$25,830                                |
| 26   | 2044              | \$2,908,900                         | 75.00%              | \$2,181,675         | 36.23               | \$79,041                           | \$79,041                                     | \$0   | \$26,347                                |
| 27   | 2045              | \$2,908,900                         | 75.00%              | \$2,181,675         | 36.95               | \$80,622                           | \$80,622                                     | \$0   | \$26,874                                |
| 28   | 2046              | \$2,908,900                         | 75.00%              | \$2,181,675         | 37.69               | \$82,234                           | \$82,234                                     | \$0   | \$27,411                                |
| 29   | 2047              | \$2,908,900                         | 75.00%              | \$2,181,675         | 38.45               | \$83,879                           | \$83,879                                     | \$0   | \$27,960                                |
| 30   | 2048              | \$2,908,900                         | 75.00%              | \$2,181,675         | 39.22               | \$85,557                           | \$85,557                                     | \$0   | \$28,519                                |
| <b>30 Year TIF Total</b>                                     |                   | <b>\$87,267,000</b>                 |                     | <b>\$65,450,250</b> |                     | <b>\$1,954,486</b>                 | <b>\$1,954,486</b>                           | <b>\$0</b>                                    | <b>\$651,495</b>                        |
| <b>30 Year Average</b>                                       |                   |                                     |                     |                     |                     | <b>\$65,150</b>                    | <b>\$65,150</b>                              | <b>\$0</b>                                    | <b>\$21,717</b>                         |

**Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model -  
977 Brighton Avenue**

**75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund**

| TIF Year                 | Tax Year-<br>April 1 | Total Added<br>Valuation | Sheltered<br>Valuation | Avoided Formula Impacts from Sheltering of Valuation |   |                                   |                          |
|--------------------------|----------------------|--------------------------|------------------------|--|---|-----------------------------------|--------------------------|
|                          |                      |                          |                        | Avoided Loss of<br>State Aid to for<br>Education     | Avoided Loss of<br>State Municipal<br>Revenue Sharing | Avoided Increase<br>In County Tax | Total Avoided<br>Impacts |
| 1                        | 2019                 | \$2,908,900              | \$2,181,675            | \$0  | \$1,276   | \$1,205                           | \$2,481                  |
| 2                        | 2020                 | \$2,908,900              | \$2,181,675            | \$0  | \$1,276   | \$1,205                           | \$2,481                  |
| 3                        | 2021                 | \$2,908,900              | \$2,181,675            | \$0  | \$1,276   | \$1,205                           | \$2,481                  |
| 4                        | 2022                 | \$2,908,900              | \$2,181,675            | \$9,283  | \$1,276   | \$1,205                           | \$11,764                 |
| 5                        | 2023                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 6                        | 2024                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 7                        | 2025                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 8                        | 2026                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 9                        | 2027                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 10                       | 2028                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 11                       | 2029                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 12                       | 2030                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 13                       | 2031                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 14                       | 2032                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 15                       | 2033                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 16                       | 2034                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 17                       | 2035                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 18                       | 2036                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 19                       | 2037                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 20                       | 2038                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 21                       | 2039                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 22                       | 2040                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 23                       | 2041                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 24                       | 2042                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 25                       | 2043                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 26                       | 2044                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 27                       | 2045                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 28                       | 2046                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 29                       | 2047                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| 30                       | 2048                 | \$2,908,900              | \$2,181,675            | \$18,566   | \$1,276   | \$1,205                           | \$21,047                 |
| <b>30 Year TIF Total</b> |                      | <b>\$87,267,000</b>      | <b>\$65,450,250</b>    | <b>\$492,000</b>                                     | <b>\$38,293</b>                                       | <b>\$36,138</b>                   | <b>\$566,431</b>         |
| <b>30 Year Average</b>   |                      |                          |                        | <b>\$16,400</b>                                      | <b>\$1,276</b>  | <b>\$1,205</b>                    | <b>\$18,881</b>          |

977 Brighton Avenue, Portland, Me.





## City of Portland HOME Funds Application

### Project: 977 Brighton Avenue Apartments

Avesta Housing is requesting \$300,000 of HOME funds from the City of Portland for our 977 Brighton Avenue Apartments project ("977 Brighton") at 977 Brighton Avenue in Portland, Maine.

The development involves the new construction of 40 1-bedroom rental apartments for seniors (55+ years of age), in one 4-story building. 34 of the apartments will be affordable and 6 will be market rate. 24 units will be affordable to households at or below 50% of area median income and 10 will be affordable to households at or below 60% of area median income. Portland Housing Authority has awarded project-based rental assistance to eight of the units at the project. All units with affordability restrictions will have a utility allowance factored into the tenant rent payment.

977 Brighton represents an opportunity to create much-needed affordable senior housing in an accessible location within Portland. The development site contains eight contiguous lots located in a highly walkable area in the Nasons Corner section of Portland. The project is located near many amenities and services, making it a prime location for housing; retail stores, a pharmacy, trails and restaurants are all located within a half mile. The site is also located within a tenth of a mile to a bus stop on the extensive Portland public transportation bus system, connecting residents with Portland's downtown as well as adjoining communities.

See the attached maps for more information about the project's siting within the City and relative to numerous nearby amenities.

As shown in the attached pictures, the 0.73-acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project will consist of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot for 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents. Storm water management systems will be used to ensure that the project does not adversely impact the vicinity of the subject parcel. Avesta will work with City staff and the Planning Board to ensure that the design of the project is consistent with neighborhood design characteristics.

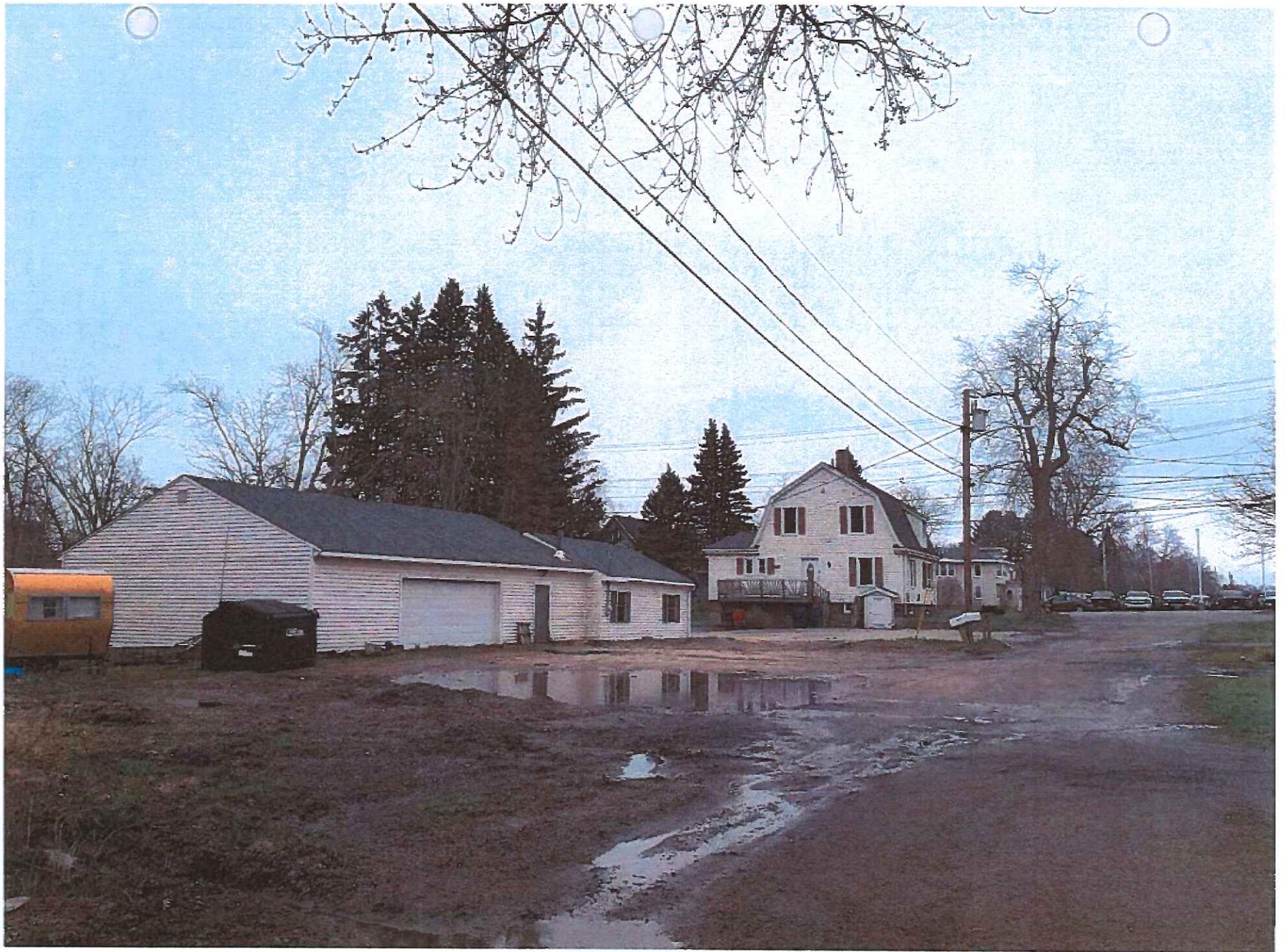
Each apartment will be approximately 600 square feet and all accessibility requirements will be met. Additional amenities will include on-site laundry, a health room, a community room and resident service coordination.

977 Brighton Avenue Apartments will continue Avesta Housing's commitment to construct and manage buildings designed to maximize energy performance, minimize adverse environmental impacts, provide healthy living spaces, conserve natural resources, and promote smart growth and sustainable development. All requirements of the City of Portland's Green Building Ordinance will be met. Additionally, as alluded to in the attached information provided by the property manager, Avesta Housing Development Corporation, smoking at the project will be prohibited and educational materials on tobacco treatment programs will be provided to tenants.

These affordable units at 977 Brighton Avenue come at a critical time for the City. Vacancies in Portland are at historic lows while rents remain too high for thousands of local renter households. In 2017, Avesta alone received requests for affordable housing from nearly 3,800 households (over 1,300 of which were senior-led households) but was only able to provide housing to 393.

977 Brighton Avenue Apartments will create much-needed senior affordable rental housing in an area of the city that is rich with transit, services, and neighborhood amenities.

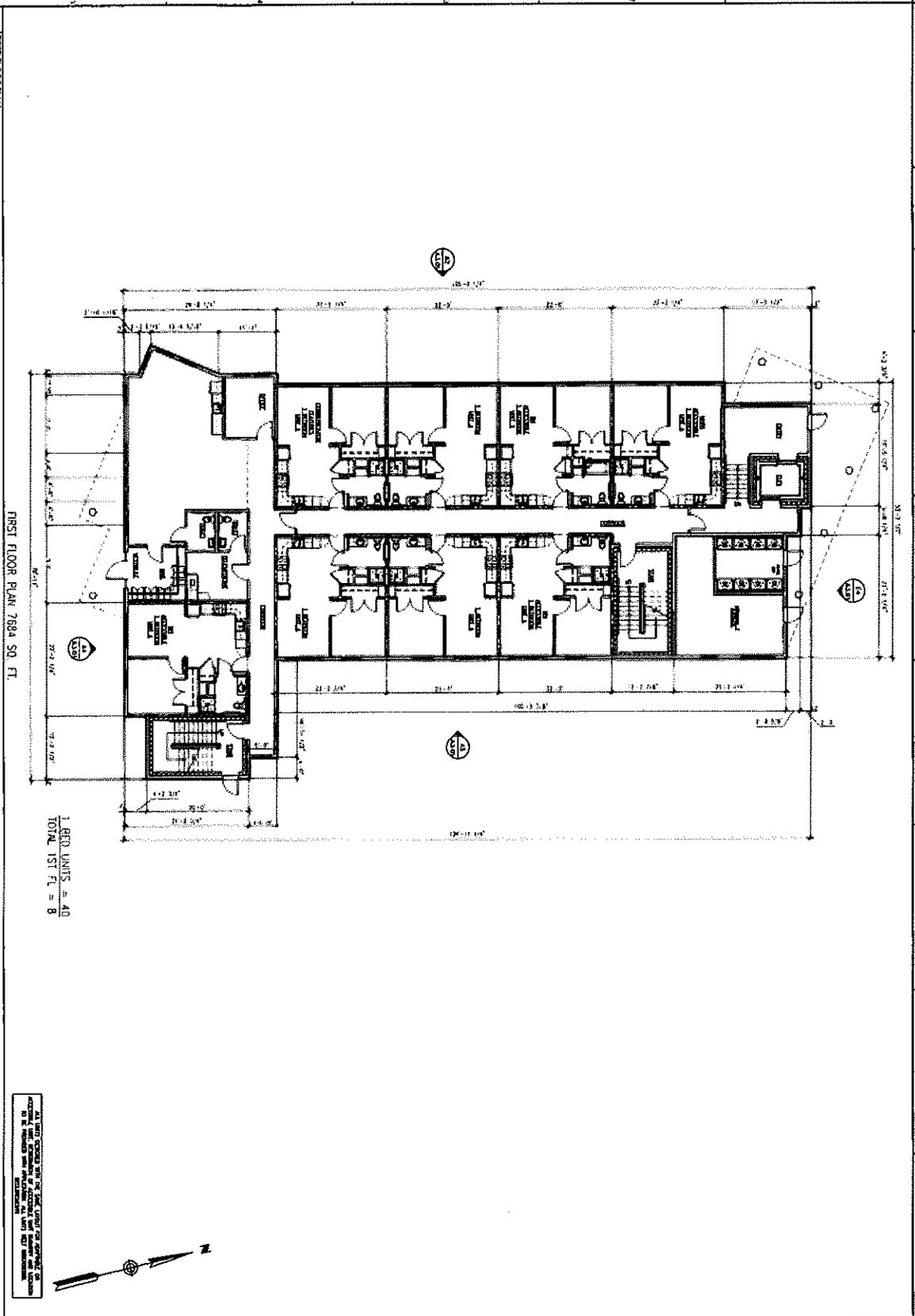






**A5**  
FIRST FLOOR PLAN

DATE: 08/20/14  
SCALE: AS SHOWN



FIRST FLOOR PLAN 7684 SQ. FT.

1 GEN. UNITS = 40  
TOTAL 1ST FL = 8

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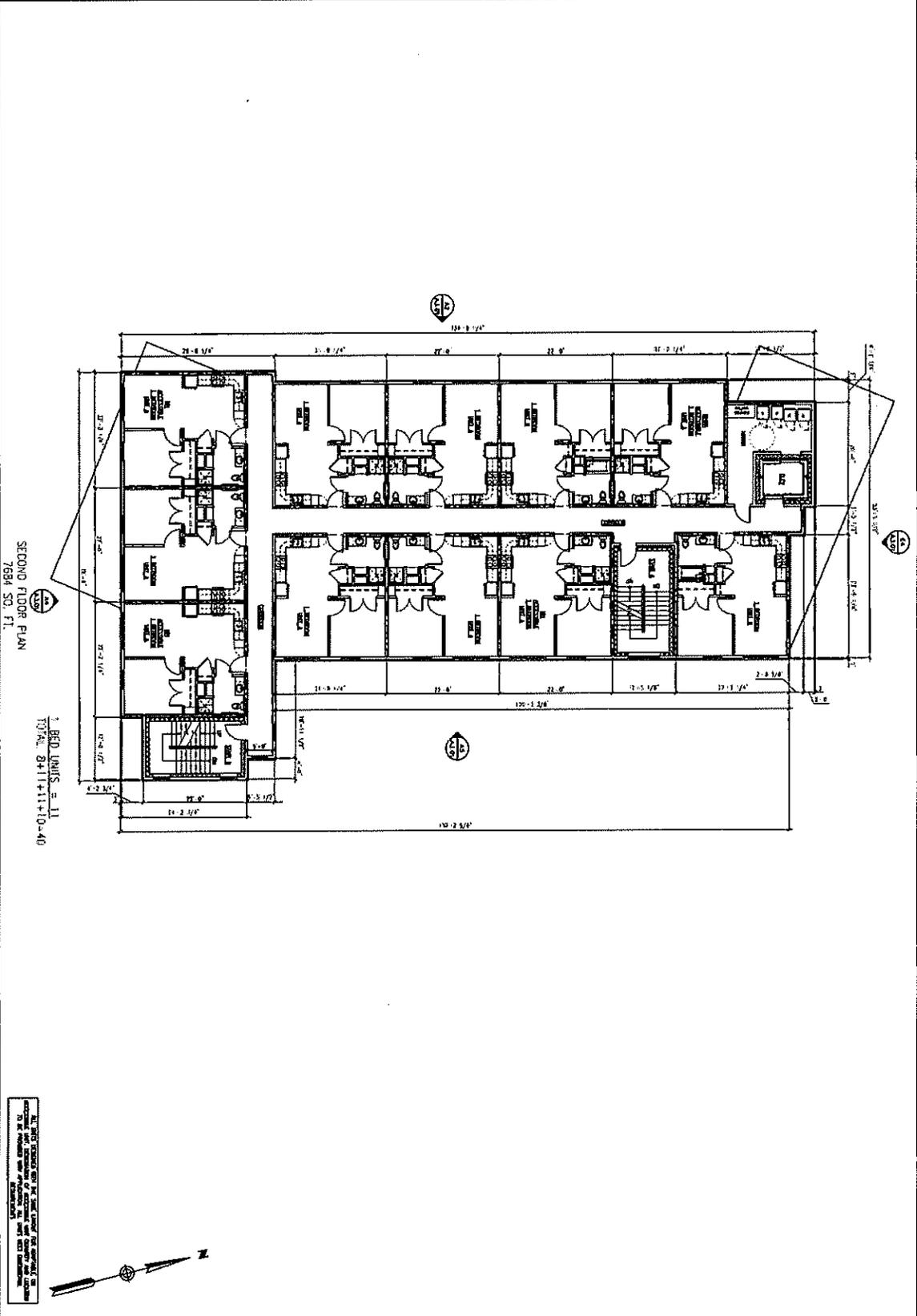


| REVISIONS | DRAWING          | PROJECT                            | OWNER  | DESIGNER   |
|-----------|------------------|------------------------------------|--|--|
|           | FIRST FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS & INTERIORS<br>120 CLEVELAND AVENUE, SUITE 100<br>COLUMBUS, OHIO 43215<br>TEL: 614.266.1444<br>FAX: 614.266.1444<br>WWW.CWSARCHITECTS.COM |

SCALE: AS SHOWN  
DATE: 08/20/14

CWS ARCHITECTS  
ARCHITECTS & INTERIORS  
120 CLEVELAND AVENUE, SUITE 100  
COLUMBUS, OHIO 43215  
TEL: 614.266.1444  
FAX: 614.266.1444  
WWW.CWSARCHITECTS.COM

**A1** SECOND FLOOR PLAN  
 SCALE: 1/8" = 1'-0"



ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.  
 DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.



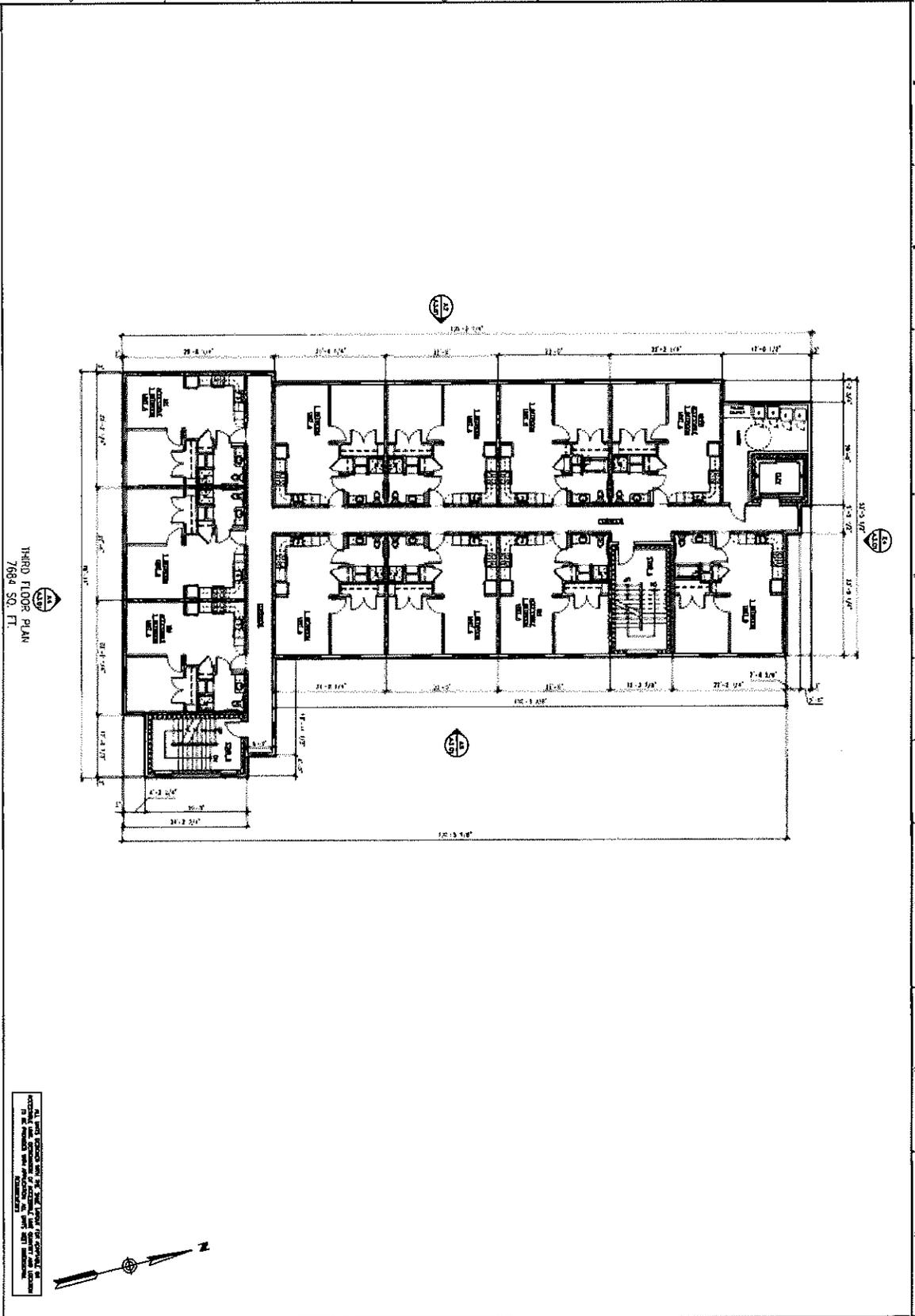
| REVISIONS | DRAWING           | PROJECT                            | OWNER  | DESIGNER   |
|-----------|-------------------|------------------------------------|--|--|
|           | SECOND FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS & INTERIORS, INC.<br>430 E. JENSEN BLVD. SUITE 200<br>DULUTH, GA 30091<br>404.271.1111<br>WWW.CWSARCHITECTS.COM |

DATE: 11/11/11  
 SCALE: AS NOTED  
 DRAWING NUMBER: A1.20

CWS ARCHITECTS  
 ARCHITECTS & INTERIORS, INC.

AS THIRD FLOOR PLAN

7684 SO. FL



THIRD FLOOR PLAN  
7684 SO. FL

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|-----------|------------------|------------------------------------|--|---|
|           | THIRD FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS, P.A.<br>1000 N. W. 10th St.<br>Fort Lauderdale, FL 33304<br>Tel: 754.463.1111<br>Fax: 754.463.1112<br>www.cwsarch.com |

Scale: AS NOTED  
Date: 11/21/2011

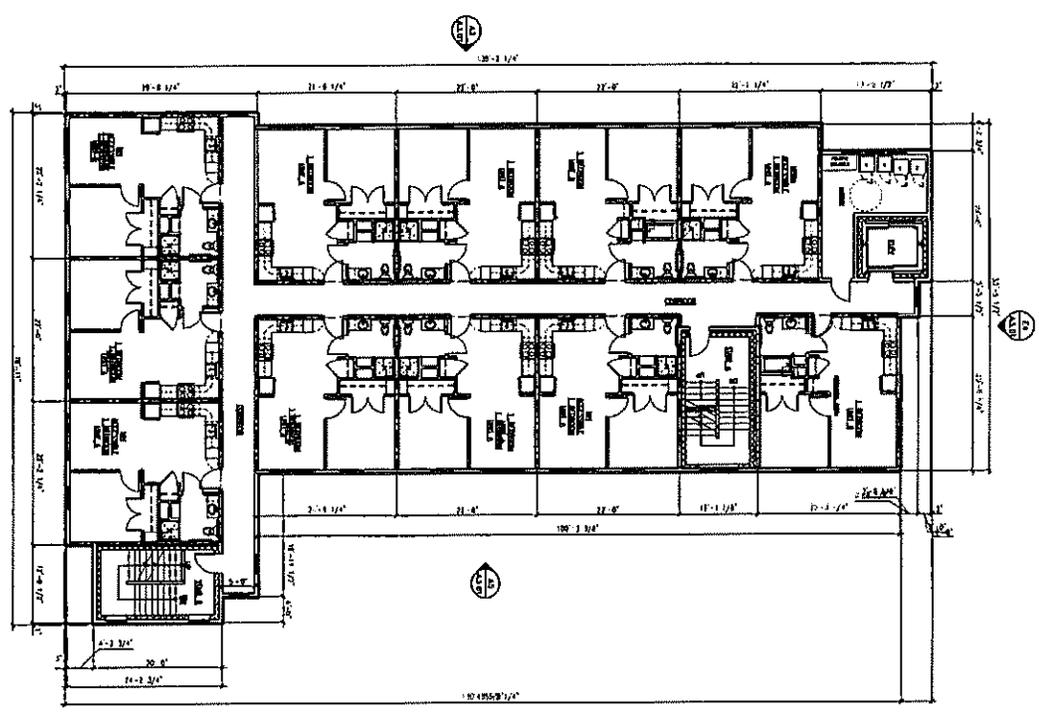
UNIVERSITY SQUARE  
A1.30

CWS ARCHITECTS  
ARCHITECTS, P.A.  
1000 N. W. 10th St.  
Fort Lauderdale, FL 33304  
Tel: 754.463.1111  
Fax: 754.463.1112  
www.cwsarch.com

AS FOURTH FLOOR PLAN

SCALE 1/8" = 1'-0"

FOURTH FLOOR PLAN  
7684 SO. FL



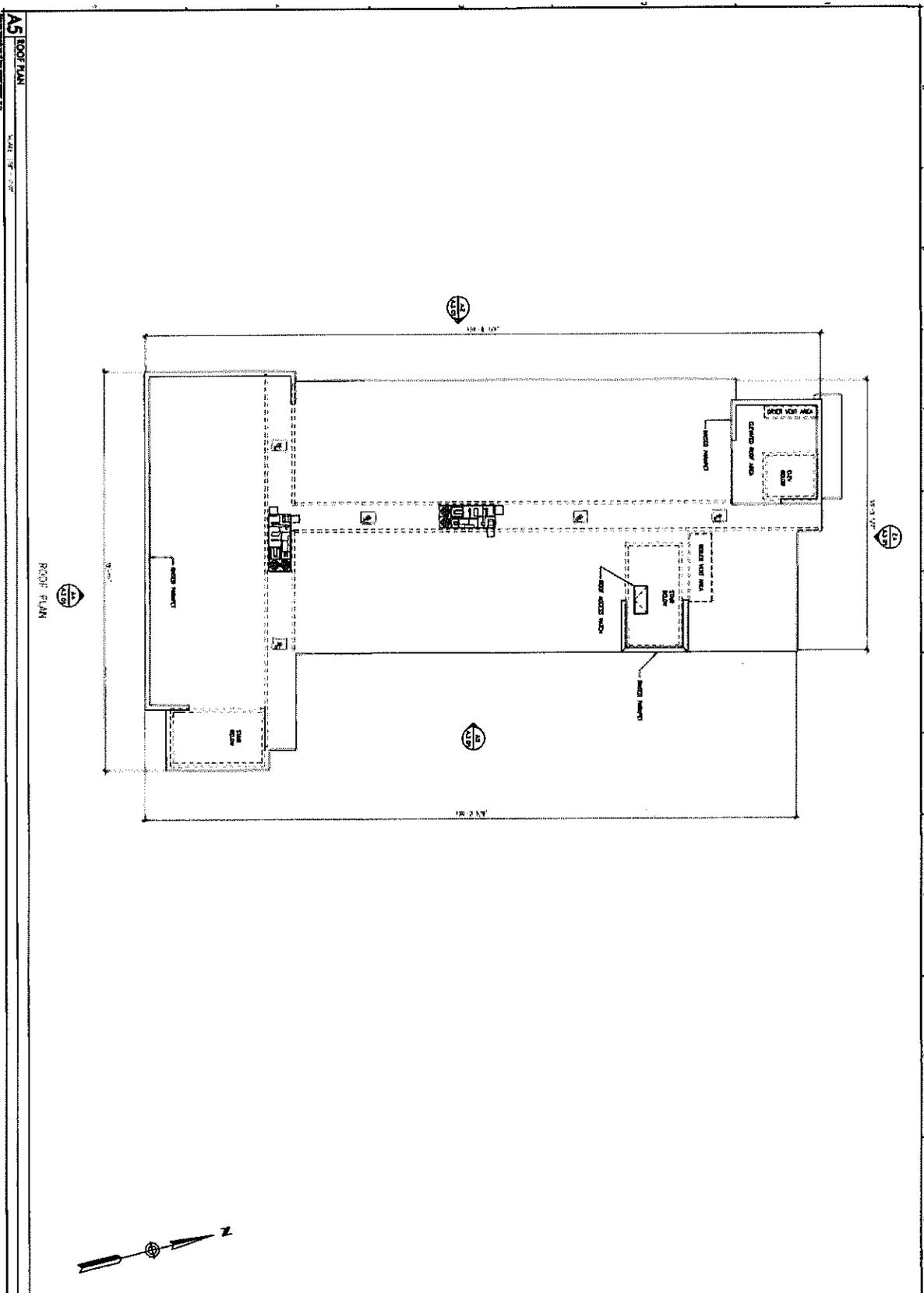
ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
DIMENSIONS TO FACE OF WALLS, DOORS, AND WINDOWS.  
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DIMENSIONS TO CENTER OF WALLS, DOORS, AND WINDOWS.



| REVISIONS | DRAWING           | PROJECT                            | OWNER  | DESIGNER   |
|-----------|-------------------|------------------------------------|--|--|
|           | FOURTH FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS & INTERIORS<br>200 GARDEN AVENUE<br>SUITE 200<br>BRIGHTON, MA 02111<br>TEL: 617.735.1111<br>WWW.CWSARCHITECTS.COM |

SCALE: AS SHOWN  
DATE: 12/17/11

CWS ARCHITECTS  
ARCHITECTS & INTERIORS  
200 GARDEN AVENUE  
SUITE 200  
BRIGHTON, MA 02111  
TEL: 617.735.1111  
WWW.CWSARCHITECTS.COM



|   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |   |   |  |   |   |
|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|---|---|--|---|---|
| TITLE<br><b>A1.50</b><br>DATE<br>12/27/2017                           | REVISIONS<br><table border="1"> <tr><td> </td><td> </td><td> </td></tr> </table> |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | DRAWING<br><b>ROOF PLAN</b><br><small>CONVERTED FROM 2017 EDC</small> | PROJECT<br><b>977 BRIGHTON AVE SENIOR APARTMENTS</b><br><small>977 BRIGHTON AVE<br/>         BOSTON, MA 02115</small> | OWNER<br><b>AVESTA 977 BRIGHTON LP<br/>         c/o AVESTA HOUSING</b><br><small>AVESTA HOUSING LP<br/>         1000 AVENUE OF THE COMMONS<br/>         SUITE 1000<br/>         BOSTON, MA 02115</small> | DESIGNER<br><b>CWS ARCHITECTS</b><br><small>ARCHITECTS</small><br><small>33 CANTON AND A ST<br/>         SUITE 400 BOSTON MA 02111<br/>         P 617 552 4411<br/>         F 617 552 4411<br/>         WWW.CWSARCHITECTS.COM</small> | <small>© 2017 CWS ARCHITECTS<br/>         ALL RIGHTS RESERVED<br/>         1000 AVENUE OF THE COMMONS<br/>         SUITE 1000<br/>         BOSTON, MA 02115</small> |
|   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |   |   |  |   |   |
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| <small>1/2" = 1'-0" SCALE<br/>         UNLESS OTHERWISE NOTED</small> |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |   |   |  |   |   |

**977 BRIGHTON AVENUE APARTMENTS**

**Project Completion Schedule**

| Activity                             | Actual/Scheduled Date<br>Month/Year |
|--------------------------------------|-------------------------------------|
| <b>A. SITE</b>                       |                                     |
| Option/Contract                      | 07/13/15                            |
| Site Acquisition                     | 10/06/15                            |
| Municipal Approval                   | 06/01/18                            |
| <b>B. FINANCING</b>                  |                                     |
| Construction Loan Commitment         | 09/01/18                            |
| Permanent Loan Commitment            | 09/01/18                            |
| Other Sources Committed              | 12/01/18                            |
| <b>C. PLANS AND SPECIFICATIONS</b>   |                                     |
| 50%                                  | 02/01/19                            |
| 90%                                  | 03/01/19                            |
| 100%                                 | 04/01/19                            |
| <b>D. CONSTRUCTION LOAN CLOSING</b>  | 05/01/19                            |
| <b>E. CONSTRUCTION START</b>         | 05/01/19                            |
| <b>F. SUBSTANTIAL COMPLETION</b>     | 05/01/20                            |
| <b>G. COMPLETION OF CONSTRUCTION</b> | 06/01/20                            |
| <b>H. LEASE-UP</b>                   |                                     |
| Lease-up Begins                      | 05/01/20                            |
| Sustained (95%) Occupancy            | 11/01/20                            |

PROJECT NAME: 977 Brighton Avenue  
 LOCATION: Portland

Date: 04/30/18

| DEVELOPMENT ASSUMPTIONS       |       |    |                       |        |          |           |
|-------------------------------|-------|----|-----------------------|--------|----------|-----------|
| Total Units                   |       | 40 | Inflation Adjustments | Yr 1-5 | Yr. 6-15 | Yr. 16-30 |
| # @ 50% AMI (PBVs)            | 20.0% | 8  | Rent                  | 2.00%  | 2.50%    | 2.00%     |
| # @ 50% AMI (LIHTC/High HOME) | 40.0% | 16 | Operating Expense     | 3.00%  | 3.00%    | 3.00%     |
| # @ 60% AMI (LIHTC/High HOME) | 0.0%  | 0  | Other Income          | 2.00%  | 2.50%    | 2.00%     |
| # @ 60% AMI (LIHTC)           | 25.0% | 10 | Debt Coverage Ratio   | 0.00   |          |           |
| # @ Market                    | 15.0% | 6  | Vacancy               | 5%     |          |           |
| Appraised Market Value        |       |    | Market Value/Unit     |        |          |           |

4,590,846

|              |           |
|--------------|-----------|
| LIHTC Alloc. | 638,000   |
| Equity yield | 0.830     |
| Synd. %      | 99.99%    |
| Equity Raise | 5,294,870 |

|                     |        |
|---------------------|--------|
| Historic Credit FED | 0      |
| Equity yield        | 0.99   |
| Synd. %             | 99.99% |
| Equity Raise        | 0      |

|                       |        |
|-----------------------|--------|
| Number of Tax-payers  | 1      |
| Historic Credit STATE | 0      |
| Equity yield          | 0      |
| Synd. %               | 99.99% |
| Equity Raise          | 0      |

Total Equity: 5,294,870

|                         |     |
|-------------------------|-----|
| Gross Square Footage    | 0   |
| Construction Cost/Sq ft | \$0 |

#DIV/0!

| PRO FORMA DEVELOPMENT BUDGET       |                  |                |            |                  |
|------------------------------------|------------------|----------------|------------|------------------|
|                                    | Residential      | Per Unit       | Commercial | Total            |
| Site Improvements                  | 572,194          | 14,305         |            | 572,194          |
| Construction                       | 5,227,444        | 130,686        |            | 5,227,444        |
| Solar                              | 0                | 0              |            | 0                |
| General Requirements               | 0                | 0              |            | 0                |
| Builder Overhead                   | 0                | 0              |            | 0                |
| Builder Profit                     | 0                | 0              |            | 0                |
| Bond Premium                       | 0                | 0              |            | 0                |
| Construction Contingency           | 5%               | 289,982        | 7,250      | 289,982          |
| Subtotal Construction Costs        | 6,089,620        | 152,240        | 0          | 6,089,620        |
| Building Permits and Fees          | 81,936           | 2,048          |            | 81,936           |
| Survey & Engineering               | 38,000           | 950            |            | 38,000           |
| Architectural & Design             | 481,000          | 11,525         |            | 481,000          |
| Legal                              | 65,000           | 1,625          |            | 65,000           |
| Title & Recording                  | 5,885            | 147            |            | 5,885            |
| Accounting                         | 10,000           | 250            |            | 10,000           |
| Construction Period Tax            | 12,000           | 300            |            | 12,000           |
| Construction Period Insurance      | 12,000           | 300            |            | 12,000           |
| Subtotal Soft Costs                | 685,821          | 17,146         | 0          | 685,821          |
| Construction Loan Origination Fees | 10,000           | 250            |            | 10,000           |
| Construction Loan Interest         | 157,266          | 3,932          |            | 157,266          |
| Letter of Credit Fee               | 3,630            | 91             |            | 3,630            |
| Escrow Agent Fee                   | 0                | 0              |            | 0                |
| Perm Loan Commitment Fee           | 10,000           | 250            |            | 10,000           |
| Construction Lender Legal          | 12,000           | 300            |            | 12,000           |
| Subtotal Finance Costs             | 192,896          | 4,822          | 0          | 192,896          |
| Market Survey                      | 3,500            | 88             |            | 3,500            |
| Appraisal                          | 6,200            | 155            |            | 6,200            |
| Environmental                      | 12,700           | 318            |            | 12,700           |
| LIHTC Fees                         | 40,000           | 1,000          |            | 40,000           |
| Soft Cost Contingency              | 25,000           | 625            |            | 25,000           |
| 3rd Party Consultants              | 18,000           | 450            |            | 18,000           |
| FF&E                               | 61,000           | 1,525          |            | 61,000           |
| Subtotal Miscellaneous             | 166,400          | 4,160          | 0          | 166,400          |
| Acquisition: Buildings             | 0                | 0              |            | 0                |
| Acquisition: Land                  | 280,000          | 7,000          |            | 280,000          |
| Carrying Costs                     | 0                | 0              |            | 0                |
| Subtotal Acquisition               | 280,000          | 7,000          | 0          | 280,000          |
| Operating Deficit Escrow           | 141,859          | 3,546          |            | 141,859          |
| Pre-funded Replacements            | 52,274           | 1,307          |            | 52,274           |
| Tax & Insurance Escrow             | 28,500           | 713            |            | 28,500           |
| Developer Overhead                 | 487,500          | 12,188         |            | 487,500          |
| Developer Profit                   | 0                | 0              |            | 0                |
| Marketing & Rent-Up Reserve        | 40,000           | 1,000          |            | 40,000           |
| Subtotal Fee and Reserves          | 750,133          | 18,753         | 0          | 750,133          |
| <b>Total Development</b>           | <b>8,164,870</b> | <b>204,122</b> | <b>0</b>   | <b>8,164,870</b> |

Notes:

|                                 |           |
|---------------------------------|-----------|
| MAXIMUM DEVELOPER FEE AVAILABLE | 650,000   |
| ACTUAL DEVELOPER FEE            | 1,208,430 |
| % OF MAXIMUM DEVELOPER FEE      | 185.9%    |
| NET DEVELOPER FEE COLLECTED     | 1,208,430 |
| % OF MAXIMUM DEVELOPER FEE      | 185.9%    |

7,983,011

199,575

< 175000 = 4PTS

**FLOW OF FUNDS**

| Sources                    | CLC<br>May-19    | During Construction |                  |                  |                  | PLC<br>Jul-20    | Mar-21         | Aug-21        | Total             |
|----------------------------|------------------|---------------------|------------------|------------------|------------------|------------------|----------------|---------------|-------------------|
|                            |                  | Jul-19              | Oct-19           | Jan-20           | Apr-20           |                  |                |               |                   |
| Beginning Cash             | 0                | 0                   | 0                | 0                | 0                | 0                | 0              | 0             | 0                 |
| Capital Contribution       | 1,058,974        |                     | 1,058,974        |                  |                  | 2,956,922        | 170,000        | 50,000        | 5,294,870         |
| Construction Loan          | 406,143          | 1,272,405           | 213,431          | 1,522,405        | 1,522,405        |                  |                |               | 4,936,788         |
| GP Bridge Loan             |                  |                     |                  |                  |                  |                  |                |               | 0                 |
| MSHA Subsidy               |                  |                     |                  |                  |                  |                  |                |               | 0                 |
| MSHA Amortizing Mortgage   |                  |                     |                  |                  |                  | 0                |                |               | 0                 |
| AHP Grant                  | 0                | 250,000             | 250,000          |                  |                  |                  |                |               | 500,000           |
| AHP Loan                   |                  |                     |                  |                  |                  | 2,070,000        |                |               | 2,070,000         |
| City HOME                  | 0                | 0                   |                  |                  |                  | 300,000          |                |               | 300,000           |
| Solar Equity               | 0                | 0                   |                  |                  |                  | 0                |                |               | 0                 |
| Other: Sponsor Loan        | 0                |                     |                  |                  |                  |                  |                |               | 0                 |
| Other                      |                  |                     |                  |                  |                  |                  |                |               | 0                 |
| Development Fee Loan       | 0                |                     |                  |                  |                  |                  |                |               | 0                 |
| <b>TOTAL SOURCES</b>       | <b>1,465,117</b> | <b>1,522,405</b>    | <b>1,522,405</b> | <b>1,522,405</b> | <b>1,522,405</b> | <b>5,326,922</b> | <b>170,000</b> | <b>50,000</b> | <b>13,101,659</b> |
| <b>Uses</b>                |                  |                     |                  |                  |                  |                  |                |               |                   |
| Acquisition                | 280,000          |                     |                  |                  |                  |                  |                |               | 280,000           |
| Construction               |                  | 1,522,405           | 1,522,405        | 1,522,405        | 1,522,405        |                  |                |               | 6,089,620         |
| Soft Costs                 | 685,821          |                     |                  |                  |                  |                  |                |               | 685,821           |
| Financing Costs            | 192,896          |                     |                  |                  |                  |                  |                |               | 192,896           |
| Miscellaneous              | 166,400          |                     |                  |                  |                  | 40,000           |                |               | 206,400           |
| Dev Fee                    | 140,000          |                     |                  |                  |                  | 127,500          | 170,000        | 50,000        | 487,500           |
| Reserves                   |                  |                     |                  |                  |                  | 222,633          |                |               | 222,633           |
| <b>TOTAL DEV. COSTS</b>    | <b>1,465,117</b> | <b>1,522,405</b>    | <b>1,522,405</b> | <b>1,522,405</b> | <b>1,522,405</b> | <b>390,133</b>   | <b>170,000</b> | <b>50,000</b> | <b>8,164,870</b>  |
| Repay GP Bridge Loan       |                  |                     |                  |                  |                  | 0                |                |               | 0                 |
| Repay Construction Loan    |                  |                     |                  |                  |                  | 4,936,788        |                |               | 4,936,788         |
| SUBTOTAL OTHER ITEMS       | 0                | 0                   | 0                | 0                | 0                | 4,936,788        | 0              | 0             | 4,936,788         |
| <b>TOTAL USES OF FUNDS</b> | <b>1,465,117</b> | <b>1,522,405</b>    | <b>1,522,405</b> | <b>1,522,405</b> | <b>1,522,405</b> | <b>5,326,922</b> | <b>170,000</b> | <b>50,000</b> | <b>13,101,658</b> |
| Ending Cash                | 0                | 0                   | 0                | 0                | 0                | 0                | 0              | 0             | 0                 |

**PROJECT FINANCING**

| Source                                | Amount           | Rate   | Term | Lien     | Annual D/S |          |           |
|---------------------------------------|------------------|--------|------|----------|------------|----------|-----------|
|                                       |                  |        |      |          | Yr. 1-5    | Yr. 6-15 | Yr. 16-30 |
| Source 1: MSHA Subsidy                | 0                | 0.00%  | 30   |          | 0          | 0        | 0         |
| Source 2: MSHA Interest Only Mortgage | 0                | 6.00%  | 30   |          | 0          | 0        | 0         |
| Source 3: AHP Grant                   | 500,000          | 0.00%  | 30   | Co-First | 0          | 0        | 0         |
| Source 4: AHP Loan                    | 2,070,000        | 3.60%  | 30   | First    | 112,934    | 112,934  | 112,934   |
| Source 5: City HOME                   | 300,000          | 0.00%  | 30   | Co-First |            | Grant    |           |
| Source 6: Solar Equity                | 0                |        |      |          |            |          |           |
| Source 7: Other: Sponsor Loan         |                  |        |      |          |            |          |           |
| Source 8: Development Fee Loan        | 0                |        |      |          |            |          |           |
| Source 9: Net Syndication             | 5,294,870        | \$0.83 |      |          |            |          |           |
| Capitalization Gap (Surplus)          | (0)              |        |      |          |            |          |           |
| <b>Total</b>                          | <b>8,164,870</b> |        |      |          |            |          |           |

|  |
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|  |
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|  |

\$0.0706

| PROPOSED RENT SCHEDULE |           |         |                        |                   |            |             |                |            |
|------------------------|-----------|---------|------------------------|-------------------|------------|-------------|----------------|------------|
| Type                   | AMI       | # Units | Rents from Applicant   | Program Max Rents | Gross Rent | Market Rent | Utility Allow. | Total Rent |
| Efficiency             | 50% PBVs  | 0       |                        | 911               | 911        | \$955       | 0              | 0          |
|                        | 50% LIHTC | 0       |                        | 718               | 718        | \$955       | 0              | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 60% LIHTC | 0       |                        | 862               | 862        | \$955       | 0              | 0          |
|                        | Market    | 0       |                        |                   |            |             | 0              | 0          |
| 1BR                    | 50% PBVs  | 8       |                        | 1028              | 1,028      | \$1,050     |                | 98,688     |
|                        | 50% LIHTC | 16      |                        | 770               | 770        | \$1,050     | 0              | 147,840    |
|                        | 60% HOME  |         |                        |                   |            | \$1,050     |                | 0          |
|                        | 60% LIHTC | 10      |                        | 924               | 924        | \$1,050     | 0              | 110,880    |
|                        | Market    | 6       |                        |                   | 1,050      | \$1,050     |                | 75,600     |
| 2BR                    | 50% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 50% LIHTC |         |                        | 923               | 923        | \$1,250     | 0              | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 60% LIHTC |         |                        | 1108              | 1,108      | \$1,250     | 0              | 0          |
|                        | Market    | 0       |                        |                   |            |             | 0              | 0          |
| 3BR                    | 50% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 50% LIHTC |         |                        |                   |            |             | 0              | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 60% LIHTC |         |                        |                   |            |             | 0              | 0          |
|                        | Market    | 0       |                        |                   |            |             | 0              | 0          |
| 4BR                    | 50% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 50% LIHTC |         |                        |                   |            |             | 0              | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0              | 0          |
|                        | 60% LIHTC |         |                        |                   |            |             | 0              | 0          |
|                        | Market    | 0       |                        |                   |            |             | 0              | 0          |
| Other:                 |           |         |                        |                   |            |             | 0              |            |
| Subtotals              |           | 40      |                        |                   |            |             |                | 433,008    |
|                        |           |         | Other Income           |                   | Laundry    |             |                | 3,156      |
|                        |           |         | Vacancy Rate           |                   | 5%         |             |                | (21,808)   |
|                        |           |         | Other Income           | TIF               |            | 65%         |                | 30,765     |
|                        |           |         | Effective Gross Income |                   |            |             |                | 445,120    |

#DIV/0!  
current taxes 4,670

| OPERATING EXPENSES                  |                |                 |                  |
|-------------------------------------|----------------|-----------------|------------------|
| Expense                             | Annual         | Annual Per Unit | Monthly Per Unit |
| <b>Administrative Expenses:</b>     |                |                 |                  |
| Management Fees                     | 24,672         | 617             | 51               |
| Management Charges                  | 24,672         | 617             | 51               |
| Marketing Expenses                  | 0              | 0               | 0                |
| Legal Expenses                      | 1,500          | 38              | 3                |
| Auditing Expenses                   | 5,000          | 125             | 10               |
| Bad Debts                           | 0              | 0               | 0                |
| Other Administrative Expenses       | 6,000          | 150             | 13               |
| <b>Administrative Expenses</b>      | <b>61,844</b>  | <b>1,546</b>    | <b>129</b>       |
| <b>Operating Expenses:</b>          |                |                 |                  |
| Janitorial Payroll                  | 0              | 0               | 0                |
| Janitorial Supplies and Equipment   | 0              | 0               | 0                |
| Janitorial Contractual Services     | 6,600          | 165             | 14               |
| Fuel and Gas                        | 18,000         | 450             | 38               |
| Electricity                         | 34,000         | 850             | 71               |
| Water and Sewer                     | 16,000         | 400             | 33               |
| Garbage and Trash Removal           | 4,000          | 100             | 8                |
| Vehicle and Equipment Expenses      | 0              | 0               | 0                |
| Other Operating Expenses            | 0              | 0               | 0                |
| <b>Operating Expenses</b>           | <b>78,600</b>  | <b>1,965</b>    | <b>164</b>       |
| <b>Maintenance Expenses:</b>        |                |                 |                  |
| Grounds Maintenance Payroll         | 0              | 0               | 0                |
| Grounds Tools and Supplies          | 0              | 0               | 0                |
| Grounds Contractual Services        | 25,000         | 625             | 52               |
| Miscellaneous Ground Maintenance    | 0              | 0               | 0                |
| Tenant Damage Charges - Grounds     | 0              | 0               | 0                |
| Building Maintenance Payroll        | 0              | 0               | 0                |
| Building Tools and Supplies         | 5,000          | 125             | 10               |
| Building Contractual Services       | 20,000         | 500             | 42               |
| Building Systems Maintenance        | 25,000         | 625             | 52               |
| Miscellaneous Building Maintenance  | 0              | 0               | 0                |
| Tenant Damage Charges - Building    | 0              | 0               | 0                |
| <b>Maintenance Expenses</b>         | <b>75,000</b>  | <b>1,875</b>    | <b>156</b>       |
| <b>General Expenses:</b>            |                |                 |                  |
| Property Taxes                      | 52,000         | 1,300           | 108              |
| Property and Liability Insurance    | 15,000         | 375             | 31               |
| Tenant Computer Network Expense     | 0              | 0               | 0                |
| Tenant Service Expenses             | 12,199         | 305             | 25               |
| <b>General Expenses</b>             | <b>79,199</b>  | <b>1,980</b>    | <b>165</b>       |
| Replacement Reserve Funding         | 18,000         | 450             | 38               |
| Commercial Expenses (if applicable) |                | 0               | 0                |
| <b>Total</b>                        | <b>312,643</b> | <b>7,816</b>    | <b>651</b>       |

| AFFORDABLE MORTGAGE CALCULATION |         |
|---------------------------------|---------|
| Effective Gross Income          | 445,120 |
| Annual Operating Expense        | 312,643 |
| Stabilized NOI                  | 132,477 |
| DSC                             |         |
| \$ Avail for D/S                |         |
| Other DS                        | 112,934 |
| Balance                         | 1.17    |
| Affordable Mortgage             |         |

| BREAKEVEN ANALYSIS: | RENT SENSITIVITY |        | OCCUPANCY           |         |
|---------------------|------------------|--------|---------------------|---------|
|                     | Total            | Annual | Total               | Annual  |
| Operating Expense   | 312,643          |        | Gross Revenues      | 466,929 |
| Debt Service        | 112,934          |        |                     |         |
| Breakeven Rent      | 887              |        | Breakeven Occupancy | 91%     |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT |          |          |          |          |          |          |          |          |          |          |          |
|---|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 5 Months  |          |          |          |          |          |          |          |          |          |          |          |
| 7/24/20   | 12/31/20 | 12/31/21 | 12/31/22 | 12/31/23 | 12/31/24 | 12/31/25 | 12/31/26 | 12/31/27 | 12/31/28 | 12/31/29 | 12/31/30 |
| Effective Gross Income                          | 185,467  | 445,120  | 454,023  | 463,103  | 472,365  | 481,813  | 493,858  | 506,204  | 518,859  | 531,831  | 545,127  |
| Less Operating Expense                          | 130,268  | 312,643  | 322,022  | 331,883  | 341,634  | 351,883  | 362,439  | 373,312  | 384,512  | 396,047  | 407,928  |
| Net Operating Income                            | 55,199   | 132,477  | 132,000  | 131,420  | 130,732  | 129,930  | 131,419  | 132,892  | 134,348  | 135,784  | 137,198  |
| Less RLP Repay                                  |          | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Less Other Repay                                | 47,056   | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  |
| Cash Flow                                       | 8,143    | 19,543   | 19,066   | 18,486   | 17,798   | 16,996   | 18,485   | 19,958   | 21,414   | 22,850   | 24,264   |
| Cash Flow per Unit                              | 489      | 489      | 477      | 462      | 445      | 425      | 462      | 499      | 535      | 571      | 607      |
| Debt Coverage Ratio(RLP)                        | 1.17     | 1.17     | 1.17     | 1.16     | 1.16     | 1.15     | 1.16     | 1.18     | 1.19     | 1.20     | 1.21     |
| Operating Reserve Balance                       | 141,859  | 148,952  | 156,400  | 164,220  | 172,431  | 181,052  | 190,105  | 199,610  | 209,590  | 220,070  | 242,627  |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued |         |          |          |          |         |          |          |          |         |          |          |
|--|---------|----------|----------|----------|---------|----------|----------|----------|---------|----------|----------|
| Yr 15  |         |          |          |          |         |          |          |          |         |          |          |
|  | 1/1/32  | 12/31/32 | 12/31/33 | 12/31/34 | 1/1/36  | 12/31/36 | 12/31/37 | 12/31/38 | 1/1/40  | 12/31/40 | 12/31/41 |
| Effective Gross Income                                     | 558,755 | 572,724  | 587,042  | 601,718  | 616,761 | 629,096  | 641,678  | 654,511  | 667,602 | 680,954  | 694,573  |
| Less Operating Expense                                     | 420,166 | 432,771  | 445,754  | 459,127  | 472,901 | 487,088  | 501,701  | 516,752  | 532,254 | 548,222  | 564,668  |
| Net Operating Income                                       | 138,589 | 139,952  | 141,287  | 142,591  | 143,860 | 142,008  | 139,977  | 137,760  | 135,348 | 132,732  | 129,904  |
| Less RLP Repay   | 0       | 0        | 0        | 0        | 0       | 0        | 0        | 0        | 0       | 0        | 0        |
| Less Other Repay   | 112,934 | 112,934  | 112,934  | 112,934  | 112,934 | 112,934  | 112,934  | 112,934  | 112,934 | 112,934  | 112,934  |
| Cash Flow  | 25,655  | 27,019   | 28,353   | 29,657   | 30,926  | 29,074   | 27,043   | 24,826   | 22,414  | 19,798   | 16,971   |
| Cash Flow per Unit   | 641     | 675      | 709      | 741      | 773     | 727      | 676      | 621      | 560     | 495      | 424      |
| Debt Coverage Ratio(RLP)                                   | 1.23    | 1.24     | 1.25     | 1.26     | 1.27    | 1.26     | 1.24     | 1.22     | 1.20    | 1.18     | 1.15     |
| Operating Reserve Balance                                  | 242,627 | 254,758  | 267,496  | 280,871  | 294,915 | 309,660  | 325,143  | 341,401  | 358,471 | 376,394  | 414,975  |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued |          |         |          |          |          |         |          |          |          |  |
|--|----------|---------|----------|----------|----------|---------|----------|----------|----------|--|
|  | 12/31/42 | 1/1/44  | 12/31/44 | 12/31/45 | 12/31/46 | 1/1/48  | 12/31/48 | 12/31/49 | 7/30/50  |  |
| Effective Gross Income                                     | 708,484  | 722,634 | 737,086  | 751,828  | 766,864  | 782,202 | 797,846  | 813,803  | 484,213  |  |
| Less Operating Expense                                     | 581,608  | 599,057 | 617,028  | 635,539  | 654,605  | 674,244 | 694,471  | 715,305  | 429,779  |  |
| Net Operating Income                                       | 126,856  | 123,577 | 120,058  | 116,289  | 112,259  | 107,958 | 103,375  | 98,498   | 54,434   |  |
| Less RLP Repay   | 0        | 0       | 0        | 0        | 0        | 0       | 0        | 0        | 0        |  |
| Less Other Repay   | 112,934  | 112,934 | 112,934  | 112,934  | 112,934  | 112,934 | 112,934  | 112,934  | 112,934  |  |
| Cash Flow  | 13,922   | 10,643  | 7,124    | 3,355    | (575)    | (4,976) | (9,559)  | (14,436) | (58,500) |  |
| Cash Flow per Unit   | 348      | 266     | 178      | 84       | (17)     | (124)   | (239)    | (361)    | (2,507)  |  |
| Debt Coverage Ratio(RLP)                                   | 1.12     | 1.09    | 1.06     | 1.03     | 0.99     | 0.96    | 0.92     | 0.87     | 0.48     |  |
| Operating Reserve Balance                                  | 414,975  | 435,723 | 457,510  | 480,385  | 504,404  | 528,950 | 550,422  | 568,384  | 582,367  |  |



**To:** Mary Davis, City of Portland  
**From:** Anne Boynton, Urban Ventures, Inc.  
**Re:** 977 Brighton Ave, proposed by Avesta  
**Date:** June 12, 2018

## Executive Summary

Avesta requests \$300,000 in HOME funding and a 75% TIF to support their development of a 40 unit new construction senior apartment complex at 977 Brighton Ave. Avesta purchased the site proposed for this development in 2015. The lots currently contain a house and a garage, which will both be demolished. Though the area is suburban, the site is a short walk from the Pine Tree Shopping Center, providing access to a pharmacy and other shopping and dining options, and is less than 1/10<sup>th</sup> of a mile from a bus stop.

## Sources and Uses

|                       |             |   |                  |
|-----------------------|-------------|---|------------------|
| AHP loan              | \$2,070,000 | Construction (incl. site & contingency)   | \$6,089,620      |
| AHP grant             | \$500,000   | Soft costs (incl financing & contingency) | \$1,045,117      |
| LIHTC Equity          | \$5,294,870 | Acquisition                               | \$280,000        |
| City of Portland HOME | \$300,000   | Pre funded Reserves                       | \$262,633        |
|                       |             | Developer Fee                             | <u>\$487,500</u> |
| Total Sources:        | \$8,164,870 | Total Uses:                               | \$8,164,870      |

Avesta has received a commitment of funds for the AHP loan and \$500,000 grant. Bangor Savings has issued a term sheet for both construction and permanent first mortgages. Avesta plans to submit an application for 9% LIHTCs in the upcoming round opening in September. Avesta seeks the \$300,000 HOME and 75% TIF to support the application for LIHTCs.

For analysis of "Uses," see Development Budget.

## Development Budget

### Construction Costs:

Construction costs are based on a letter of estimate from CWS Architects. This is a very broad brush estimate, without even a break out of demolition, site improvements, and anticipated cost per square foot for improvements provided in the architect's letter. However, based on Avesta's break out of site work, the estimated \$170/sq foot for improvements should be more than sufficient for a pretty straightforward design and should accommodate some price inflation prior to construction start.

### Soft Costs:

Soft costs are in the range of normal, with a few exceptions. Architectural seems high for a straightforward design, and the relatively small number of units drives the per unit architectural expense up to over \$11,000 per unit. This does include \$45,000 for owner's representative construction management, which is typically a good investment in quality construction and smooth construction



process, with minimal change orders. FF&E is also high at \$61,000, which is \$1,525 per unit. This is \$25,000 for security cameras, \$6,000 for custodial equipment, and \$30,000 for common area and exterior furnishings. Since the “common area” is a single office and one interior lobby, plus exterior space, that seems quite high.

#### **Contingency:**

Contingency is budgeted at standard 5% for construction and a minimalist \$25,000 for soft costs. These are insufficient given the stage of development. However, the construction figure seems high enough to cover a range of unanticipated price increases, and from a practical perspective, I consider much of the FF&E item to be contingency.

#### **Acquisition:**

Avesta proposes to sell the sites to the LLC for \$280,000. Their acquisition price was \$283,000. The assessed value is \$291,100. While this seems a fair price, an appraisal supporting that price is a condition of any recommendation.

### **Operating Budget & 20 Year Cashflow Projection**

#### **Project Income:**

Avesta plans a mixed income building, with 24 units for households below 50% AMI (\$770 LIHTC, \$1,028 w Project Based Vouchers), 10 units for households below 60% AMI (\$924/mo), and 6 market rate units (\$1,050/mo). Avesta has a commitment for 8 project based vouchers from the Housing Authority to provide a deeper subsidy for 8 of the 24 households at 50% AMI. Consistent with Portland policy, 4 units must house homeless seniors.

#### **Operating Expense**

The budgeted per unit operating cost appears high at \$8,122, however, factoring out the TIF shows operating expenses of \$6,918 per unit, which is in the middle range for affordable housing. Supportive services are budgeted consistent with Maine Housings requirements at \$12,199. Utilities are generously budgeted at \$1,700 per unit per year for 600 sq foot units of new construction meeting green standards. Maintenance also seems high at \$2,140 for newly constructed, small, senior units, including \$25,000 for grounds. They will be able to operate a bit leaner than these costs suggest.

#### **20 Year Cashflow & Debt Service Coverage Ratio (DSCR)**

Cashflow starts out at a comfortable 1.22 DSCR in year one with a 5% vacancy. However, with industry standard inflators of 2% for income and 3% for expenses, the cashflow gradually erodes. By year 20, DSCR is down to 1.05. Avestas projections show positive cashflow for 20 years by using a 2.5% income inflator for years 6-15. Creating positive cashflow by using more aggressive income inflators puts project success in the hands of one variable the developer does NOT control – increases in market price of rent. If, on the other hand, Avesta can find a way to trim maintenance from \$2,140 to \$2,015 per unit per year (for instance, trim grounds expense from \$25,000 to \$20,000), the year 1 DSCR is 1.26 and is 1.13 in year 20. There are ways the developer can control both the operating expenses and the rent revenue (out performing the budgeted 5% vacancy rate) which will support positive cashflow which don't require aggressive assumptions regarding income inflation.



## Developer Financials

Avesta is in good, and improving, financial condition. Avesta has provided audits for 2014, 2015, 2016, and internal financial statements for 2017. Prior year audits have been received by Avesta in late May or early June, so while not ideal to review unaudited financials for 2017, it is not out of line with the timing of audit finalization in prior years.

Current assets in 2016 of \$9.6 million (audited) rise to \$11.8 million in 2017 (unaudited), while current liabilities in 2016 of \$4.9 million (audited) rise to \$6.1 million 2017 (unaudited). The resulting Current Ratios (current assets divided by current liabilities) are healthy for their scale of operations – 1.97 (2016 audited) and 1.93 (2017 unaudited). Net assets were \$123 million in 2016 (audited) and \$132 million in 2017 (unaudited). There has been significant sustained growth in net assets – which have more than doubled in the 5 years since 2012, when net assets were \$66 million. In 2017, revenue continued to grow and exceed budget while operating expenses were held under budget. Depreciation resulted in a paper loss of \$2,973,841, which is typical for a company with this financial structure, but this paper loss was more than outweighed by the growth in real estate equity.

This developer has the financial capacity to intervene in a development facing unexpected set backs and or cost over-runs to keep the development process moving forward. Their financial strength as an organization mitigates the risk of the thin soft cost contingency and the possibility of leaner than projected operating surpluses.

## Recommendations

Subject to availability of funding, I recommend a loan in the amount of \$300,000, zero percent interest, payment deferred for 30 years, and a 75% TIF, with the following conditions prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.
2. Satisfactory review of relocation budget.
3. Satisfactory appraisal

# Development Budget with Permanent Sources

Date 6/7/2018  
 Project Name 977 Brighton  
 Project Address 977 Brighton  
 Developer/Sponsor Avesta

Total Units 40  
 Total Square Feet 30,736

|                                | <u>Total</u>       | <u>Per Unit</u>  | <u>Per Sq Ft</u> |
|--------------------------------|--------------------|------------------|------------------|
| <b>Sources of Funds</b>        |                    |                  |                  |
| Permanent Financing - AHP Loan | \$2,070,000        | \$51,750         | \$67             |
| AHP Grant                      | \$500,000          | \$12,500         | \$16             |
| Equity (net LIHTC proceeds)    | \$5,294,870        | \$132,372        | \$172            |
| Deferred development fee       | \$0                | \$0              | \$0              |
| City of Portland HOME          | \$300,000          | \$7,500          | \$10             |
| Other                          |                    | \$0              | \$0              |
| <b>Total Sources of Funds</b>  | <b>\$8,164,870</b> | <b>\$204,122</b> | <b>\$266</b>     |

## Uses of Funds

|  |                    |                  |              |
|--|--------------------|------------------|--------------|
| <b>Hard Costs</b>  |                    |                  |              |
| Site Improvements  | \$572,194          | \$14,305         | \$19         |
| Rehabilitation   |                    | \$0              | \$0          |
| New Construction   | \$5,227,444        | \$130,686        | \$170        |
| Contractor's Profit, Overhead, & Gen. Requirements       | 0.0%               | \$0              | \$0          |
| Hazardous Materials abatement (if contracted separately) |                    | \$0              | \$0          |
| Demolition Cost (if contracted separately)               |                    | \$0              | \$0          |
| Bond Premium   |                    | \$0              | \$0          |
| Other  |                    | \$0              | \$0          |
| Hard Cost Contingency (% of hard costs)                  | 5.0%               | \$289,982        | \$7,250      |
| <b>Total Hard Costs</b>                                  | <b>\$6,089,620</b> | <b>\$152,241</b> | <b>\$198</b> |

|  |                  |                 |             |
|--|------------------|-----------------|-------------|
| <b>Soft Costs</b>  |                  |                 |             |
| Building Permit & Fees                                     | \$81,936         | \$2,048         | \$3         |
| Survey & Engineering                                       | \$38,000         | \$950           | \$1         |
| Design & Permitting (% of const exp)                       | 8.6%             | \$461,000       | \$11,525    |
| Borrower Legal (all closings, excluding syndication legal) | \$65,000         | \$1,625         | \$2         |
| Title & Recording  | \$5,885          | \$147           | \$0         |
| Accounting   | \$10,000         | \$250           | \$0         |
| Construction Period Taxes                                  | \$12,000         | \$300           | \$0         |
| Construction Period Insurance                              | \$12,000         | \$300           | \$0         |
| Other: FF&E, Security                                      | \$61,000         | \$1,525         | \$2         |
| Other  |                  | \$0             | \$0         |
| <b>Total Soft Costs</b>                                    | <b>\$746,821</b> | <b>\$18,671</b> | <b>\$24</b> |

|                                    |           |         |     |
|------------------------------------|-----------|---------|-----|
| <b>Financing Costs</b>             |           |         |     |
| Construction Loan Origination Fees | \$10,000  | \$250   | \$0 |
| Construction Period Interest       | \$157,266 | \$3,932 | \$5 |
| Lender Inspection Fees             | \$3,630   | \$91    | \$0 |

|                              |                  |                |            |
|------------------------------|------------------|----------------|------------|
| Letter of Credit Fee         |                  | \$0            | \$0        |
| Permanent Loan Fee           | \$10,000         | \$250          | \$0        |
| Construction Lender Legal    | \$12,000         | \$300          | \$0        |
| Other                        | \$0              | \$0            | \$0        |
| <b>Total Financing Costs</b> | <b>\$192,896</b> | <b>\$4,822</b> | <b>\$6</b> |

|  |                  |                |             |
|--|------------------|----------------|-------------|
| <b>Miscellaneous</b>                                 |                  |                |             |
| Market Survey  | \$3,500          | \$88           | \$0         |
| Appraisal  | \$6,200          | \$155          | \$0         |
| Environmental Study                                  | \$12,700         | \$318          | \$0         |
| LIHTC Fees -- prepaid monitoring                     | \$40,000         | \$1,000        | \$1         |
| Other: Commissioning                                 |                  | \$0            | \$0         |
| Relocation Costs                                     | \$0              | \$0            | \$0         |
| Other -- 3rd Party Consultants                       | \$18,000         | \$450          | \$1         |
| Soft Cost Contingency (% of soft costs excl Dev Fee) | 1.43%            | \$25,000       | \$625       |
| <b>Total Miscellaneous:</b>                          | <b>\$105,400</b> | <b>\$2,635</b> | <b>\$10</b> |

|                          |                  |                |            |
|--------------------------|------------------|----------------|------------|
| <b>Acquisition</b>       |                  |                |            |
| Acquisition: Buildings   | \$0              | \$0            | \$0        |
| Acquisition: Land        | \$280,000        | \$7,000        | \$9        |
| Acquisition: Legal       | \$0              | \$0            | \$0        |
| Other                    | \$0              | \$0            | \$0        |
| <b>Total Acquisition</b> | <b>\$280,000</b> | <b>\$7,000</b> | <b>\$9</b> |

|   |                  |                 |             |
|---|------------------|-----------------|-------------|
| <b>Reserves and Developer Fee</b>       |                  |                 |             |
| Operating Deficit Escrow                | \$141,859        | \$3,546         | \$5         |
| Prefunded Replacement Reserve           | \$52,274         | \$1,307         | \$2         |
| Taxes & Insurance Escrow                | \$28,500         | \$713           | \$1         |
| Developer Overhead                      | \$487,500        | \$12,188        | \$16        |
| Developer Profit                        |                  | \$0             | \$0         |
| Rent Up Reserve & Marketing             | \$40,000         | \$1,000         | \$1         |
| Other                                   | \$0              | \$0             | \$0         |
| <b>Total Reserves and Developer Fee</b> | <b>\$750,133</b> | <b>\$18,753</b> | <b>\$24</b> |

|                            |                    |                  |              |
|----------------------------|--------------------|------------------|--------------|
| <b>Total Uses of Funds</b> | <b>\$8,164,870</b> | <b>\$204,122</b> | <b>\$272</b> |
|----------------------------|--------------------|------------------|--------------|

Developer Fee Analysis:            Total Fees: \$487,500  
Percent of TDC:            6.54% (excluding reserves & developer fee)

# Project Operating Pro Forma

Date June 12, 2018  
 Project Name 977 Brighton  
 Project Address 977 Brighton  
 Developer/Sponsor Avesta

## Rental Income

| Unit Type     | Number of Units | Per Unit Sq Ft | Total Sq Ft | Restriction on % Median Inc. | Per Unit Monthly Gross Rent | Utility Deductions | Rent Subsidy | Per Unit Monthly Net Rent | Per Unit Net Rent Per Sq Ft | Total Monthly Net Income | Total Annual Net Rent |
|---------------|-----------------|----------------|-------------|------------------------------|-----------------------------|--------------------|--------------|---------------------------|-----------------------------|--------------------------|-----------------------|
| 1 BR          | 8               |                | 0           | 50%                          | \$1,028                     | \$0                |              | \$1,028                   | #DIV/0!                     | \$8,224                  | \$98,688              |
| 1 BR          | 16              |                | 0           | 50%                          | \$770                       | \$0                |              | \$770                     | #DIV/0!                     | \$12,320                 | \$147,840             |
| 1 BR          | 10              |                | 0           | 60%                          | \$924                       | \$0                |              | \$924                     | #DIV/0!                     | \$9,240                  | \$110,880             |
| 1 BR          | 6               |                | 0           | market                       | \$1,050                     | \$0                |              | \$1,050                   | #DIV/0!                     | \$6,300                  | \$75,600              |
| 2 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 2 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 3 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 3 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 4 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 4 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| Other         |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| Other         |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| <b>Total:</b> | <b>40</b>       |                | <b>0</b>    |                              |                             |                    |              |                           |                             | <b>\$36,084</b>          | <b>\$433,008</b>      |

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

Note: Year 1 is the first full year of stabilized operations

|                                 | <u>Year 1</u>    | <u>Year 1/Unit</u> | <u>Year 2</u>    | <u>Year 3</u>    | <u>Year 4</u>    | <u>Year 5</u>    | <u>Year 6</u>    | <u>Year 7</u>    | <u>Year 8</u>    | <u>Year 9</u>    | <u>Year 10</u>   |            |
|---------------------------------|------------------|--------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------|
| <b>Income</b>                   |                  |                    |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Sch. Gross Income - Residential | \$433,008        | \$10,825           | \$441,668        | \$450,502        | \$459,512        | \$468,702        | \$478,076        | \$487,637        | \$497,390        | \$507,338        | \$517,485        |            |
| Vacancy Loss                    | 5.0%             | (\$21,650)         | (\$541)          | (\$22,083)       | (\$22,525)       | (\$22,976)       | (\$23,435)       | (\$23,904)       | (\$24,382)       | (\$24,870)       | (\$25,367)       | (\$25,874) |
| Other income (laundry)          | \$2,998          | \$75               | \$3,058          | \$3,119          | \$3,182          | \$3,245          | \$3,310          | \$3,376          | \$3,444          | \$3,513          | \$3,583          |            |
| TIF -- 75% requested            | \$48,171         | \$1,204            | \$49,616         | \$51,105         | \$52,638         | \$54,217         | \$55,843         | \$57,519         | \$59,244         | \$61,022         | \$62,852         |            |
| <b>Effective Gross Income</b>   | <b>\$462,527</b> | <b>\$11,563</b>    | <b>\$472,259</b> | <b>\$482,200</b> | <b>\$492,355</b> | <b>\$502,729</b> | <b>\$513,326</b> | <b>\$524,151</b> | <b>\$535,209</b> | <b>\$546,505</b> | <b>\$558,046</b> |            |
| <b>Administrative</b>           |                  |                    |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Management Fee                  | \$24,672         | \$617              | \$25,412         | \$26,175         | \$26,960         | \$27,769         | \$28,602         | \$29,460         | \$30,343         | \$31,254         | \$32,191         |            |
| Management Charges              | \$24,672         | \$617              | \$25,412         | \$26,175         | \$26,960         | \$27,769         | \$28,602         | \$29,460         | \$30,343         | \$31,254         | \$32,191         |            |
| Marketing Expense               | \$0              | \$0                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| Legal                           | \$1,500          | \$38               | \$1,545          | \$1,591          | \$1,639          | \$1,688          | \$1,739          | \$1,791          | \$1,845          | \$1,900          | \$1,957          |            |
| Audit & Accounting              | \$5,000          | \$125              | \$5,150          | \$5,305          | \$5,464          | \$5,628          | \$5,796          | \$5,970          | \$6,149          | \$6,334          | \$6,524          |            |
| Admin Other                     | \$6,000          | \$150              | \$6,180          | \$6,365          | \$6,556          | \$6,753          | \$6,956          | \$7,164          | \$7,379          | \$7,601          | \$7,829          |            |
| <b>Total Administrative</b>     | <b>\$61,844</b>  | <b>\$1,546</b>     | <b>\$63,699</b>  | <b>\$65,610</b>  | <b>\$67,579</b>  | <b>\$69,606</b>  | <b>\$71,694</b>  | <b>\$73,845</b>  | <b>\$76,060</b>  | <b>\$78,342</b>  | <b>\$80,692</b>  |            |
| <b>Supportive Services</b>      | <b>\$12,199</b>  | <b>\$305</b>       | <b>\$12,565</b>  | <b>\$12,942</b>  | <b>\$13,330</b>  | <b>\$13,730</b>  | <b>\$14,142</b>  | <b>\$14,566</b>  | <b>\$15,003</b>  | <b>\$15,453</b>  | <b>\$15,917</b>  |            |
| <b>Utilities</b>                |                  |                    |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Fuel Oil                        | \$18,000         | \$450              | \$18,540         | \$19,096         | \$19,669         | \$20,259         | \$20,867         | \$21,493         | \$22,138         | \$22,802         | \$23,486         |            |
| Natural Gas                     |                  | \$0                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| Electric                        | \$34,000         | \$850              | \$35,020         | \$36,071         | \$37,153         | \$38,267         | \$39,415         | \$40,598         | \$41,816         | \$43,070         | \$44,362         |            |
| Water / Sewer                   | \$16,000         | \$400              | \$16,480         | \$16,974         | \$17,484         | \$18,008         | \$18,548         | \$19,105         | \$19,678         | \$20,268         | \$20,876         |            |
| Other                           |                  | \$0                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| <b>Total Utilities</b>          | <b>\$68,000</b>  | <b>\$1,700</b>     | <b>\$70,040</b>  | <b>\$72,141</b>  | <b>\$74,305</b>  | <b>\$76,535</b>  | <b>\$78,831</b>  | <b>\$81,196</b>  | <b>\$83,631</b>  | <b>\$86,140</b>  | <b>\$88,725</b>  |            |

| Maintenance                    | Year 1   | Year 1/Unit | Year 2   | Year 3   | Year 4   | Year 5   | Year 6   | Year 7    | Year 8    | Year 9    | Year 10   |
|--------------------------------|----------|-------------|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|
| Grounds                        | \$25,000 | \$625       | \$25,750 | \$26,523 | \$27,318 | \$28,138 | \$28,982 | \$29,851  | \$30,747  | \$31,669  | \$32,619  |
| Janitorial                     | \$6,600  | \$165       | \$6,798  | \$7,002  | \$7,212  | \$7,428  | \$7,651  | \$7,881   | \$8,117   | \$8,361   | \$8,612   |
| Trash Removal                  | \$4,000  | \$100       | \$4,120  | \$4,244  | \$4,371  | \$4,502  | \$4,637  | \$4,776   | \$4,919   | \$5,067   | \$5,219   |
| Security                       |          | \$0         | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       | \$0       | \$0       |
| Equipment & Supplies           | \$5,000  | \$125       | \$5,150  | \$5,305  | \$5,464  | \$5,628  | \$5,796  | \$5,970   | \$6,149   | \$6,334   | \$6,524   |
| Maintenance                    | \$25,000 | \$625       | \$25,750 | \$26,523 | \$27,318 | \$28,138 | \$28,982 | \$29,851  | \$30,747  | \$31,669  | \$32,619  |
| Maintenance contracts (HVAC, e | \$20,000 | \$500       | \$20,600 | \$21,218 | \$21,855 | \$22,510 | \$23,185 | \$23,881  | \$24,597  | \$25,335  | \$26,095  |
| Other                          |          | \$0         | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       | \$0       | \$0       |
| Total Maintenance              | \$85,600 | \$2,140     | \$88,168 | \$90,813 | \$93,537 | \$96,344 | \$99,234 | \$102,211 | \$105,277 | \$108,436 | \$111,689 |

| Taxes & Insurance   |          |         |          |          |          |          |          |          |          |           |           |
|---|----------|---------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|
| Real Estate Taxes or PILOT                                    | \$64,229 | \$1,606 | \$66,156 | \$68,141 | \$70,185 | \$72,290 | \$74,459 | \$76,693 | \$78,994 | \$81,363  | \$83,804  |
| Payroll Taxes / Fidelity Bond /<br>Workers Comp / Health Ins. |          | \$0     | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       |
| Insurance (property, liability)                               | \$15,000 | \$375   | \$15,450 | \$15,914 | \$16,391 | \$16,883 | \$17,389 | \$17,911 | \$18,448 | \$19,002  | \$19,572  |
| Other   |          | \$0     | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       |
| Total Taxes & Insurance                                       | \$79,229 | \$1,981 | \$81,606 | \$84,054 | \$86,576 | \$89,173 | \$91,848 | \$94,604 | \$97,442 | \$100,365 | \$103,376 |

|                      |          |       |          |          |          |          |          |          |          |          |          |
|----------------------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Replacement Reserves | \$18,000 | \$450 | \$18,540 | \$19,096 | \$19,669 | \$20,259 | \$20,867 | \$21,493 | \$22,138 | \$22,802 | \$23,486 |
| Operating Reserves   |          | \$0   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Total Expenses</b> | <b>\$324,872</b> | <b>\$8,122</b> | <b>\$334,618</b> | <b>\$344,657</b> | <b>\$354,996</b> | <b>\$365,646</b> | <b>\$376,616</b> | <b>\$387,914</b> | <b>\$399,552</b> | <b>\$411,538</b> | <b>\$423,884</b> |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

|                             |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Net Operating Income</b> | <b>\$137,655</b> | <b>\$3,441</b> | <b>\$137,641</b> | <b>\$137,544</b> | <b>\$137,359</b> | <b>\$137,083</b> | <b>\$136,710</b> | <b>\$136,236</b> | <b>\$135,657</b> | <b>\$134,967</b> | <b>\$134,161</b> |
|-----------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

| Debt Service                  |           |         |           |           |           |           |           |           |           |           |           |
|-------------------------------|-----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| First Lien                    | \$112,934 | \$2,823 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 |
| Second Lien                   |           | \$0     | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Other                         |           | \$0     | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Total Debt Service (Must Pay) | \$112,934 | \$2,823 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 |

|                                 |          |       |          |          |          |          |          |          |          |          |          |
|---------------------------------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Cash Flow (after Must Pay Debt) | \$24,721 | \$618 | \$24,707 | \$24,610 | \$24,425 | \$24,149 | \$23,776 | \$23,302 | \$22,723 | \$22,033 | \$21,227 |
| Debt Service Coverage Ratio     | 1.22     |       | 1.22     | 1.22     | 1.22     | 1.21     | 1.21     | 1.21     | 1.20     | 1.20     | 1.19     |

| Cash Flow Debt Payments       |      |          |       |          |          |          |          |          |          |          |          |
|-------------------------------|------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|
| City of Portland              | 0.0% | \$0      | \$0   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| Developer Fee Loan            | 0.0% | \$0      | \$0   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| Cash Flow Retained by Project |      | \$24,721 | \$618 | \$24,707 | \$24,610 | \$24,425 | \$24,149 | \$23,776 | \$23,302 | \$22,723 | \$21,227 |

Retained Cash Flow % 8%

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

|                                 | Year 11          | Year 12          | Year 13          | Year 14          | Year 15          | Year 16          | Year 17          | Year 18          | Year 19          | Year 20          |            |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------|
| <b>Income</b>                   |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Sch. Gross Income - Residential | \$527,834        | \$538,391        | \$549,159        | \$560,142        | \$571,345        | \$582,772        | \$594,427        | \$606,316        | \$618,442        | \$630,811        |            |
| Vacancy Loss                    | 5.0%             | (\$26,392)       | (\$26,920)       | (\$27,458)       | (\$28,007)       | (\$28,567)       | (\$29,139)       | (\$29,721)       | (\$30,316)       | (\$30,922)       | (\$31,541) |
| Other income (laundry)          | \$3,655          | \$3,728          | \$3,802          | \$3,878          | \$3,956          | \$4,035          | \$4,116          | \$4,198          | \$4,282          | \$4,368          |            |
| TIF -- 75% requested            | \$64,738         | \$66,680         | \$68,680         | \$70,741         | \$72,863         | \$75,049         | \$77,300         | \$79,619         | \$82,008         | \$84,468         |            |
| <b>Effective Gross Income</b>   | <b>\$569,835</b> | <b>\$581,879</b> | <b>\$594,184</b> | <b>\$606,754</b> | <b>\$619,597</b> | <b>\$632,717</b> | <b>\$646,122</b> | <b>\$659,817</b> | <b>\$673,810</b> | <b>\$688,106</b> |            |
| <b>Administrative</b>           |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Advertising                     | \$33,157         | \$34,152         | \$35,176         | \$36,232         | \$37,319         | \$38,438         | \$39,591         | \$40,779         | \$42,002         | \$43,263         |            |
| Office Payroll & Benefits       | \$33,157         | \$34,152         | \$35,176         | \$36,232         | \$37,319         | \$38,438         | \$39,591         | \$40,779         | \$42,002         | \$43,263         |            |
| Office Supplies, Phone, Misc.   | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| Mngr or Super Rent Free Unit    | \$2,016          | \$2,076          | \$2,139          | \$2,203          | \$2,269          | \$2,337          | \$2,407          | \$2,479          | \$2,554          | \$2,630          |            |
| Audit & Accounting              | \$6,720          | \$6,921          | \$7,129          | \$7,343          | \$7,563          | \$7,790          | \$8,024          | \$8,264          | \$8,512          | \$8,768          |            |
| Admin Other                     | \$8,063          | \$8,305          | \$8,555          | \$8,811          | \$9,076          | \$9,348          | \$9,628          | \$9,917          | \$10,215         | \$10,521         |            |
| <b>Total Administrative</b>     | <b>\$83,113</b>  | <b>\$85,607</b>  | <b>\$88,175</b>  | <b>\$90,820</b>  | <b>\$93,545</b>  | <b>\$96,351</b>  | <b>\$99,241</b>  | <b>\$102,219</b> | <b>\$105,285</b> | <b>\$108,444</b> |            |
| <b>Supportive Services</b>      | <b>\$16,394</b>  | <b>\$16,886</b>  | <b>\$17,393</b>  | <b>\$17,915</b>  | <b>\$18,452</b>  | <b>\$19,006</b>  | <b>\$19,576</b>  | <b>\$20,163</b>  | <b>\$20,768</b>  | <b>\$21,391</b>  |            |
| <b>Utilities</b>                |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Fuel Oil                        | \$24,190         | \$24,916         | \$25,664         | \$26,434         | \$27,227         | \$28,043         | \$28,885         | \$29,751         | \$30,644         | \$31,563         |            |
| Electric                        | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| Gas                             | \$45,693         | \$47,064         | \$48,476         | \$49,930         | \$51,428         | \$52,971         | \$54,560         | \$56,197         | \$57,883         | \$59,619         |            |
| Water / Sewer                   | \$21,503         | \$22,148         | \$22,812         | \$23,497         | \$24,201         | \$24,927         | \$25,675         | \$26,446         | \$27,239         | \$28,056         |            |
| Other                           | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| <b>Total Utilities</b>          | <b>\$91,386</b>  | <b>\$94,128</b>  | <b>\$96,952</b>  | <b>\$99,860</b>  | <b>\$102,856</b> | <b>\$105,942</b> | <b>\$109,120</b> | <b>\$112,394</b> | <b>\$115,765</b> | <b>\$119,238</b> |            |

| Maintenance                    | Year 11          | Year 12          | Year 13          | Year 14          | Year 15          | Year 16          | Year 17          | Year 18          | Year 19          | Year 20          |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Janitorial                     | \$33,598         | \$34,606         | \$35,644         | \$36,713         | \$37,815         | \$38,949         | \$40,118         | \$41,321         | \$42,561         | \$43,838         |
| Exterminating                  | \$8,870          | \$9,136          | \$9,410          | \$9,692          | \$9,983          | \$10,283         | \$10,591         | \$10,909         | \$11,236         | \$11,573         |
| Trash Removal                  | \$5,376          | \$5,537          | \$5,703          | \$5,874          | \$6,050          | \$6,232          | \$6,419          | \$6,611          | \$6,810          | \$7,014          |
| Security                       | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Grounds                        | \$6,720          | \$6,921          | \$7,129          | \$7,343          | \$7,563          | \$7,790          | \$8,024          | \$8,264          | \$8,512          | \$8,768          |
| Maintenance                    | \$33,598         | \$34,606         | \$35,644         | \$36,713         | \$37,815         | \$38,949         | \$40,118         | \$41,321         | \$42,561         | \$43,838         |
| Elevator, HVAC, pool contracts | \$26,878         | \$27,685         | \$28,515         | \$29,371         | \$30,252         | \$31,159         | \$32,094         | \$33,057         | \$34,049         | \$35,070         |
| Other                          | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Maintenance</b>       | <b>\$115,039</b> | <b>\$118,490</b> | <b>\$122,045</b> | <b>\$125,706</b> | <b>\$129,478</b> | <b>\$133,362</b> | <b>\$137,363</b> | <b>\$141,484</b> | <b>\$145,728</b> | <b>\$150,100</b> |

| Taxes & Insurance  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Real Estate Taxes or PILOT                                 | \$86,318         | \$88,908         | \$91,575         | \$94,322         | \$97,152         | \$100,067        | \$103,069        | \$106,161        | \$109,346        | \$112,626        |
| Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins. | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Insurance (property, liability)                            | \$20,159         | \$20,764         | \$21,386         | \$22,028         | \$22,689         | \$23,370         | \$24,071         | \$24,793         | \$25,536         | \$26,303         |
| Other  | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Taxes &amp; Insurance</b>                         | <b>\$106,477</b> | <b>\$109,671</b> | <b>\$112,962</b> | <b>\$116,350</b> | <b>\$119,841</b> | <b>\$123,436</b> | <b>\$127,139</b> | <b>\$130,953</b> | <b>\$134,882</b> | <b>\$138,929</b> |

|                             |          |          |          |          |          |          |          |          |          |          |
|-----------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>Replacement Reserves</b> | \$24,190 | \$24,916 | \$25,664 | \$26,434 | \$27,227 | \$28,043 | \$28,885 | \$29,751 | \$30,644 | \$31,563 |
| <b>Operating Reserves</b>   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Total Expenses</b> | <b>\$436,601</b> | <b>\$449,699</b> | <b>\$463,190</b> | <b>\$477,085</b> | <b>\$491,398</b> | <b>\$506,140</b> | <b>\$521,324</b> | <b>\$536,964</b> | <b>\$553,073</b> | <b>\$569,665</b> |
|-----------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

|                             |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Net Operating Income</b> | <b>\$133,234</b> | <b>\$132,180</b> | <b>\$130,994</b> | <b>\$129,669</b> | <b>\$128,199</b> | <b>\$126,577</b> | <b>\$124,798</b> | <b>\$122,854</b> | <b>\$120,737</b> | <b>\$118,441</b> |
|-----------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

| Debt Service                         |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|--------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| First Lien                           | \$112,934        | \$112,934        | \$112,934        | \$112,934        | \$112,934        | \$112,934        | \$112,934        | \$112,934        | \$112,934        | \$112,934        |
| Second Lien                          | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Other                                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Debt Service (Must Pay)</b> | <b>\$112,934</b> |

|                                    |             |             |             |             |             |             |             |             |             |             |
|------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Cash Flow (after Must Pay Debt)    | \$20,300    | \$19,246    | \$18,060    | \$16,735    | \$15,265    | \$13,643    | \$11,864    | \$9,920     | \$7,803     | \$5,507     |
| <b>Debt Service Coverage Ratio</b> | <b>1.18</b> | <b>1.17</b> | <b>1.16</b> | <b>1.15</b> | <b>1.14</b> | <b>1.12</b> | <b>1.11</b> | <b>1.09</b> | <b>1.07</b> | <b>1.05</b> |

| Cash Flow Debt Payments              |      |                 |                 |                 |                 |                 |                 |                 |                |                |
|--------------------------------------|------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------|----------------|
| DHCD                                 | 0.0% | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0            | \$0            |
| Developer Fee Loan                   | 0.0% | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0            | \$0            |
| <b>Cash Flow Retained by Project</b> |      | <b>\$20,300</b> | <b>\$19,246</b> | <b>\$18,060</b> | <b>\$16,735</b> | <b>\$15,265</b> | <b>\$13,643</b> | <b>\$11,864</b> | <b>\$9,920</b> | <b>\$5,507</b> |

Retained Cash Flow % 8%

Order 270-17/18  
~~Tab 34~~ - 6-16-18  
Tab 30 7-16-18

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

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

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

**ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO  
THE CREDIT ENHANCEMENT AGREEMENT WITH AVESTA 977 BRIGHTON LP**

**ORDERED**, that the attached credit enhancement agreement between the City of Portland and Avesta 977 Brighton LP related to the 977 Brighton Avenue Apartments Affordable Housing Tax Increment Financing District is hereby approved; and

**BE IT FURTHER ORDERED**, that and the City Manager is authorized to sign the agreement in substantially the form attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

*Order 19-18/19  
Feb 31 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER PLACING A REFERENDUM QUESTION  
ON NOVEMBER 6, 2018, MUNICIPAL BALLOT  
RE: FORMATION OF THE GREATER SEBAGO EDUCATION ALLIANCE**

**ORDERED**, that the following question is hereby placed on the November 6, 2018, Regular Municipal Election ballot:

**Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?**

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

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

**FROM:** Xavier Botana, Superintendent of Schools  
Portland Public Schools

**DATE:** June 25, 2018

**SUBJECT:** Placement of a Referendum Question on November 2018 Ballot regarding the formation of the Greater Sebago Education Alliance, as required by state law

**SPONSOR:** N/A  
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

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

No readings required; this agenda item is not an ordinance, appropriation resolve, or order authorizing any expenditure of funds.

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**

Request for City Council to place a referendum question on the November 2018 ballot regarding the formation of the Greater Sebago Education Alliance Regional Service Center, as required by 20-A M.R.S. § 3805(3).

**II. AGENDA DESCRIPTION**

The Portland Board of Education respectfully requests the City Council to place the following question before the voters on the November ballot, as required by 20-A M.R.S. § 3805(3):

Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?

### **III. BACKGROUND**

In early 2018, Portland Public Schools began discussions with neighboring school administrative units to form a regional service center in order to enhance student learning and opportunities and maximize available and desired resources through the establishment of shared regional initiatives. After several months of discussion, the group prepared and adopted, by action of its respective school boards, an Interlocal Agreement for the Greater Sebago Education Alliance Regional Service Center (the "GSEA Agreement"). The GSEA Agreement contemplates the formation of a regional service center that will provide the following services to its members: joint purchasing of food supplies; joint professional development offerings; joint substitute teacher recruiting, training, and diversity hiring processes; joint ELL intake processes; and serving as an incubator for new regional programs and services.

The school statute, section 3805(3) of Title 20-A, requires that the formation of a regional service center must receive voter approval. The statute expressly provides that voter approval (as opposed to approval of the legislative body) is required. In Portland, where the municipal school unit is composed of a charter municipality that has a city council form of government, the only means to secure voter approval is by referendum.

Accordingly, the Portland Board of Education respectfully requests the City Council to place the following question before the voters on the November ballot:

Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?

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

Placement of a referendum question before the Portland voters regarding the formation of the GSEA Regional Service Center, as required by Title 20-A, Section 3805(3) of the Maine Revised Statutes.

### **V. FINANCIAL IMPACT**

Placement of the question before the voters itself will have no financial impact on the City. Should the voters approve the formation of the GSEA Regional Service Center, Portland Public Schools would secure state subsidy in the amount of \$92,101.20 in the first year of operation of the GSEA Regional Service Center, and would also benefit from direct state payments to the regional service center and savings from the joint purchasing of goods and services.

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

**VII. RECOMMENDATION**

**VIII. LIST ATTACHMENTS**

Prepared by:

Date:

Bean/agendarequestmemo/rev 1/23/2017

PROPOSED ORDER

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

**ORDER PLACING A REFERENDUM QUESTION ON NOVEMBER 2018 BALLOT  
REGARDING THE FORMATION OF THE GREATER SEBAGO EDUCATION  
ALLIANCE REGIONAL SERVICE CENTER**

**ORDERED,** pursuant to section 3805(3), of Title 20-A of the Maine Revised Statutes, that the Question set forth below be placed on the ballot of a Referendum Election of the City of Portland, Maine to be held on November 6, 2018:

Question \_\_: Do you favor the formation of a regional service center pursuant to an Interlocal Agreement for the Greater Sebago Education Alliance, as approved by the governing bodies of the parties thereto and the Commissioner of the Department of Education?

*Order 30-17/18  
Tab 3a 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROPRIATING \$130,000 FOR  
MIDDLE SCHOOL MATH CURRICULUM EXPANSION AND MATERIALS  
FOR THE PORTLAND PUBLIC SCHOOL SYSTEM**

**ORDERED**, that \$130,000 from the Portland Public Schools Fiscal Year 2017 unassigned fund balance is hereby appropriated to purchase the Open Up Resource middle school math curriculum and related materials.

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

**TO:** Mayor and City Council

**FROM:** **Xavier Botana, Superintendent, Portland Public Schools**  
**Alicia Gardiner, Executive Director of Budget & Finance, Portland Public Schools**

**DATE:** **6/4/2018**

**DISTRIBUTION:** City Manager, Mayor, Sonia Bean, Danielle West-Chuhta,  
Nancy English, Julie Sullivan

**SUBJECT:** **Use of Unassigned Fund Balance**

**SPONSOR:**

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

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading June 18, 2018 Final Action July 2, 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)**

**I. SUMMARY OF ISSUE (Agenda Description)**

Portland Public Schools budgeted \$299,000 in FY2017 for continued curriculum expansion and materials, including funds for middle school mathematics. At the end of the fiscal year, PPS had approximately \$148,000 remaining in the budget as no purchase decision for the middle school math curriculum was made during the fiscal year. Part of the reason that no decision was made was due to the turnover of the prior Chief Academic Officer and that the Interim CAO was only in the position during the 2017-2018 school year.

PPS discussed with the external auditors how to encumber the funds for use in FY2018 but, because there had not been a decision made as to what vendor we would use, it was determined that we could not encumber the funds for over six months.

The Portland Board of Public Education met on May 1, 2018 and discussed the purchase of the middle school math curriculum. The Assisat Superintendent of Teaching and Learning has recommended that PPS purchase the math curriculum from Open Up Resources and explained that we will be requesting the use of FY2017 funds to pay for this curriculum as they were originally intended to do.

## **II. REASON FOR SUBMISSION (Summary of Issue/Background)**

During the FY2017 budget process, the Chief Academic Officer (CAO) budgeted approximately \$150,000 for a new middle school math curriculum. The CAO resigned their position at the end of FY2016 and an Interim CAO was named. Due to the temporary nature of their position, the Interim CAO did not want to purchase a middle school math curriculum and wanted to wait until a permanent CAO was hired. Unfortunately, the funds lapsed to unassigned fund balance at the end of the fiscal year. The Superintendent and Staff did highlight to the Board that we would be requesting the use of these funds at a later date and did let them know that it would require City Council approval.

On May 1, 2018 the Assistant Superintendent for Teaching and Learning/Chief Academic Officer, recommended the purchase of a curriculum from Open Up Resources. The materials and cost of professional development for the first year is a minimum of \$97,500 but could be up to \$130,000 depending on how many teachers are included in the initial training. In her memo to the Board, the Assistant Superintendent of Teaching and Learning noted that we would like to use the FY2017 funds budgeted for this purpose. Therefore, Portland Public Schools staff, including the Superintendent, Executive Director of Budget & Finance, and the Assistant Superintendent of Teaching and Learning, would like to request the approval from the City Council to use \$130,000 of unassigned fund balance, specifically budgeted for in FY2017, to purchase Open Up Resource's math curriculum.

## **III. INTENDED RESULT**

We intend to increase appropriation for the Portland Public Schools by \$130,000 in order to purchase the middle school math curriculum. We would increase the budgeted use of fund balance in the general fund by \$130,000 and increase the budgeted curriculum materials account in the Academics budget line by \$130,000 in FY2018. This would allow for the school department to purchase the math curriculum ahead of the 2018-2019 school year.

## **IV. COUNCIL GOAL ADDRESSED**

## **IV. FINANCIAL IMPACT**

The financial impact of this would reduce unassigned fund balance by \$130,000. As of 6/30/17, PPS has \$682,697 over the maximum allowable fund balance (\$2,916,945 or 3% of the prior year general budget budget). The use of \$500,000 in FY2018 in addition to the use of \$130,000 for the purchase of the middle school math curriculum would bring us down closer to the maximum amount allowed.

## **VI. STAFF ANALYSIS**

## **VII. RECOMMENDATION**

## **VIII. LIST ATTACHMENTS**

Prepared by: Alicia Gardiner, Executive Director of Budget & Finance

Date: June 4, 2018

Bean/agendamemo/rev 1-8-15



**Executive Summary**

Portland Board of Public Education  
Business Meeting Agenda Item

**TOPIC:** Board Focus: Policy IJJ – Selection of Educational Materials

**DATE:** May 1, 2018

**PREPARED BY:** Melea Nalli, Assistant Superintendent for Teaching and Learning

**Recommended Action:**

- Action Item – Consent
- Action Item – First Read
- Action Item – Vote
- Discussion Item
- Information Item

**Agenda Reference:**

VII. b.

**School Year Item:**

C-7-17/18

**Recommendation(s):**

**Purpose:**

This is an update on the adoption of new middle school math educational materials.

**Connection to Comprehensive Plan Framework:**

The work of the Portland Board of Public Education (“Board”), as facilitated by the Chair, supports all goals and objectives of the Comprehensive Plan Framework:

**Goal 1 – ACHIEVEMENT:** All Portland Public School students be prepared for college and career and empowered to pursue a postsecondary path.

**Goal 3 – EQUITY:** Portland Public Schools is vigilant in supporting each and every student’s particular path to achieving high standards, rooting out systemic or ongoing inequities.

**Background:**

During the 2016-17 school year, middle school principals and teachers, in partnership with leadership from the Academic team, determined the need for a common set of educational materials in math. A previous curriculum adoption and roll-out were not successful and teachers had resorted to doing their own thing and so math instruction was varied across schools and even within schools. Our math results on MEAs are lower than we want and expect for all students and especially for students of color, those who are ELs and for students on IEPs, which contributed to our explicit Portland Promise goals of Achievement and Equity. During the spring of last year when it was time to make a decision about which new program to adopt, there was little consensus among teachers and principals based on the process that took place over the course of the year. At that point we decided to delay the decision, recognizing that it was essential to ensure strong process resulting in broad buy-in as the foundation for effective implementation. This year,

we brought on a middle school math coach consultant, Jesse Robinson, via our Title II funds. As a part of her work, Ms. Robinson led a data-driven process to explore three high potential programs in deep partnership with principals and teachers. The selection committee came to a consensus decision to adopt Open Up Resources.

**Fiscal Impact:**

Open Up Resources are made free under the Common Creative OER license. Upfront costs for intensive professional development and consumables is \$76,00. This money is available from the \$100,000 that had been saved from the 2016-17 budget when the Middle School Math curriculum decision was delayed. Ongoing costs for professional development and consumables are between \$21,500 and \$54,000 depending on how much professional development we require and how many teachers want to use the consumables. Currently, we spend \$75,000 centrally on all curriculum materials for the district. In order for us to achieve ongoing implementation of this program, it will require added investment in our curriculum budget.

**Attachment(s):**

Current Policy IJJ

*Order 21-18/19  
Tab 33 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROVING THREE-PARTY AGREEMENT BETWEEN PORTLAND,  
PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM  
AND MAINE DEPARTMENT OF TRANSPORTATION  
RE: ALLEN AVENUE BETWEEN PENNELL AVENUE AND YALE STREET**

**ORDERED**, that the three-party Partnership Agreement between the Maine Department of Transportation, Portland Area Comprehensive Transportation System and the City of Portland for pavement preservation on Allen Avenue between Pennell Avenue and Yale Street is hereby approved in substantially the form attached hereto; and

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

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

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

**FROM:** Michael Farmer, Senior Engineer, Department of Public Works

**DATE:** June 25, 2018

**SUBJECT:** PACTS Municipal Partnership Initiative Agreement  
State Route 100 (Allen Avenue: Yale to Pennell)  
Pavement Preservation

**SPONSOR:** Jon P. Jennings, City Manager

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading:** 7/16/2013                      **Final Action:** 8/13/2018

**Can action be taken at a later date:** \_\_\_\_\_ Yes      X   No (If no why not?) Funds pursuant to this agreement are needed for construction of this project.

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

*Not Applicable*

**I. ONE SENTENCE SUMMARY**

The City Council is being asked to approve the attached PACTS Municipal Partnership Initiative (MPI) Agreement and authorize the City Manager to sign it, which would allow City staff to move ahead with plans to pave Allen Avenue between Pennell Avenue and Yale Street.

**II. AGENDA DESCRIPTION**

Approving and signing this agreement between PACTS, MaineDOT, and the City of Portland would confirm the City's intent to undertake this project and pay 50% of the total project cost. The estimated total project cost is \$367,500. The City's 50% share would be \$183,750. A copy of the fully executed agreement will be returned to the City and become the City's "notice to proceed" with this project.

**III. BACKGROUND**

The scope of work for this project includes milling and paving Allen Avenue between Pennell Avenue and Yale Street. The City received approval in 2017 for an MPI project to pave Allen Avenue between Washington Avenue and Pennell Avenue. More recently, the City received approval for an MPI project to pave Washington Avenue between Allen Avenue and Ocean Avenue. All three MPI projects have been combined with a traffic signal improvement

project for bidding and construction. The traffic signal project includes improvements at signalized intersections on Washington Avenue and Auburn Street between Veranda Street and Lyseth Moore Drive.

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

This project will improve the pavement surface and ride quality in the project area.

**V. FINANCIAL IMPACT**

By approving the PACTS MPI Agreement, the City Council would indicate its intent to undertake this project and pay 50% of the total estimated project cost. The total estimated project cost is \$367,500. The City's 50% share would be \$183,750. The FY19 CIP includes \$203,400 for the City's share of this project (project account C19101).

If the total project costs were to exceed \$367,500, the City would be obligated to pay for 100% of the total project costs in excess of \$367,500, in addition to the 50% local share.

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

MaineDOT has two separate Municipal Partnership Initiative (MPI) programs that are available to Portland. One MPI program is administered at the local level by MaineDOT's regional office in Scarborough. The other MPI program is administered locally by PACTS. Both MPI programs provide grants of up to 50% of the cost for paving projects on arterial and collector streets.

**VII. RECOMMENDATION**

The Department of Public Works recommends approving and signing the subject PACTS MPI Agreement to allow City staff to proceed with paving of Allen Avenue from Pennell Avenue to Yale Street.

**VIII. LIST ATTACHMENTS**

- A. PACTS MPI Agreement for State Route 100 (Allen Avenue: Yale to Pennell) Pavement Preservation Project
- B. Project location Map

Prepared by: Michael Farmer

Date: June 25, 2018



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

**State of Maine**  
**DEPARTMENT OF TRANSPORTATION**  
Portland Area Comprehensive Transportation System  
Municipal Partnership Initiative Agreement

**Portland, Maine**  
**State Route 100 (Allen Avenue: Yale to Pennell)**  
**Pavement Preservation**  
**(Payable to Municipality)**

|  |  |
|--|--|
| <i>MaineDOT Use Only</i>                             |  |
| WIN #: <u>(To be included after WIN Activation)</u>  | Estimated Project Amount: <b><u>\$367,500.00</u></b>           |
| N/M MPO Id#: <u>PACTS</u>                            | MPO Share: <b><u>\$183,750.00</u></b>                          |
| Municipality Id#: <u>VC1000073472</u>                | Municipal Share: <b><u>\$183,750.00</u></b>                    |
| Agreement Begin Date: <u>Upon MaineDOT Signature</u> | Agreement End Date: <u>5 years from date last signed below</u> |

This Cooperative Agreement (the "Agreement") is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the "Municipality"), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS) (MaineDOT, the Municipality and PACTS are collectively referred to as the "Parties").

**RECITALS**

- A. MaineDOT, through its partnership with Maine's Metropolitan Planning Organizations (MPOs), is charged with managing and dispersing state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT's MPO partner for the Portland Urbanized Area.
- B. PACTS has created and administers a Municipal Partnership Initiative program (the "PACTS MPI Program"), the purpose of which is to participate in the funding of approved collector and/or arterial roadway projects (the "MPI Project(s)") with the intention of restoring substandard State and State Aid highways to MaineDOT and PACTS minimum standards.
- C. MPI Projects are administered by the municipality in which the project is being constructed. PACTS' participation in an MPI Project is accomplished through its acceptance of the Project into the PACTS MPI Program, and the contribution of state funds allocated to PACTS and

disbursed by MaineDOT to the administering municipality on PACTS' behalf (the "PACTS Share"). MPI Project costs not paid by the PACTS Share are paid by the administering municipality.

- D. The work that is the subject of this Agreement consists of a 1 ¼" overlay on State Route 100 (Allen Avenue) beginning at Yale Street and extending north 0.38 of a mile to Pennell Avenue (the "Project"), and is generally outlined in **Appendix A**, made a part herewith.
- E. PACTS has selected the Project for inclusion in the 2018-2019-2020 MaineDOT Work Plan, using state capital improvement funding allocated by MaineDOT.
- F. The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and is prepared to administer and fund the Project in accordance with the terms of this Agreement.
- G. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- H. This Agreement is intended to cover the roles and responsibilities of the Parties through full Project development and construction, and to establish the financial obligations of each Party.

#### AGREEMENT

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

**1. Appendices:**

The following Appendices are hereby incorporated into this Agreement by reference:

- **Appendix A - PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project**

**2. Project Cost Sharing and Payment Schedule:**

**a. Financial Obligations:**

**i. Total Project Costs.**

- 1. PACTS and the Municipality agree to share in all costs associated with all phases of the Project through construction (the "Total Project Costs") in accordance with the allocations outlined below (the "Party Shares") unless otherwise negotiated by mutual agreement of the Parties.

- a. **PACTS Share** (provided through PACTS' state allocation and disbursed by MaineDOT) - 50% of eligible Project costs, up to a maximum of \$183,750.00.

b. **Municipal Share** (provided through the Municipality's obligation of funds) - 50% of eligible Project costs, plus 100% of any and all remaining Project Costs once the PACTS Share has been exhausted (the "Overage").

2. The estimated Total Project Costs are \$367,500.00 (the "Estimated Total Project Costs"), and are allocated in the table below. If the Estimated Total Project Costs are adjusted to reflect updated costs, the Municipality will consult with PACTS before such adjustments are approved and implemented.

| Total Project Costs                                       | PACTS Share<br>(State MPO Funds)<br>50%<br>(Max. \$183,750.00) | Municipal Share<br>50% + Overage | Estimated Total<br>Cost |
|---|--|----------------------------------|-------------------------|
| <b>Estimated Total Project Costs:</b>                     |  |                                  |                         |
| <u>\$ 367,500.00</u>                                      |  |                                  |                         |
| <b>Estimated Allocated Shares</b>                         | \$183,750.00   | \$183,750.00<br>+\$0.00          | \$367,500.00            |
| <b>Total Party Share of Estimated Total Project Costs</b> | \$183,750.00   | \$183,750.00                     | \$367,500.00            |

b. **Payment Schedule:** The Municipality shall be the sole administrator of the Project contract(s) and shall pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified above.

- i. The Municipality may begin invoicing PACTS for the PACTS Share of eligible Project costs upon 1/3 Project completion. Invoices shall be submitted no more than monthly with a maximum number of invoice submittals not to exceed five (5) invoices for the total Project.
- ii. The Municipality shall submit to PACTS for reimbursement detailed invoice(s) documenting actual amounts incurred for Project related costs, together with evidence of such invoices having been paid by the Municipality, and identifying PACTS' share of each invoice submitted.
- iii. Each invoice shall include the Municipality's certification that all amounts claimed are correct, and not previously claimed.
- iv. PACTS shall review each such invoice and, upon approval, shall forward each invoice to MaineDOT for payment to the Municipality out of PACTS' allocated state MPO funds. MaineDOT shall reimburse the Municipality accordingly within thirty (30) days of its receipt of such approved invoice(s) in an aggregate amount not to exceed the total PACTS Share.

**3. Project Milestones:** The Municipality agrees to share information about the Project with PACTS and MaineDOT at the following milestones, as appropriate:

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

**4. Project Design, Construction Plans and Specifications:**

- a. The Municipality shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents for the Project within the scope of work identified above, using a standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- b. The Municipality shall retain a Professional Engineer licensed in the State of Maine to oversee all Project activities (the "Project Engineer").
- c. The Project must be designed by a Professional Engineer licensed in the State of Maine (the "Design Engineer") and in compliance with MaineDOT's design standards (the "Design Standards").
  - i. The Design Engineer shall provide certification to the Parties that, in his/her professional opinion, the Project will provide a smooth ride and not reduce the safety, mobility or structural quality of the affected State and/or State Aid Highway.
  - ii. All design documents must be stamped and signed by the Design Engineer in accordance with the provisions of this Section.
- d. MaineDOT reserves the right to review and comment on all plans and specifications with the focus on ensuring that the Project will achieve the anticipated benefits and will not degrade safety.
- e. The Municipality, through its Project Engineer, shall obtain written approval from MaineDOT for any exceptions to the "Design Standards". Submitted documentation shall compare the proposed design to the existing conditions for each proposed exception. Any and all exceptions shall be listed on the cover sheet accompanying the Project plans and submitted to MaineDOT, accompanied by a request for acceptance of the Project's design exceptions. All such requests must include the signature and professional stamp of the Professional Engineer responsible for the design of the Project.

- f. In developing the Project, the Municipality shall ensure that the following elements are satisfied:
- i. The Project improvements must have a minimum useful life of ten (10) years;
  - ii. The safety of the corridor and the life of the resulting structural and design elements shall be equal to or better than the existing conditions and design;
  - iii. The structures, roadways and design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
  - iv. The Project shall not introduce any unanticipated safety hazards to the traveling public;
  - v. The Project shall retain the same level or an improved level of mobility of travel within the corridor;
  - vi. The Project shall not in any manner decrease the life expectancy of the affected component(s) of Maine's transportation system;
  - vii. The Project shall meet the most recent Americans with Disabilities Act of 1990 (ADA) design requirements;
  - viii. Traffic control and the safety of pedestrians, bicyclists and the traveling public shall be provided for at all times.
- g. The Municipality shall coordinate with affected utilities to identify existing utility locations and/or any utility relocation impacts that may be created by the development of the Project.
- h. It is expected that the Project can be constructed within the existing right-of-way limits. If that is not the case, the Municipality must provide MaineDOT with a detailed explanation of the property rights required for the Project and shall acquire any such property rights in accordance with all applicable state and federal laws. The PACTS Share may only be applied to costs associated with the acquisition of property rights required for the implementation of the Project.
- i. The Municipality shall perform all necessary federal, state and local permitting activities required in connection with the Project.
- j. Project construction must commence within twelve (12) months and must be certified as complete within twenty-four (24) months of the date of execution of this Agreement. If this timeline is not met, and the Municipality cannot show that it has made a good faith effort to meet this timeline, PACTS retains the right to withdraw any unpaid portion of the PACTS Share and reallocate its remaining funding to other eligible projects in its service area.

- k. Upon completion of Project construction, the Municipality shall provide certification to MaineDOT from the Project Engineer stating that the Project is complete and has been constructed in accordance with the plans and specifications.

**5. Public Involvement:**

The Municipality shall be responsible for implementing and leading any and all required public involvement processes and activities, including those required by Maine's Sensible Transportation Policy Act, and any necessary media coordination associated with the any phases of the Project covered by this Agreement.

**6. Changes to Project Scope:**

The Municipality will consult with MaineDOT and PACTS before implementing any adjustments to the Project scope.

**7. Termination:**

- a. In the event the Municipality decides to terminate the Project for any reason prior to the award of a contract to construct the Project and that termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for covering all Project costs incurred up to the time of termination.
- b. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- c. In no event shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- d. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

**8. Miscellaneous Provisions:**

- a. Quality of Work. PACTS reserves the right to require the Municipality to refund all reimbursements made and to repay PACTS fully for all Projects costs incurred if the work is found to be unsatisfactory.
- b. Reprogramming of Remaining PACTS Funds. Any state MPO funds allocated to the Project that remain unspent following payment of the final invoice and reconciliation of the Project shall be made available to PACTS for reprogramming once the Project is closed out.
- c. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's

own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.

- d. Assumption of Responsibility. The Municipality hereby assumes responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of the Municipality, its employees, agents or representatives, and shall ensure that its contractor(s) assume the same responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of its own employees, agents or representatives. This assumption of responsibility shall also include damage to vehicles passing through the Project limits.
- e. Obligation of State Funds. Notwithstanding anything herein to the contrary, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- f. Performance. The Parties will avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- g. Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs set out herein.
- h. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
- i. Assignment. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of the Parties.

- j. Independent Capacity. The Municipality and PACTS, their respective employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
- k. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- l. Binding Effect. The Parties shall be bound by the terms of this Agreement. This provision shall apply to the Agreement's executors, their successors, administrators and legal representatives.
- m. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT:                    Maine Department of Transportation  
    16 State House Station  
    Augusta, ME 04333-0016  
    Attn.: Darryl Belz, PE, Safety/MPO Engineer  
    Email: darryl.belz@maine.gov

Municipality:                City of Portland  
    Department of Public Services  
    55 Portland Street  
    Portland, ME 04101  
    Attn.: Michael Farmer, Senior Engineer  
    Email: mfarmer@portlandmaine.gov

PACTS:                         PACTS  
    970 Baxter Boulevard, Suite 201  
    Portland, ME 04103  
    Attn.: Sara Zografos, Planner Director  
    Email: szografos@spcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement effective on the day and date last signed.

  
Date 5/7/18  
Kristina Egan, Executive Director \*  
Greater Portland Council of Governments  
For Portland Area Comprehensive Transportation System  
Duly authorized

\_\_\_\_\_  
Date \_\_\_\_\_  
Jon Jennings, City Manager \*  
Municipality of Portland  
Duly authorized

\_\_\_\_\_  
Date \_\_\_\_\_  
Herb Thomson, Director, Bureau of Planning \*  
Maine Department of Transportation  
Duly authorized

*\* I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*

**APPENDIX A**

**PACTS Letter to MaineDOT Outlining Scope  
and Cost of MPI Project**



# PACTS

## Portland Area Comprehensive Transportation System

Darryl Belz, P.E.  
Safety/MPO Engineer  
Bureau of Planning  
Maine Department of Transportation  
16 State House Station  
Child Street  
Augusta, Maine 04433-0016

January 24, 2018

Revised: PACTS 2018 MPI Project: Portland, Allen Avenue

Darryl,

The following is a request to develop an agreement for the above project for the 2018 PACTS MPI program.

PACTS will be using a portion of our CY2018 state funding allocation for four projects which have been endorsed by our Committees and approved by the PACTS Policy Committee at their July 20, 2017 meeting.

The following project was submitted by Portland for 2018 funding:

Allen Avenue, from Yale Street northwesterly to Pennell Avenue.  
The RLM's are from 3.03 miles to 3.43 miles for a total project length of 0.38 miles  
The scope is expected to consist of pavement rehabilitation and paving, ADA and sidewalk rehabilitation and bicycle lanes.  
The total cost is estimated at \$367,500.  
Construction complete year is scheduled to be 2018.  
The funding is 50%/50% at \$183,750 state and \$183,750 local, with a maximum state (PACTS) cap of \$183,750.

PACTS is requesting the above state amount from the PACTS 2018 allocation resulting in a WIN for the project and a three-party agreement to follow. Portland would like to proceed soon with the design.

The municipal contact is Mike Farmer and he will have been informed that we will need contract documents including a scope of work, unit prices and complete specifications like or the same as a MaineDOT "Book Project", including a set plans as necessary as outlined in the pending agreement.

Thank you for your attention to this matter. If you have any questions please call.

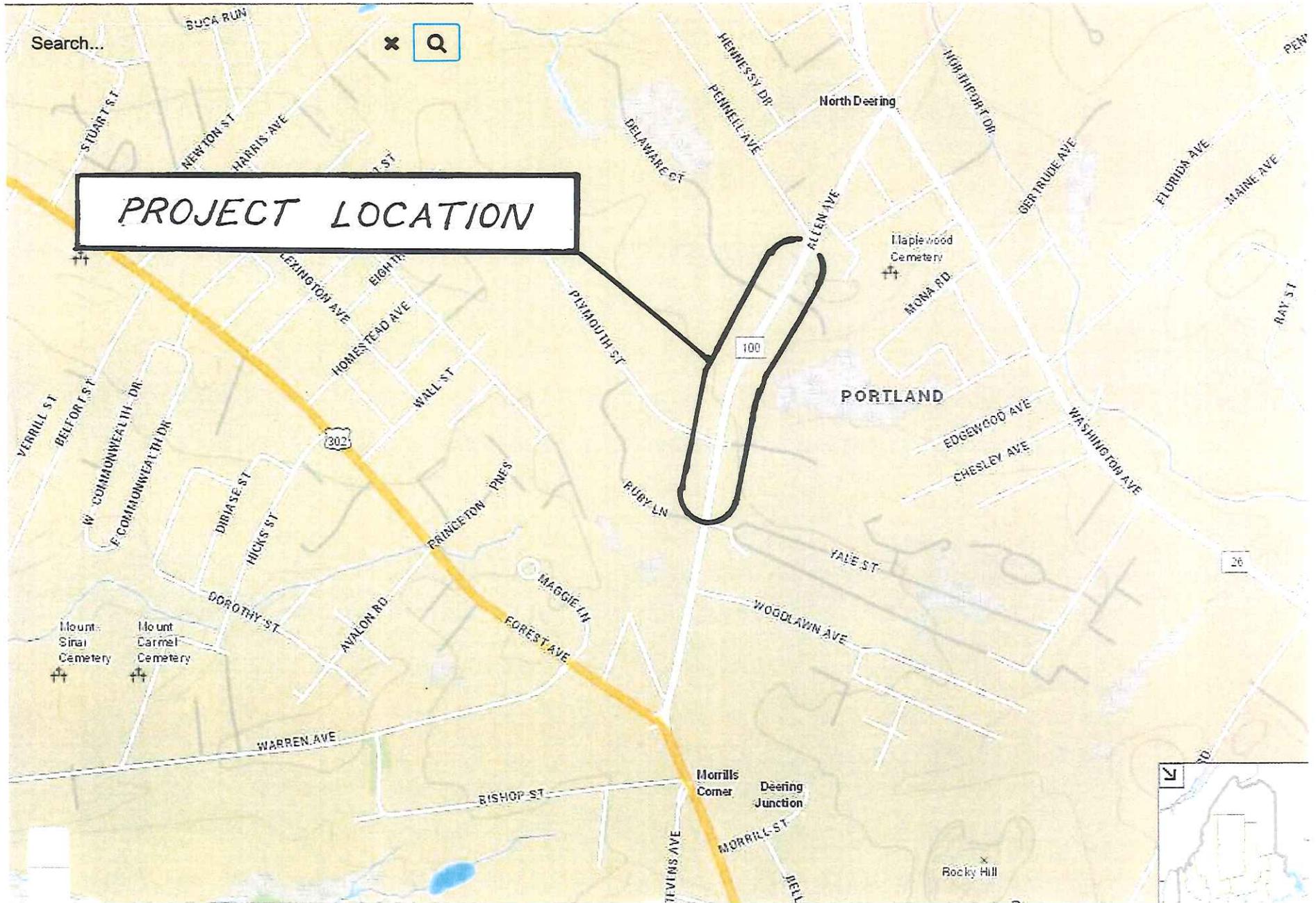
Sincerely,

  
Paul Nichoff  
PACTS

cc: Mike Farmer, City of Portland  
Jeremiah Bartlett, City of Portland  
Rob Hetz, DOT

*The Metropolitan Planning Organization for the Portland Urbanized Area*

970 Baxter Blvd • Portland, Maine 04103  
Telephone: (207) 774-9891 • Fax: (207) 774-7149 • www.pactsplan.org



*Order 22-18/19  
Tab 34 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROVING THE ACCEPTANCE AND APPROPRIATION  
OF A BROWNFIELDS CLEAN UP FUND GRANT**

**ORDERED**, that a Brownfields supplemental clean up grant in the amount of \$500,000 from the United States Environmental Protection Agency is hereby accepted for the purposes of funding assessments of contaminated sites; and

**BE IT FURTHER ORDERED**, that the Brownfields clean up grant monies of \$500,000 be hereby appropriated to the City of Portland Brownfields Revolving Loan Fund; and

**BE IT FURTHER ORDERED**, the City Manager or his or her designee is authorized to execute any and all documents necessary to accept and appropriate the grant, and otherwise carry out the intent of this order.



Economic Development Department  
Gregory A. Mitchell, Director

**TO:** Mayor and City Council

**FROM:** Gregory A. Mitchell, Economic Development Director  
Nelle Hanig, Business Programs Manager

**DATE:** June 27, 2018

**DISTRIBUTION:** City Manager, Mayor, Anita LaChance, Mona Bector, Sonia Bean, Danielle West-Chuhta, Nancy English

**SUBJECT:** **Acceptance and Appropriation of \$500,000 EPA Grant of Supplemental Brownfields Cleanup Funds**

**SPONSOR:** Jon P. Jennings, City Manager

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> Reading – July 16, 2018; 2<sup>nd</sup> Reading – August 13, 2018

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

**PRESENTATION:** (Greg Mitchell – 5 minutes)

**I. ONE SENTENCE SUMMARY**

The City of Portland has been awarded a \$500,000 grant from the Environmental Protection Agency (EPA) of supplemental Brownfields cleanup funds to recapitalize the City Portland Development Corporation's Brownfields Revolving Loan Fund (RLF).

**II. AGENDA DESCRIPTION**

To seek the City Council's approval to accept and authorization to appropriate \$500,000 in EPA Supplemental Brownfields RLF grant funds, with the expectation that the funds will become available October 1, 2018. These funds will supplement the City's Brownfields RLF which was recapitalized last year with an \$800,000 EPA grant, allowing the provision of greater assistance for remediation of Brownfields sites in Portland.

**III. BACKGROUND**

The City of Portland applied to EPA back in December 2015 for \$800,000 in grant funds to recapitalize its Brownfields RLF. EPA awarded the grant in 2016 and all of the funds were

subsequently approved by the Portland Development Corporation (PDC) for awards to the Children's Museum and Theatre of Maine (\$170,000 grant), Thompson's Point (\$350,000 loan), and Children's Odyssey School (\$180,000 grant), with the remaining \$100,000 being used for environmental and underwriting contractors, legal costs, travel, and other program expenses.

As all of those funds have been approved for specific projects, some of which have already been drawn down, the City was invited by EPA to apply for supplemental funds. That application was successful with a new EPA grant of \$500,000 just approved. The funds will be invested in remediation and cleanup for redevelopment of contaminated properties in Portland.

#### **IV. INTENDED RESULT**

The City will use the funds initially to hire a Qualified Environmental Professional(s) to assist staff in reaching out to property owners with contaminated properties and determining eligibility of Brownfields cleanup sites. This is the first step in ultimately providing loans (to for-profits) and possibly some grants (to non-profits) for the cleanup of more Brownfields sites. While these funds can be used throughout Portland, there will be a particular emphasis on East and West Bayside and the Portland waterfront.

#### **V. COUNCIL GOAL ADDRESSED**

In addition to the public health benefits of reduced environmental contamination in the City, remediated sites will be reused and redeveloped. The Council goal addressed is to promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

#### **VI. FINANCIAL IMPACT**

There will be no direct financial impact on the City. A positive financial impact will be contaminated sites being remediated, redeveloped, and put back on the tax rolls providing revenue for the City and new jobs.

#### **VII. STAFF ANALYSIS**

There are brownfields sites throughout the Portland peninsula and elsewhere in the City. The benefit to having available Brownfields funds is to help mitigate the additional cost of redeveloping contaminated sites. Clean sites will yield redevelopment and new revenue for the City as well as jobs. An additional \$500,000 in Brownfields cleanup funds will have a substantial impact on remediating/cleaning up more contaminated properties in Portland and redeveloping them.

#### **VIII. RECOMMENDATION**

Economic Development staff recommend that the City Council approve acceptance and authorize appropriation of a grant of \$500,000 in EPA Brownfields Revolving Loan Funds, which are anticipated to be officially awarded and available for use October 1, 2018.

#### **VIII. LIST ATTACHMENTS - None**

Order 23-18/19  
Tab 35 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**TRAFFIC SCHEDULE AMENDMENT  
RE: Unrestricted to Metered Parking on India and Fore Streets**

**ORDERED**, that the City of Portland's Traffic Schedule be and hereby is amended as follows:

**By removing under Fore Street from India Street to Hancock Street:**

South Side

- **Schedule I** – No Parking Anytime

**By adding under Fore Street from India Street to Hancock Street:**

South Side

- **Schedule XXI** – Meter Zone No. 3 - 2 Hour

**By removing under India Street from a point 16 feet south of Newbury Street to a point 61 feet south of Newbury Street:**

West Side

- **Schedule XV** – 15 Minute Parking

**By adding under India Street from Newbury Street to a point 100 feet south of Newbury Street:**

West Side

- **Schedule XXI** – Meter Zone No. 3 - 2 Hour

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

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

**FROM:** Jennifer Ladd, Project Engineer  
Department of Public Works - Engineering

**DATE:** June 27, 2018

**SUBJECT:** Traffic Schedule Amendment: Unrestricted to Metered Parking on India Street and Fore Street

**SPONSOR:** Jon Jennings

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** \_\_\_ July 16<sup>th</sup>, 2018 \_\_\_\_\_ **Final Action** \_\_\_ August 13<sup>th</sup>, 2018 \_\_\_\_\_

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

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

**I. ONE SENTENCE SUMMARY –**

The Department of Public Works requests City Council approval to amend the Traffic Schedule to convert four existing unrestricted parking spaces along the west side of India Street (from Middle Street to Newbury Street) to four two-hour metered parking spaces, and to convert No Parking Anytime on the south side of Fore Street (from India Street to Hancock Street) to nine metered parking spaces.

**II. AGENDA DESCRIPTION -**

The requested Council action would amend the Traffic Schedule to change the west side of India Street, between Middle Street and Newbury Street, from unrestricted to two-hour metered parking. This would result in four metered parking spaces on this block of India Street. This action would also amend the Traffic Schedule to change the south side of Fore Street between India Street and Hancock Street, from No Parking Anytime to two-hour metered parking, resulting in nine metered parking spaces on this block of Fore Street.

**III. BACKGROUND -**

The India Street area is currently undergoing significant development and growth, including new retail, banking, hotels and residential facilities. As these developments replace surface parking lots and generate new activity, there is increased demand for parking in general and a lower inventory of off-street parking to meet that need. Both street segments are adjacent to on-going construction and any proposed parking schedule changes would be implemented when all construction activity and impacts within the right-of-way are finished.

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

Approval of these amendments to the Traffic Schedule will ensure that on-street parking is provided, to the extent possible, to meet the growing demand for parking in this area. The implementation of time restricted parking will encourage regular parking turnover in areas with new retail and other commercial uses.

**V. FINANCIAL IMPACT -**

The financial impact to make these parking changes will be approximately \$500-\$1,000 for combined staff time and materials.

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

The CPort Credit Union site plan approval (for the corner of Middle Street and India Street) will introduce one 15-minute parking space on India Street and one 15-minute parking space on Middle Street.

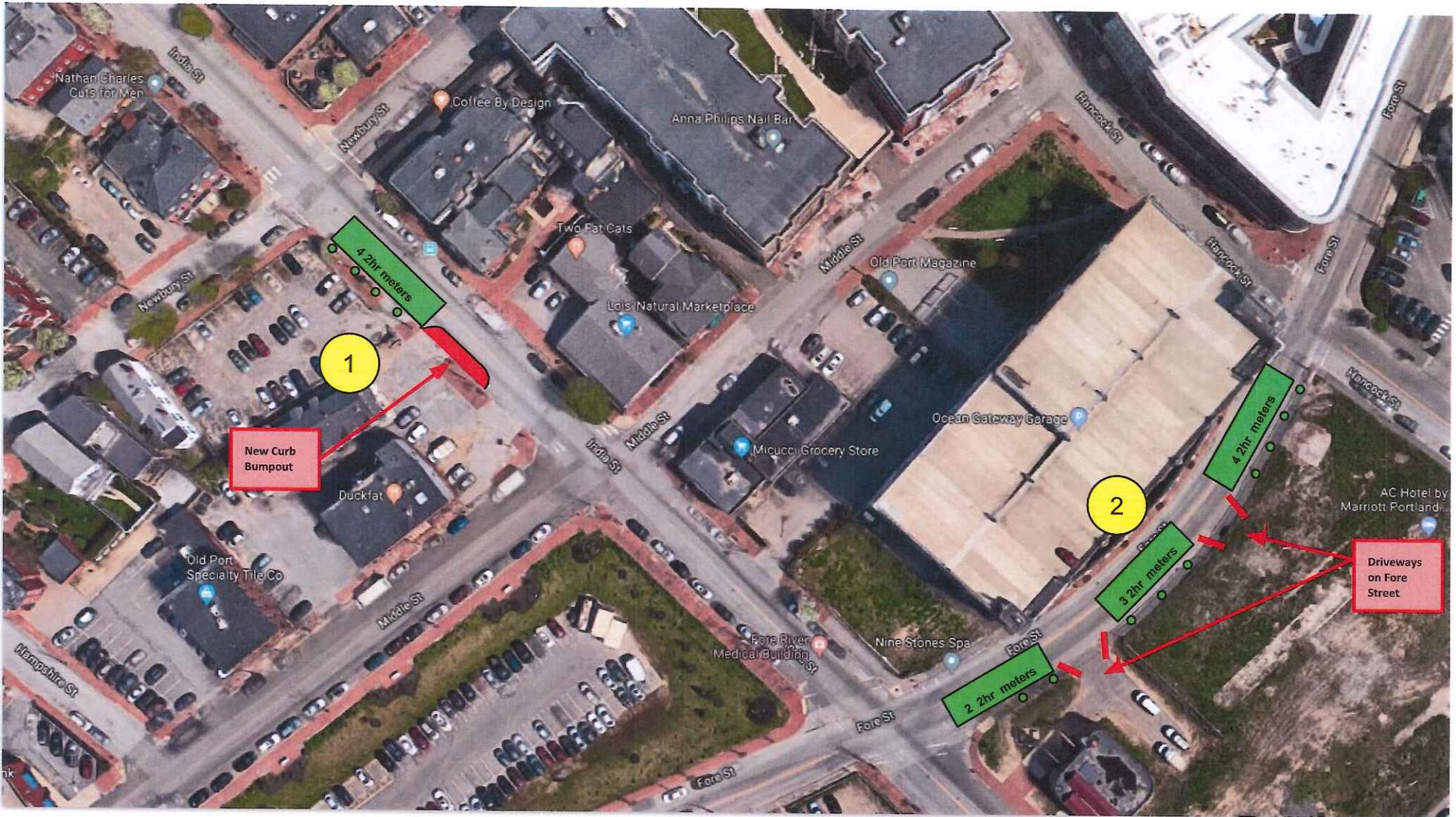
**VII. RECOMMENDATION –**

DPW staff, with support from the Parking Division, recommend this change.

**VIII. LIST ATTACHMENTS**

1. Parking Changes Proposed for India Street & Fore Street

Prepared by: Jennifer Ladd  
Date: June 27, 2018



### India Street and Fore Street Parking Schedule Changes

- 1
 = Current Schedule: driveways and two 15-minute spaces, Change: four 2-hour metered spaces
- 2
 = Current Schedule: parking prohibited, Change: nine 2-hour metered spaces
- = Approximate meter head locations
- = Recent site work taken into account for new parking schedule

Prepared by the City of  
Portland Department  
of Public Works



Date: 6/28/2018  
Checked by: JWL

*Order 24-18/19  
Tab 36 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**TRAFFIC SCHEDULE AMENDMENT  
RE: Unrestricted to No Parking on Portions of Washington and Allen Avenues**

**ORDERED**, that the City of Portland's Traffic Schedule be and hereby is amended as follows:

**By adding under Allen Avenue from a point 56 feet northerly of Goodridge Avenue to Washington Avenue:**

West Side

➤ **Schedule I – No Parking Anytime**

**By adding under Allen Avenue from a point 56 northerly of Goodridge Avenue to a point 185 feet southerly of Woodlawn Avenue:**

East Side

➤ **Schedule I – No Parking Anytime**

**By adding under Allen Avenue from a point 150 feet northerly of Knight Street to Abbott Street:**

East Side

➤ **Schedule I – No Parking Anytime**

**By adding under Washington Avenue from to a point 40 feet easterly of Gertrude Street to a point 115 feet easterly of Drake Street:**

North Side

➤ **Schedule I – No Parking Anytime**

**By adding under Washington Avenue from a point 85 feet easterly of Ray Street to a point 180 feet easterly of Rainbow Mall Road:**

North Side

➤ **Schedule I – No Parking Anytime**

**By removing under Washington Avenue from a point 145 easterly of Ocean Avenue to a point 25 feet westerly of Byfield Road:**

North Side

➤ **Schedule I – No Parking Anytime**

**By adding under Washington Avenue from a point 145 easterly of Ocean Avenue to Byfield Road:**

North Side

➤ **Schedule I – No Parking Anytime**

**By adding under Washington Avenue from Allen Avenue to a point 40 feet southerly of Maplewood Street:**

South Side

➤ **Schedule I – No Parking Anytime**

**By adding under Washington Avenue from a point 75 easterly of Chesley Street to a point 545 feet easterly of Canco Road:**

South Side

➤ **Schedule I – No Parking Anytime**

**By removing under Washington Avenue from a point 130 feet westerly of Ocean Avenue to Fallbrook Road:**

South Side

➤ **Schedule I – No Parking Anytime**

**By adding under Washington Avenue from a point 230 easterly of Fallbrook Street to a point 130 feet westerly of Ocean Avenue:**

South Side

➤ **Schedule I – No Parking Anytime**

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

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

**FROM:** Jennifer Ladd, Senior Transportation Engineer  
Department of Public Works

**COPY:** Chris Branch, DPW Director  
Keith Gray, City Engineer  
Jeremiah Bartlett, Transportation Systems Engineer  
John Peverada, Parking Division

**DATE:** June 28<sup>th</sup>, 2018

**SUBJECT:** Traffic Schedule Amendment: Unrestricted Parking to No Parking on portions of Washington Avenue, between Maplewood Street and Byfield Road, and Allen Avenue, between Forest Ave and Washington Avenue.

**SPONSOR:** Jon Jennings, City Manager

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** \_\_\_ July 16<sup>th</sup>, 2018 \_\_\_\_\_ **Final Action** \_\_\_ August 13<sup>th</sup>, 2018 \_\_\_\_\_

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

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

**I. ONE SENTENCE SUMMARY –**

The Department of Public Works requests City Council approval to convert currently unrestricted parking on multiple segments of Washington Avenue (between Maplewood Street to Byfield Road) and Allen Avenue (between Forest Ave and Washington Avenue) to No Parking Anytime.

**II. AGENDA DESCRIPTION –**

Staff is seeking Council endorsement to amend the Traffic Schedule in certain locations on Washington Avenue and Allen Avenue to facilitate and extend transportation improvements along both corridors in conjunction with resurfacing and signal work scheduled for the 2018 construction season.

The proposed schedule changes would impact 130 parking spaces on Washington Avenue and 80 parking spaces on Allen Avenue. (See attached graphics)

### **III. BACKGROUND –**

Prior studies, data collection efforts and parking counts, including a study by the Portland Area Comprehensive Transportation System (PACTS), entitled The Bike Network Expansion for the Feasibility and Implementation of the 2009 Regional Bicycle & Pedestrian Plan Update and the Pedestrian and Bicycle Chapter of the 2012 Portland Comprehensive Plan, have indicated low on-street parking utilization and an opportunity to improve transportation efficiency on these parts of Washington Avenue and Allen Avenue. Reallocating space from underutilized on-street parking to buffered bike lanes and a reduction in travel lane width will better accommodate a wider variety of street users, improve safety for all and continue similar facility changes implemented on Washington Avenue in 2017 between Ocean Avenue and Presumpscot Street.

Public outreach was conducted in June 2018 to make local residents and businesses aware of the proposed parking changes and invite them to a public meeting for more information. A public press release was issued and over 500 pamphlets and graphics were mailed or hand delivered to abutters and businesses along these corridors. A public meeting was held on June 19<sup>th</sup>, 2018. A meeting summary is attached. There were lots of questions about the project in general, a concern for overall speeding traffic on these roads and some detailed suggestions on pavement marking, but no strong opposition to the parking changes proposed.

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

Approval of these amendments to the Traffic Schedule will allow new roadway reconfigurations to be implemented as part of planned resurfacing and signal work on Washington Avenue and Allen Avenue. These amendments will take advantage of low parking utilization of these roadways and will increase multi-modal transportation options and efficiency on these important travel corridors in Portland.

### **V. FINANCIAL IMPACT –**

The financial impact for Washington Avenue will be approximately \$4,100 for combined staff time and materials, and the required DigSafe fees related to the installation of signage; a small portion of which may be covered by the construction costs for resurfacing of Washington Avenue.

The financial impact for Allen Avenue will be approximately \$2,000 for combined staff time and materials, and the required DigSafe fees related to the installation of signage; a small portion of which may be covered by the construction costs for resurfacing of Allen Avenue.

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

Based on parking counts done in 2015, 2017, and 2018 on both Washington Avenue and Allen Avenue, average parking utilization is well under 5% in the morning, in the evening, and on weekends on these sections of road. By replacing the underutilized parking with higher quality bicycle facilities, the street space will be used more efficiently and actively so that bicycling will be a safer and more realistic option for transportation on Washington Avenue and Allen Avenue.

Implementing bicycle facilities in these locations will also allow a cyclist to connect to striped, buffered bike lanes that were added on Washington Avenue between Ocean Avenue and Presumpscot Street in 2017.

We met with Councilor Cook on May 9<sup>th</sup> and with Councilor Costa on May 11<sup>th</sup> to brief them on the project and the proposed parking changes.

**VII. RECOMMENDATION –**

DPW staff, with support from the Parking Division, recommend this change.

**VIII. LIST ATTACHMENTS –**

1. Washington and Allen Parking Change – Agenda Item Support Graphic
2. Washington and Allen Parking Counts – Agenda Item Support Graphic
3. Washington and Allen Public Meeting Summary - Agenda Item Support Document

Prepared by: Jennifer Ladd

Date: June 28<sup>th</sup>, 2018

Bean/agendarequestmemo/rev 11/2015

## WASHINGTON AND ALLEN MPI PAVING PUBLIC MEETING SUMMARY

Meeting Location: Training Room, 250 Canco Road

Meeting Date: June 19, 2018

Approximate Meeting Time: 6:00pm - 8:00pm

Presenters: Bruce Hyman, DPUD; Jennifer Ladd, DPW

Public Notification: 500 pamphlets mailed to abutters, passed door-to-door, distributed to businesses

### Attendees:

| NAME                | ADDRESS/ORGANIZATION  | EMAIL                       |
|---------------------|---|-----------------------------|
| Joseph Bugate       | 70 Allen Ave  |                             |
| Sharon Restell      | 183 Allen Ave   | syrestell@gmail.com         |
| Kathleen Sutherland | 900 Washington Ave, treasurer of the 900 Washington Avenue Association, unit #3 |                             |
| John Sutherland     | 900 Washington Ave, president of the 900 Washington Avenue Association, unit #3 |                             |
| Archie Giobbi       | 1184 Washington Ave   | archiegiobbi@gmail.com      |
| Paul White          | 50 Allen Ave  |                             |
| Joseph Mendes       | 1066 Washington Ave   | mendes6279@yahoo.com        |
| Ann Roderick        | 970 Washington Ave  | aroderick@outlook.com       |
| David Morash        | 124 Allen Ave   | flatlanderdev@aol.com       |
| Michael LeComte     | 1115 Washington Ave   | michael.r.lecomte@gmail.com |

### Take-aways:

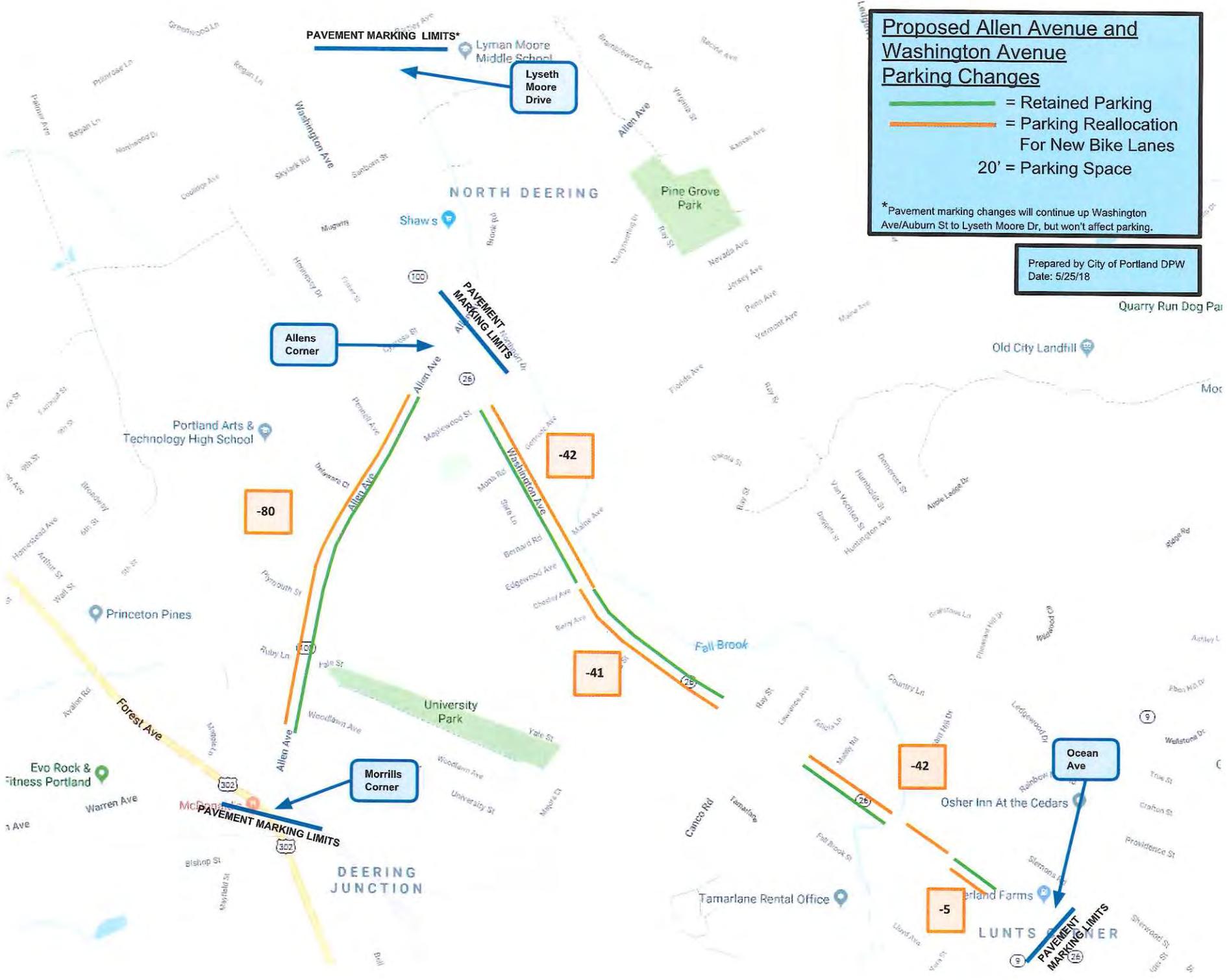
- Speed seems to be an issue along Washington *and* Allen. Narrowing travel lanes is a proven treatment to help encourage lower speeds.
- Attendees reported a lot of pedestrians and a lot of bikes getting on buses, at all hours of the day. Residents are concerned for their safety, especially in the wintertime.
- Suggestion was made to adjust the left turn lane stop bars back on Allen Ave (NB) and Canco Rd (SB) to help facilitate turning vehicles with large radii.
- A comprehensive speed study should be done in tandem with this project to capture any impacts the project may have on general travel speeds.

# Proposed Allen Avenue and Washington Avenue Parking Changes

- = Retained Parking
- = Parking Reallocation For New Bike Lanes
- 20' = Parking Space

\* Pavement marking changes will continue up Washington Ave/Auburn St to Lyseth Moore Dr, but won't affect parking.

Prepared by City of Portland DPW  
Date: 5/25/18



Quarry Run Dog Park

Old City Landfill

Morrills Dr

University St

Woodlawn Ave

Yale St

Maplewood St

Morrills Dr

Woodlawn Ave

Yale St

Maplewood St

Morrills Dr

Woodlawn Ave

Yale St

Maplewood St

Morrills Dr

Woodlawn Ave

Yale St

Order 25-18/19  
Tab 37 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROPRIATING  
HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS  
IN THE AMOUNT OF \$200,000 TO THE  
AVESTA HOUSING DEVELOPMENT CORPORATION  
RE: DEERING PLACE**

**ORDERED**, that the amount of \$200,000 in Home Investment Partnerships (HOME) Program funds is hereby appropriated to the Avesta Housing Development Corporation for development costs for Deering Place; and

**BE IT FURTHER ORDERED**, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the grant, and otherwise carry out the intent 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:** Planning and Urban Development Department  
Housing & Community Development Division

**DATE:** June 27, 2018

**SUBJECT:** Order Authorizing Additional Financial Assistance in the amount of \$200,000 in HOME Program Funds to the Avesta Housing Development Corporation project entitled Deering Place located at 61 Deering Street and 510 Cumberland Avenue

**SPONSOR:** Jill Duson, Chair, Housing Committee  
**Date the Committee Met: June 5, 2018 Results: 3-0 in favor**

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
1<sup>st</sup> reading July 16, 2018 Final Action August 13, 2018

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

**PRESENTATION: (List the presenter(s), type and length of presentation)**  
Mary Davis, HCD Division Director will be available to answer any questions

**I. ONE SENTENCE SUMMARY**

Avesta Housing Development Corporation (AHDC) is proposing to renovate and construct a seventy-five (75) unit mixed-income rental housing development on a site they own located at 61 Deering Street and 510 Cumberland Avenue. AHDC is requesting additional financial assistance from the City in the form of a HOME Loan in the amount of \$200,000. In November 2017, Avesta Housing Development Corporation (AHDC) received a commitment of \$300,000 in HOME funding and approval of TIF Credit Enhancement Agreement (75% of the increased taxable value over 30 years, average of \$147,981/year) for this project. The project was awarded Low Income Housing Tax Credits in March of this year. The developer is seeking additional HOME funding to ensure that the project can move forward.

**II. AGENDA DESCRIPTION**

Avesta Housing Development Corporation (AHDC) is proposing to renovate and construct a seventy-five (75) unit mixed-income rental housing development on a site they own located at 61 Deering Street and 510 Cumberland Avenue. AHDC is requesting additional financial assistance from the City in the form of a HOME Loan in the amount of \$200,000. In November 2017,

Avesta Housing Development Corporation (AHDC) received a commitment of \$300,000 in HOME funding and approval of TIF Credit Enhancement Agreement (75% of the increased taxable value over 30 years, average of \$147,981/year) for this project. The project was awarded Low Income Housing Tax Credits in March of this year. The developer is seeking additional HOME funding to ensure that the project can move forward. The HOME loan request is detailed in this memo.

The Deering Place project will include:

| Deering Place<br>510 Cumberland Avenue & 61 Deering Street |                                    |    |
|--|------------------------------------|----|
| Efficiency Units (15)                                      | at or below 40% area median income | 0  |
|  | at or below 50% area median income | 9  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 6  |
| 1-Bedroom Units (38)                                       | at or below 40% area median income | 0  |
|  | at or below 50% area median income | 14 |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 24 |
| 2-Bedroom Units (9)  | at or below 40% area median income | 5  |
|  | at or below 50% area median income | 4  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 0  |
| 3-Bedroom Units (13)                                       | at or below 40% area median income | 8  |
|  | at or below 50% area median income | 5  |
|  | at or below 60% area median income | 0  |
|  | Market Rate                        | 0  |
| Total Units  |                                    | 75 |

As stated in the developer's application:

*“Deering Place will combine the redevelopment of two under-utilized parking lots and the rehabilitation of an existing mixed-use building to create a mixed-income, contextually-appropriate residential community with 75 units and enhanced amenities. The project will include a mix of affordable and market rate units, making it possible to preserve and add affordable units as well as ensure the long term viability of the project. The scope of work includes a rehab and expansion of 510 Cumberland Avenue (“Building A”) and the construction of a new building at 61 Deering Street (“Building B”). Upon completion, there will be a total of 75 apartments, of which 62 will be newly constructed units and 15 will meet handicapped accessible standards.”*

In total, the development will include 75 apartment units, ranging in size from efficiency to 3 bedrooms. It will include a community room, a telemedical room, laundry facilities in each building, and 64 parking spaces. The project will serve a mixed income population, with 32

market rate units and 48 affordable units. Thirteen units will continue to serve households at 40% of AMI, per the existing affordability restriction with Maine Housing. The remaining 35 affordable units will serve households at 50% AMI.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the HOME funding recommendation.

The Housing Committee met on June 5, 2018 and voted 3-0 to forward this funding request to the City Council for approval.

### **III. BACKGROUND**

Avesta acquired the 61 Deering Street/510 Cumberland Avenue property from Opportunity Alliance on October 25, 2016, along with a parking lot and a historic building located at 73 Deering Street, with a total of 16 residential apartments and underutilized commercial space. A Capital Needs Assessment concludes that the properties are in reasonable condition considering their age (built in 1900 and 1920) but that both buildings have major systems which are nearing the end of their useful lives, and there are deferred maintenance items which need immediate attention.

There is a use agreement with Maine Housing also dated October 25, 2016, restricting the use of the residential units to affordable housing until at least 2038 (21 years from now). Maine Housing has agreed to transfer the existing affordability restriction on the 3 residential units at 73 Deering (the portion of the property slated for sale) to 3 newly constructed units. This will allow 73 Deering to be sold without affordability restrictions, substantially increasing its market value.

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

Increase access to rental and ownership housing that is safe and affordable for working and low-income families.

### **V. FINANCIAL IMPACT**

The property is currently tax exempt. When completed the project's estimated tax assessed value is \$7 million. Additional HOME funds request: \$200,000 (making the total City HOME investment \$500,000), over 30-years, at zero percent interest, with repayment annually of 20% of cashflow.

Total City HOME Investment of \$500,000/unit - \$6,667.

Total City HOME Investment of \$500,000/affordable unit = \$11,111.

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

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project, has the financial capacity to keep the development process moving forward and that the project will have sufficient cash flow to repay the City HOME loan in full.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below. With that being said, the third party report makes the following recommendations:

An additional HOME loan in the amount of \$200,000, with the following conditions prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14.5% of net construction costs.
2. Satisfactory review of a final development budget and operating pro forma which is consistent with the commitments of all source, including a cashflow waterfall acceptable to the City;
3. Any net proceeds of the sale of 73 Deering Place (after debt is retired, payment of settlement expenses, adjustment for any operating losses during the pre-development holding period, and any legal expense related to separation of the parcels) to be used to reduce the HOME loan amount.
4. Satisfactory review of a current appraisal ("current" as of date of loan closing) which breaks out the "as is" and "as built" values for each of the four existing parcels, to insure the limited partnership is not overpaying for the site.
5. Final rent schedules to be compared to maximum allowable rents and applicable utility allowance charts to determine final maximum rent rates.

As part of the Maine State Housing Authority's (MSHA) Qualified Allocation Plan (QAP) application due in February, the developers will need letters of commitment of support for their projects prior to the QAP submission deadline. If the Council agrees with the staff recommendation, this letter would include the recommendations of the third party underwriter and be conditioned on the completion of the following additional requirements:

1. The commitment will be subject to compliance with all HOME Program regulations including, but not limited to, satisfactory underwriting analysis, cost allocation, designation of HOME units and compliance with the new HOME Final Rule (effective August 23, 2013) and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013.
2. The commitment will include the requirement that the environmental review process be satisfactorily completed. The City's agreement to provide funds will be conditioned on the determination to proceed with, modify or cancel the project based on the results of the environmental review.
3. Commitment of funds to be stated as "an amount up to the funding request based on maximization of LIHTC equity raise", to ensure that the City's contribution is leveraged to the maximum extent possible.
4. If applicable, documentation acceptable to the City that the acquisition cost is reasonably related to market value. This is a HOME Program requirement.
5. Commitment should be subject to the projections and assumptions noted in the project budgets and pro-forma submitted, for both HOME and TIF funding, and the City reserves the right to reconsider and adjust their commitment if any significant alterations occur in the budget. A final commitment will be subject to a final budget.
6. Any substantial changes to the composition of the project, or the financial investment required, will be brought back to the Housing Committee and the City Council for review and approval.

A recommendation for City HOME funding by the City Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Any funding awarded will be contingent on the project's final approval by the Planning Board.

## **VII. RECOMMENDATION**

Staff is requesting approval by the City Council of additional HOME funding of \$200,000 (bringing the total City HOME investment to \$500,000) with a loan term of 30 years at zero percent interest with repayment annually of 20% of cashflow.

## **VIII. LIST ATTACHMENTS**

Excerpt HOME Application Information for Deering Place  
Third Party Underwriting Analysis

Prepared by: Mary P. Davis, HCD Division Director  
Date: June 27, 2018



## City of Portland HOME Funds Application

### Project: Deering Place

Avesta Housing is requesting \$200,000 of HOME funds from the City of Portland to complete the Deering Place project (“Deering Place”) at 61 Deering Street and 510 Cumberland Avenue, Portland, Maine. The City has already demonstrated its commitment to this project through the reservation of \$300,000 in HOME funds during the 2017-2018 round and the approval of a Tax Increment Financing District inclusive of the project site in November 2017. Since then, federal tax law changes have caused significant fluctuation in the tax credit equity market and, as a result, Avesta Housing is seeking additional support from the City to ensure the Deering Place’s success.

Deering Place is an opportunity to preserve, redevelop, and expand affordable housing in a highly desirable and accessible location within Portland. The development site contains three contiguous lots located in a highly walkable area in the historic Parkside neighborhood in downtown Portland. Deering Place is in close proximity to many amenities and services within the downtown area, making it a prime location for housing; MaineHealth, Deering Oaks park, a pharmacy, bus stops, schools, and a grocery store are all within a half mile.

Deering Place will combine the redevelopment of two under-utilized parking lots and the rehabilitation of an existing mixed-use building to create a mixed-income, contextually-appropriate residential community with 75 units and enhanced amenities. The project will include a mix of affordable and market rate units, making it possible to preserve and add affordable units as well as ensure the long term viability of the project. The scope of work includes a rehab and expansion of 510 Cumberland Avenue (“Building A”) and the construction of a new building at 61 Deering Street (“Building B”). Upon completion, there will be a total of 75 apartments, of which 62 will be newly constructed units and 15 will meet handicapped accessible standards.

Building A is a three-story brick building originally constructed in 1927 and expanded in the early 1990s, currently comprised of 13 one- and two-story three-bedroom rental units, significant first floor commercial space, and a large surface parking lot. The building has not received any major capital improvements in almost 30 years and is in need of significant interior and exterior rehabilitation work. To address these issues and create a higher quality living experience for the residents, the project will facilitate much needed capital improvements at the building level (e.g., brick repointing, roof repair, HVAC enhancements) and through in-unit upgrades (e.g., new doors, energy efficient light fixtures and appliances, cabinets, flooring). The project will also convert the underutilized commercial space to seven new residential units. In addition, Building A will be expanded by constructing a new 32-unit residential building on the surface parking lot next to the existing building. The new building will be attached to the existing building and utilize the same address. The expanded Building A will include 52 units and 51 covered parking spaces, up to 14 of which will be handicapped accessible. Building B will be comprised of 23 units and one handicapped accessible parking space.

Avesta prioritizes quality, environmentally sustainable design in all of our projects and the organization has developed building standards that ensure that our baseline building envelopes and mechanical systems exceed any building codes we encounter. In line with these initiatives, we plan to incorporate a range of features to promote and support sustainability, energy efficiency, and indoor air quality at Deering Place, including energy efficient heating systems, boilers, and furnaces; water conserving fixtures; Energy Star appliances; LED or Energy Star qualified lighting; and natural ventilation through operable windows.

Combined amenities in the two buildings, available to all Deering Place residents, will include a new community room, a laundry room in each building, and a telemedicine room, which will provide simple remote access to medical care. The grounds will be well landscaped with easily accessible walkways and sitting areas.

Deering Place will be a mixed-income project for individuals and families, comprised of 45 affordable rental units (60% of the project) and 30 market rental units (40% of the project). There are currently income and rent restrictions governed by a MaineHousing agreement requiring at least 13 units to be designated for households at or below 40% of Area Median Income (AMI). This project will ensure the preservation of those existing affordability restrictions over the long term. Additionally, the project has and will continue to have residents with Housing Choice Vouchers and other forms of rental assistance.

Incorporating the current affordability restrictions, the newly completed project will have 13 units designated for individuals or families at or below 40% of AMI, 32 units designated for individuals or families at or below 50% of AMI, and 30 market-rate units. All units with affordability restrictions will have a utility allowance factored into the tenant rent payment.

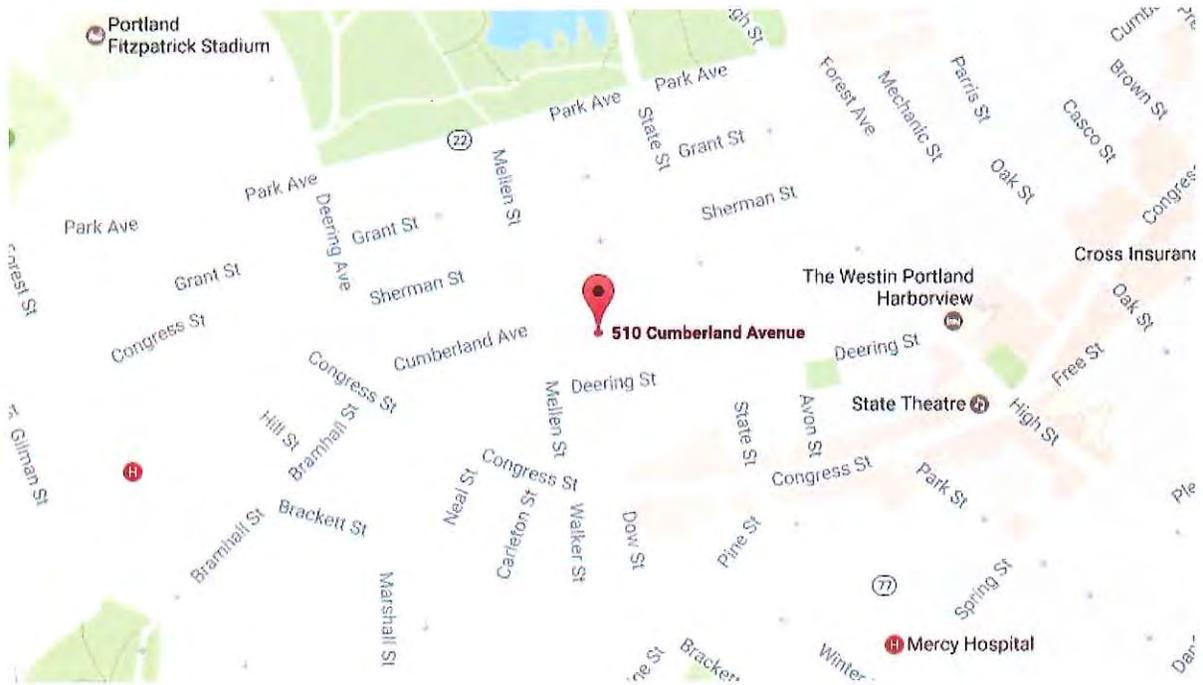
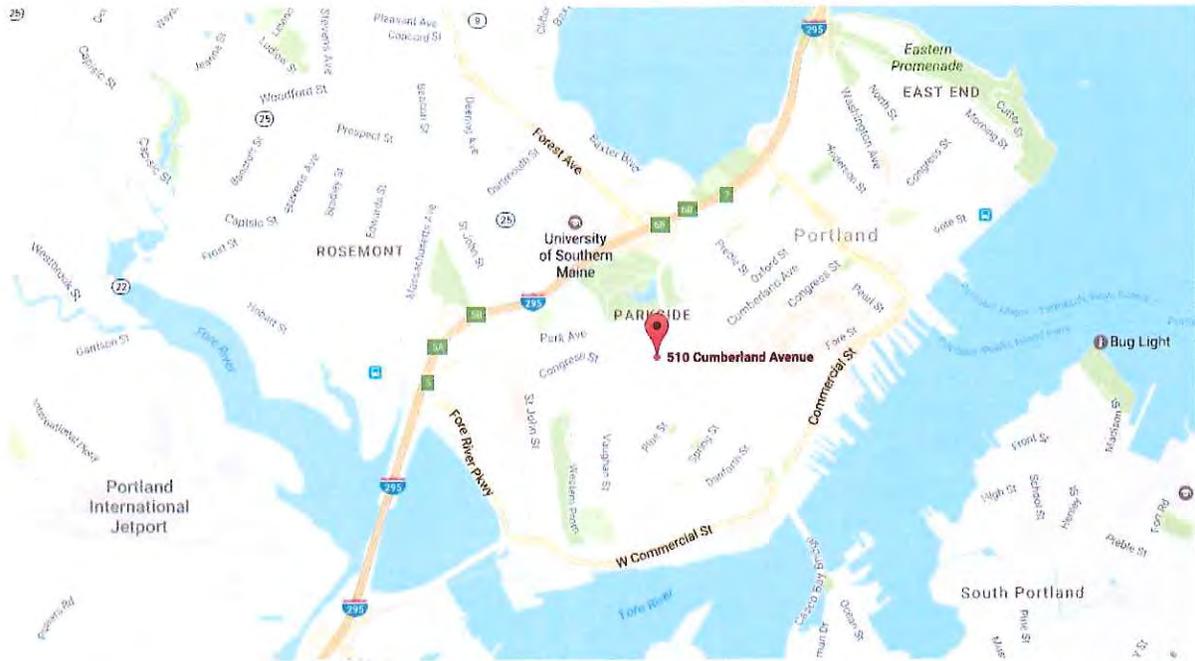
These affordable units at Deering Place come at a critical time for very low income Portlanders. Vacancies in Portland are at all-time lows while rents continue to increase. In 2017, Avesta alone received requests for affordable housing from nearly 3,800 households (over 1,300 of which were senior-led households) but was only able to provide housing to 393, showing demand far exceeds supply. Furthermore, Deering Place currently has a waitlist of over 100 households for the 13 existing units.

Deering Place will preserve and improve existing affordable rental housing and add much-needed new affordable rental housing in a central location of the city rich with transit, services, and neighborhood amenities.

**Deering Place - Portland, ME  
Project Completion Schedule**

| Activity                             | Scheduled Date<br>Month/Year |
|--------------------------------------|------------------------------|
| <b>A. SITE</b>                       |                              |
| Option/Contract                      | 07/19/16                     |
| Site Acquisition                     | 10/15/16                     |
| Zoning Approval                      | NA                           |
| <b>B. APPROVALS</b>                  |                              |
| Historic Preservation                | 1/10/2018                    |
| Zoning                               | 12/13/2017                   |
| TIF                                  | 11/20/2017                   |
| <b>C. FINANCING</b>                  |                              |
| Construction Loan Commitment         | 02/01/18                     |
| Permanent Loan Commitment            | 02/01/18                     |
| Other Sources Committed              | 03/01/18                     |
| <b>D. PLANS AND SPECIFICATIONS</b>   |                              |
| 50%                                  | 06/01/18                     |
| 90%                                  | 08/01/18                     |
| 100%                                 | 10/01/18                     |
| <b>E. CONSTRUCTION LOAN CLOSING</b>  | 03/31/19                     |
| <b>F. CONSTRUCTION START</b>         | 04/01/19                     |
| <b>G. COMPLETION OF CONSTRUCTION</b> | 04/01/20                     |
| <b>H. LEASE-UP</b>                   |                              |
| Lease-up Begins                      | 03/01/20                     |
| Sustained (95%) Occupancy            | 12/31/20                     |

## Map and Photos of 510 Cumberland Avenue





PROJECT NAME:  
LOCATION:

**Deering Place**  
510 Cumberland Ave & 61 Deering St, Portland, ME

Date: 05/04/18

| DEVELOPMENT ASSUMPTIONS |       |           |                       |           |          |           |
|-------------------------|-------|-----------|-----------------------|-----------|----------|-----------|
| Total Units             |       | 75        | Inflation Adjustments | Yr 1-5    | Yr. 6-15 | Yr. 16-30 |
| 40% LIHTC               | 17.3% | 13        | Rent                  | 2.00%     | 2.00%    | 3.00%     |
| 50% LIHTC               | 41.3% | 31        | Operating Expense     | 3.00%     | 3.00%    | 3.00%     |
| 50% AMI                 | 1.3%  | 1         | Other Income          | 2.00%     | 2.00%    | 3.00%     |
| 60% AMI (LIHTC)         | 0.0%  | 0         | Debt Coverage Ratio   | 1.15      |          |           |
| Market                  | 40.0% | 30        | Vacancy               | 5%        |          |           |
| Appraised Market Value  |       | 9,087,133 | Market Value/Unit     | \$121,162 |          |           |

|              |           |
|--------------|-----------|
| LIHTC Alloc. | 809,470   |
| Equity yield | 0.89      |
| Synd. %      | 99.99%    |
| Equity Raise | 7,223,800 |

|                     |        |
|---------------------|--------|
| Historic Credit FED | 0      |
| Equity yield        | 0.00   |
| Synd. %             | 99.99% |
| Equity Raise        | 0      |

|                       |        |
|-----------------------|--------|
| Number of Tax-payers  | 1      |
| Historic Credit STATE | 0      |
| Equity yield          | 0.00   |
| Synd. %               | 99.99% |
| Equity Raise          | 0      |

|               |           |
|---------------|-----------|
| Total Equity: | 7,223,800 |
|---------------|-----------|

|                          |        |
|--------------------------|--------|
| Gross Square Footage     | 71,140 |
| Construction Cost/Sq ft. | \$151  |

| PRO FORMA DEVELOPMENT BUDGET        |                   |                |            |                   |
|-------------------------------------|-------------------|----------------|------------|-------------------|
|                                     | Residential       | Per Unit       | Commercial | Total             |
| Site Improvements                   | 562,500           | 7,500          |            | 562,500           |
| Construction                        | 7,680,955         | 102,413        |            | 7,680,955         |
| Commercial Construction             | 560,000           | 7,467          |            | 560,000           |
| General Requirements                | 780,000           | 10,400         |            | 780,000           |
| Builder Overhead                    | 489,811           | 6,531          |            | 489,811           |
| Builder Profit                      | 0                 | 0              |            | 0                 |
| Bond Premium                        | 93,964            | 1,253          |            | 93,964            |
| Construction Contingency            | 6.5% 592,939      | 7,906          |            | 592,939           |
| <b>Subtotal Construction Costs</b>  | <b>10,760,169</b> | <b>143,469</b> | <b>0</b>   | <b>10,760,169</b> |
| Building Permits and Fees           | 128,570           | 1,714          |            | 128,570           |
| Survey & Engineering                | 51,000            | 680            |            | 51,000            |
| Architectural & Design              | 404,876           | 5,398          |            | 404,876           |
| Legal                               | 48,000            | 640            |            | 48,000            |
| Title & Recording                   | 13,312            | 177            |            | 13,312            |
| Accounting                          | 10,000            | 133            |            | 10,000            |
| Construction Period Tax             | 12,513            | 167            |            | 12,513            |
| Construction Period Insurance       | 30,000            | 400            |            | 30,000            |
| Other: as built, FFE, qt            | 37,000            | 493            |            | 37,000            |
| <b>Subtotal Soft Costs</b>          | <b>735,270</b>    | <b>9,804</b>   | <b>0</b>   | <b>735,270</b>    |
| Equity Bridge Loan Origination Fees | 8,660             | 115            |            | 8,660             |
| Equity Bridge Loan Interest         | 258,057           | 3,441          |            | 258,057           |
| FHA/GNMA Permanent Loan Fee         | 90,457            | 1,206          |            | 90,457            |
| Other FHA Fees                      | 111,563           | 1,488          |            | 111,563           |
| Other Fees                          | 36,200            | 483            |            | 36,200            |
| <b>Subtotal Finance Costs</b>       | <b>504,937</b>    | <b>6,732</b>   | <b>0</b>   | <b>504,937</b>    |
| Market Survey                       | 8,000             | 107            |            | 8,000             |
| Appraisal                           | 7,500             | 100            |            | 7,500             |
| Environmental Study                 | 5,000             | 67             |            | 5,000             |
| LIHTC Fees                          | 100,410           | 1,339          |            | 100,410           |
| Other: Soft Cost Contingency/Misc   | 175,000           | 2,333          |            | 175,000           |
| Other: Commissioning                | 12,000            | 160            |            | 12,000            |
| <b>Subtotal Miscellaneous</b>       | <b>307,910</b>    | <b>4,105</b>   | <b>0</b>   | <b>307,910</b>    |
| Acquisition: Buildings              | 382,500           | 5,100          |            | 382,500           |
| Acquisition: Land                   | 350,000           | 4,667          |            | 350,000           |
| Acquisition: Legal                  | 0                 | 0              |            | 0                 |
| <b>Subtotal Acquisition</b>         | <b>732,500</b>    | <b>9,767</b>   | <b>0</b>   | <b>732,500</b>    |
| HUD Operating Deficit Escrow        | 301,523           | 4,020          |            | 301,523           |
| Pre-funded Replacements             | 93,872            | 1,252          |            | 93,872            |
| Construction Interest Reserves      | 165,335           | 2,204          |            | 165,335           |
| Tax & Insurance Escrow              | 100,241           | 1,337          |            | 100,241           |
| Total Syndication Expenses          | 0                 | 0              |            | 0                 |
| Consultant Fee                      | 0                 | 0              |            | 0                 |
| Other: Transition & Rent-up Reserve | 50,000            | 667            |            | 50,000            |
| Developer Overhead                  | 562,500           | 7,500          |            | 562,500           |
| Developer Profit                    | 0                 | 0              |            | 0                 |
| <b>Subtotal Fee and Reserves</b>    | <b>1,273,471</b>  | <b>16,980</b>  | <b>0</b>   | <b>1,273,471</b>  |
| <b>Total Development Costs</b>      | <b>14,314,257</b> | <b>190,857</b> | <b>0</b>   | <b>14,314,257</b> |

Notes:

|                                 |         |
|---------------------------------|---------|
| MAXIMUM DEVELOPER FEE AVAILABLE | 987,500 |
| ACTUAL DEVELOPER FEE            | 562,500 |
| % OF MAXIMUM DEVELOPER FEE      | 57.0%   |
| NET DEVELOPER FEE COLLECTED     | 562,500 |
| % OF MAXIMUM DEVELOPER FEE      | 57.0%   |

**FLOW OF FUNDS**

| Sources                    | CLC              | During Construction |                  |                  |                  | PLC              | 2020           | 2021           | Total             |
|----------------------------|------------------|---------------------|------------------|------------------|------------------|------------------|----------------|----------------|-------------------|
|                            | 3/31/19          | 6/29/19             | 9/27/19          | 12/26/19         | 3/25/20          | 7/30/20          |                |                |                   |
| Beginning Cash             | 0                | 4,402,289           | 3,743,652        | 2,135,015        | 526,377          | 0                | 0              | 0              | 0                 |
| Capital Contribution       | 1,444,760        | 1,083,570           | 1,083,570        | 1,083,570        |                  | 2,178,330        | 200,000        | 150,000        | 7,223,800         |
| Equity Bridge Loan         | 0                | 0                   | 0                | 0                | 2,165,830        |                  |                |                | 2,165,830         |
| GP Bridge Loan             |                  |                     |                  |                  |                  |                  |                |                | 0                 |
| MSHA Subsidy               |                  |                     |                  |                  |                  |                  |                |                | 0                 |
| HUD 221(d)(4) Tranche A    | 4,521,457        |                     |                  |                  |                  |                  |                |                | 4,521,457         |
| HUD 221(d)(4) Tranche B    | 1,509,000        |                     |                  |                  |                  |                  |                |                | 1,509,000         |
| Other: Amortizing Mortgage |                  |                     |                  |                  |                  |                  |                |                | 0                 |
| Other: AHP Subsidy         |                  | 500,000             |                  |                  |                  |                  |                |                | 500,000           |
| Other: City FedHOME        |                  | 450,000             |                  |                  |                  | 50,000           |                |                | 500,000           |
| Acquired Project Reserves  | 60,000           |                     |                  |                  |                  |                  |                |                | 60,000            |
| <b>TOTAL SOURCES</b>       | <b>7,535,217</b> | <b>6,435,859</b>    | <b>4,827,222</b> | <b>3,218,585</b> | <b>2,692,207</b> | <b>2,228,330</b> | <b>200,000</b> | <b>150,000</b> | <b>16,480,087</b> |
| <b>Uses</b>                |                  |                     |                  |                  |                  |                  |                |                |                   |
| Acquisition                | 732,500          |                     |                  |                  |                  |                  |                |                | 732,500           |
| Construction               |                  | 2,690,042           | 2,690,042        | 2,690,042        | 2,690,042        |                  |                |                | 10,760,169        |
| Soft Costs                 | 735,270          |                     |                  |                  |                  |                  |                |                | 735,270           |
| Financing Costs            | 496,277          | 2,165               | 2,165            | 2,165            | 2,165            |                  |                |                | 504,937           |
| Miscellaneous              | 307,910          |                     |                  |                  |                  |                  |                |                | 307,910           |
| Dev Fee                    | 150,000          |                     |                  |                  |                  |                  |                |                | 562,500           |
| Reserves                   | 710,971          |                     |                  |                  |                  | 62,500           | 200,000        | 150,000        | 710,971           |
| <b>TOTAL DEV. COSTS</b>    | <b>3,132,928</b> | <b>2,692,207</b>    | <b>2,692,207</b> | <b>2,692,207</b> | <b>2,692,207</b> | <b>62,500</b>    | <b>200,000</b> | <b>150,000</b> | <b>14,314,257</b> |
| Repay GP Bridge Loan       |                  |                     |                  |                  |                  | 0                |                |                | 0                 |
| Repay Equity Bridge Loan   |                  |                     |                  |                  |                  | 2,165,830        |                |                | 2,165,830         |
| Other Syndication Costs    | 0                |                     |                  |                  |                  |                  |                |                | 0                 |
| SUBTOTAL OTHER ITEMS       | 0                | 0                   | 0                | 0                | 0                | 2,165,830        | 0              | 0              | 2,165,830         |
| <b>TOTAL USES OF FUNDS</b> | <b>3,132,928</b> | <b>2,692,207</b>    | <b>2,692,207</b> | <b>2,692,207</b> | <b>2,692,207</b> | <b>2,228,330</b> | <b>200,000</b> | <b>150,000</b> | <b>16,480,087</b> |
| Ending Cash                | 4,402,289        | 3,743,652           | 2,135,015        | 526,377          | 0                | 0                | 0              | 0              | 0                 |

**PROJECT FINANCING**

| Source   | Amount                       | Rate              | Term   | Lien | Annual D/S |          |           |         |
|----------|------------------------------|-------------------|--------|------|------------|----------|-----------|---------|
|          |                              |                   |        |      | Yr. 1-5    | Yr. 6-15 | Yr. 16-30 |         |
| Source 1 | MSHA Subsidy                 | 0                 | 0.00%  | 30   | First      | 0        | 0         | 0       |
| Source 2 | HUD 221(d)(4) Tranche A      | 4,521,457         | 4.70%  | 40   | First      | 250,940  | 250,940   | 250,940 |
| Source 3 | HUD 221(d)(4) Tranche B      | 1,509,000         | 4.70%  | 30   | First      | 93,915   | 93,915    | 93,915  |
| Source 4 | Other: Amortizing Mortgage   | 0                 | 0.00%  | 40   | Second     | 0        | 0         | 0       |
| Source 5 | Other: AHP Subsidy           | 500,000           | 0.00%  | 50   | Second     | 0        | 0         | 0       |
| Source 6 | Other: City FedHOME          | 500,000           | 0.00%  | 30   | Second     | 0        | 0         | 0       |
| Source 7 | Acquired Project Reserves    | 60,000            | 0.00%  | 0    | Unsecured  |          | Cash Flow |         |
| Source 8 | Net Syndication              | 7,223,800         | \$0.89 |      | Unsecured  |          | Cash Flow |         |
|          | Capitalization Gap (Surplus) | (0)               |        |      |            |          |           |         |
|          | <b>Total</b>                 | <b>14,314,257</b> |        |      |            |          |           |         |

**COLLATERAL COVERAGE**

|                                 | Total      | Per Unit |
|---------------------------------|------------|----------|
| Projected Mortgage              | 4,521,457  | 60,286   |
| Appraised Market Value          | 9,087,133  | 121,162  |
| Loan to Value Ratio             | 50%        |          |
| Market Rent Differential        | 424,164    | 471      |
| Supportable Mort.: Unrestricted | 12,164,067 | 162,188  |
| Subsidy per Unit                |            | 0        |
| Subsidy per Low Income Unit     |            | 0        |

| PROPOSED RENT SCHEDULE |           |         |                        |                   |            |             |                |            |
|------------------------|-----------|---------|------------------------|-------------------|------------|-------------|----------------|------------|
| Type                   | AMI       | # Units | Rents from Applicant   | Program Max Rents | Gross Rent | Market Rent | Utility Allow. | Total Rent |
| Efficiency             | 50% LIHTC | 9       |                        |                   | 718        | \$1,165     | 45             | 72,684     |
|                        | 50% AMI   | 0       |                        |                   | 718        | \$1,165     | 45             | 0          |
|                        | Market    | 6       |                        |                   | 1,165      | \$1,165     |                | 83,880     |
| 15                     |           |         |                        |                   |            |             |                | 0          |
| 1BR                    | 50% LIHTC | 13      |                        |                   | 770        | \$1,350     | 52             | 112,008    |
|                        | 50% AMI   | 1       |                        |                   | 770        | \$1,350     | 52             | 8,616      |
|                        | Market    | 24      |                        |                   | 1,350      | \$1,350     |                | 388,800    |
| 38                     |           |         |                        |                   |            |             |                | 0          |
| 2BR                    | 40% LIHTC | 5       |                        |                   | 738        | \$1,635     | 64             | 40,440     |
|                        | 50% LIHTC | 4       |                        |                   | 923        | \$1,635     | 64             | 41,232     |
|                        | Market    | 0       |                        |                   | 1,635      | \$1,635     |                | 0          |
| 9                      |           |         |                        |                   |            |             |                | 0          |
| 3BR                    | 40% LIHTC | 8       |                        |                   | 788        | \$2,080     | 78             | 68,160     |
|                        | 50% LIHTC | 5       |                        |                   | 973        | \$2,080     | 78             | 53,700     |
|                        | Market    | 0       |                        |                   | 2,080      | \$2,080     |                | 0          |
| 13                     |           |         |                        |                   |            |             |                | 0          |
| 4BR                    |           |         |                        |                   |            |             |                | 0          |
|                        |           |         |                        |                   |            |             |                | 0          |
|                        |           |         |                        |                   |            |             |                | 0          |
| 0                      |           |         |                        |                   |            |             |                | 0          |
| Other:                 |           |         |                        |                   |            |             |                | 0          |
| Subtotals              |           | 75      |                        |                   |            |             |                | 869,520    |
|                        |           |         | Vacancy Rate           |                   | 5%         |             |                | (43,476)   |
|                        |           |         | Other Income           |                   | TIF        | > 75%       |                | 111,086    |
|                        |           |         | Other Income           |                   | Laundry    |             |                | 8,250      |
|                        |           |         | Effective Gross Income |                   |            |             |                | 945,380    |

| AFFORDABLE MORTGAGE CALCULATION |       |  |           |
|---------------------------------|-------|--|-----------|
| Effective Gross Income          |       |  | 945,380   |
| Annual Operating Expense        |       |  | 551,702   |
| Stabilized NOI                  |       |  | 393,678   |
| DSC                             | 1.15  |  | 51,349    |
| \$ Avail for D/S                |       |  | 342,329   |
| Other DS                        | 10%   |  | 93,915    |
| Balance                         |       |  | 248,414   |
| Affordable Mortgage             | 4.70% |  | 4,475,932 |

| BREAKEVEN ANALYSIS: | RENT SENSITIVITY |  | OCCUPANCY           |         |
|---------------------|------------------|--|---------------------|---------|
|                     | Total            |  | Annual              |         |
| Operating Expense   | 551,702          |  | Gross Revenues      | 988,856 |
| Debt Service        | 344,855          |  |                     |         |
| Breakeven Rent      | 996              |  | Breakeven Occupancy | 91%     |

| OPERATING EXPENSES                  |                |                 |                  |
|-------------------------------------|----------------|-----------------|------------------|
| Expense                             | Annual         | Annual Per Unit | Monthly Per Unit |
| <b>Administrative Expenses:</b>     |                |                 |                  |
| Management Fees                     | 42,954         | 573             | 48               |
| Management Charges                  | 42,954         | 573             | 48               |
| Marketing Expenses                  | 150            | 2               | 0                |
| Legal Expenses                      | 1,000          | 13              | 1                |
| Auditing Expenses                   | 5,500          | 73              | 6                |
| Bad Debts                           | 0              | 0               | 0                |
| Other Administrative Expenses       | 0              | 0               | 0                |
| <b>Administrative Expenses</b>      | <b>92,559</b>  | <b>1,234</b>    | <b>103</b>       |
| <b>Operating Expenses:</b>          |                |                 |                  |
| Janitorial Payroll                  | 0              | 0               | 0                |
| Janitorial Supplies and Equipment   | 0              | 0               | 0                |
| Janitorial Contractual Services     | 0              | 0               | 0                |
| Fuel and Gas                        | 45,000         | 600             | 50               |
| Electricity                         | 27,000         | 360             | 30               |
| Water and Sewer                     | 31,875         | 425             | 35               |
| Garbage and Trash Removal           | 0              | 0               | 0                |
| Vehicle and Equipment Expenses      | 0              | 0               | 0                |
| Other Operating Expenses            | 0              | 0               | 0                |
| <b>Operating Expenses</b>           | <b>103,875</b> | <b>1,385</b>    | <b>115</b>       |
| <b>Maintenance Expenses:</b>        |                |                 |                  |
| Snow Removal                        | 5,000          | 67              | 6                |
| Grounds Tools and Supplies          | 5,000          | 67              | 6                |
| Grounds Contractual Services        | 10,000         | 133             | 11               |
| Miscellaneous Ground Maintenance    | 5,000          | 67              | 6                |
| Tenant Damage Charges - Grounds     | 0              | 0               | 0                |
| Building Maintenance Payroll        | 0              | 0               | 0                |
| Building Tools and Supplies         | 7,500          | 100             | 8                |
| Building Contractual Services       | 50,000         | 667             | 56               |
| Building Systems Maintenance        | 47,000         | 627             | 52               |
| Miscellaneous Building Maintenance  | 2,000          | 27              | 2                |
| Tenant Damage Charges - Building    | 0              | 0               | 0                |
| <b>Maintenance Expenses</b>         | <b>131,500</b> | <b>1,753</b>    | <b>146</b>       |
| <b>General Expenses:</b>            |                |                 |                  |
| Property Taxes                      | 147,981        | 1,973           | 164              |
| Property and Liability Insurance    | 26,250         | 350             | 29               |
| Tenant Computer Network Expense     | 0              | 0               | 0                |
| Tenant Service Expenses             | 15,787         | 210             | 18               |
| <b>General Expenses</b>             | <b>190,018</b> | <b>2,534</b>    | <b>211</b>       |
| Replacement Reserve Funding         | 33,750         | 450             | 38               |
| Commercial Expenses (if applicable) | 0              | 0               | 0                |
| <b>Total</b>                        | <b>551,702</b> | <b>7,356</b>    | <b>613</b>       |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT | 5 Months  |           |           |           |           |           |           |           |           |           |           |           |
|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|   | 7/30/20   | 12/31/20  | 12/31/21  | 12/31/22  | 12/31/23  | 12/31/24  | 12/31/25  | 12/31/26  | 12/31/27  | 12/31/28  | 12/31/29  | 12/31/30  |
| Effective Gross Income                          |           | 393,908   | 964,287   | 983,573   | 1,003,245 | 1,023,309 | 1,043,776 | 1,064,651 | 1,085,944 | 1,107,663 | 1,129,816 | 1,152,413 |
| Less Operating Expense                          |           | 229,876   | 568,253   | 585,300   | 602,859   | 620,945   | 639,574   | 658,761   | 678,524   | 698,879   | 719,846   | 741,441   |
| Net Operating Income                            |           | 164,032   | 396,035   | 398,273   | 400,385   | 402,364   | 404,202   | 405,890   | 407,421   | 408,784   | 409,971   | 410,972   |
| Less HUD Repay                                  |           | 104,558   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   |
| Less Other Repay                                |           | 39,131    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    |
| Cash Flow                                       |           | 20,343    | 51,179    | 53,417    | 55,530    | 57,509    | 59,347    | 61,035    | 62,565    | 63,928    | 65,115    | 66,116    |
| Cash Flow per Unit                              |           | 651       | 682       | 712       | 740       | 767       | 791       | 814       | 834       | 852       | 868       | 882       |
| Debt Coverage Ratio                             |           | 1.14      | 1.15      | 1.15      | 1.16      | 1.17      | 1.17      | 1.18      | 1.18      | 1.19      | 1.19      | 1.19      |
| Principal Balance                               | 4,521,457 | 4,505,318 | 4,465,272 | 4,423,303 | 4,379,318 | 4,333,221 | 4,284,910 | 4,234,279 | 4,181,217 | 4,125,606 | 4,067,324 | 4,006,243 |
| HUD 221(d)(4) Tranche B                         | 1,509,000 | 1,499,345 | 1,475,387 | 1,450,279 | 1,423,965 | 1,396,388 | 1,367,486 | 1,337,196 | 1,305,451 | 1,272,182 | 1,237,314 | 1,200,773 |
| Other: Amortizing Mortgage                      | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Other: AHP Subsidy                              | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   |
| Other: City FedHOME                             | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   |
| Principal Balance(Other)                        | 2,509,000 | 2,499,345 | 2,475,387 | 2,450,279 | 2,423,965 | 2,396,388 | 2,367,486 | 2,337,196 | 2,305,451 | 2,272,182 | 2,237,314 | 2,200,773 |
| Operating Reserve Balance                       | 301,523   | 316,599   | 332,429   | 349,050   | 366,503   | 384,828   | 404,069   | 424,273   | 445,487   | 467,761   | 491,149   | 515,706   |

|  |
|--|
| Total Cash Flow<br>Projected over 12 Years |
| 750,527                                    |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued | Yr 15     |           |           |           |           |           |           |           |           |           |           |           |
|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|  | 12/31/31  | 12/31/32  | 12/31/33  | 12/31/34  | 12/31/35  | 12/31/36  | 12/31/37  | 12/31/38  | 12/31/39  | 12/31/40  | 12/31/41  |           |
| Effective Gross Income                                     | 1,175,461 | 1,198,970 | 1,222,950 | 1,247,409 | 1,272,357 | 1,310,527 | 1,349,843 | 1,390,338 | 1,432,049 | 1,475,010 | 1,519,260 |           |
| Less Operating Expense                                     | 763,684   | 786,595   | 810,193   | 834,498   | 859,533   | 885,319   | 911,879   | 939,235   | 967,412   | 996,435   | 1,026,328 |           |
| Net Operating Income                                       | 411,777   | 412,375   | 412,757   | 412,910   | 412,823   | 425,208   | 437,964   | 451,103   | 464,636   | 478,575   | 492,933   |           |
| Less RLP Repay   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   | 250,940   |           |
| Less Other Repay   | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    | 93,915    |           |
| Cash Flow  | 66,921    | 67,520    | 67,902    | 68,055    | 67,968    | 80,353    | 93,109    | 106,248   | 119,781   | 133,720   | 148,077   |           |
| Cash Flow per Unit   | 892       | 900       | 905       | 907       | 906       | 1,071     | 1,241     | 1,417     | 1,597     | 1,783     | 1,974     |           |
| Debt Coverage Ratio(RLP)                                   | 1.19      | 1.20      | 1.20      | 1.20      | 1.20      | 1.23      | 1.27      | 1.31      | 1.35      | 1.39      | 1.43      |           |
| Principal Balance(RLP)                                     | 4,006,243 | 3,942,229 | 3,875,141 | 3,804,830 | 3,731,143 | 3,653,917 | 3,572,982 | 3,488,160 | 3,399,264 | 3,306,099 | 3,208,460 | 3,106,132 |
| HUD 221(d)(4) Tranche B                                    | 1,200,773 | 1,162,476 | 1,122,340 | 1,080,277 | 1,036,193 | 989,993   | 941,573   | 890,828   | 837,646   | 781,910   | 723,498   | 662,280   |
| Other: Amortizing Mortgage                                 | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Other: AHP Subsidy   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   |
| Other: City FedHOME  | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   | 500,000   |
| Principal Balance(Other)                                   | 2,200,773 | 2,162,476 | 2,122,340 | 2,080,277 | 2,036,193 | 1,989,993 | 1,941,573 | 1,890,828 | 1,837,646 | 1,781,910 | 1,723,498 | 1,662,280 |
| Operating Reserve Balance                                  | 515,706   | 541,492   | 568,566   | 596,995   | 626,844   | 658,187   | 691,096   | 725,651   | 761,933   | 800,030   | 840,031   | 882,033   |



**To:** Mary Davis, City of Portland  
**From:** Anne Boynton, Urban Ventures, Inc.  
**Re:** Avesta – Deering Place  
**Date:** 5/22/18

### Executive Summary

In the 2017 HOME funding round, the City of Portland made a \$300,000 commitment of HOME funds to Avesta for the Deering Place development, contingent upon receipt of additional sources including 9% LIHTCs. Avesta received the LIHTC award and has moved the project forward on many fronts, including historic and TIF approvals. However, there is a gap which must be filled in order to proceed. Avesta requests an additional \$200,000, for a total of \$500,000 in HOME funding.

The Deering Place development will completely reconfigure the four lots currently combined as the 61 Deering Street/510 Cumberland Avenue property:

- A new building will be built at 61 Deering Street;
- An addition will be constructed on 510 Cumberland Avenue, adding new apartment units and covered parking;
- The existing 510 Cumberland Avenue commercial space will be reconfigured into apartments and covered parking;
- The existing 13 apartment units at 510 Cumberland Avenue will be renovated;
- The historic structure at 73 Deering will be removed from the existing property description and use restrictions and sold;
- The existing playground will be removed.

In total, the new configuration will include 75 apartment units, ranging in size from efficiency to 3 bedrooms. It will include a community room, a telemedical room, laundry facilities in each building, and parking.

The project will serve a mixed income population, with 30 market rate units and 45 affordable units. Thirteen units will continue to serve households at 40% of AMI, per the existing affordability restriction with Maine Housing. The remaining 32 affordable units will serve households at 50% AMI.

Avesta acquired the 61 Deering Street/510 Cumberland Avenue property from Opportunity Alliance on October 25, 2016, along with a parking lot and a historic building located at 73 Deering Street, with a total of 16 residential apartments and underutilized commercial space. A Capital Needs Assessment concludes that the properties are in reasonable condition considering their age (built in 1900 and 1920) but that both buildings have major systems which are nearing the end of their useful lives, and there are deferred maintenance items which need immediate attention. The four lots *jointly* secure a \$1,550,000 mortgage held by Gorham Savings Bank. This is an interest only balloon loan, with a 2 year term and interest only payments at 3.5%. These properties also secure a \$500,000 short term note from the seller (Opportunity Alliance), for a total debt of \$2,050,000 on the properties.

In addition, there is a use agreement with Maine Housing also dated October 25, 2016, restricting the use of the residential units to affordable housing until at least 2038. Maine Housing has agreed to



transfer the existing affordability restriction on the 3 residential units at 73 Deering (the portion of the property slated for sale) to 3 newly constructed units. This will allow 73 Deering to be sold without affordability restrictions, substantially increasing its market value.

### Sources and Uses

| Sources:                  |                    | Uses:                   |                  |
|---------------------------|--------------------|-------------------------|------------------|
| HUD 221(d)(4)             | \$6,030,457        | Hard Construction Costs | \$10,760,169     |
| AHP Subsidy               | \$500,000          | Soft & Financing Costs  | \$ 1,398,118     |
| City of Portland HOME     | \$500,000          | Acquisition             | \$732,500        |
| Existing Project Reserves | \$60,000           | Relocation              | \$150,000        |
| Net Syndication Proceeds  | <u>\$7,223,800</u> | Reserves                | \$710,970        |
|                           |                    | Developer Fee           | <u>\$562,500</u> |
| Total Sources of Funds:   | \$14,314,257       | Total Uses of Funds     | \$14,314,257     |

Letters of commitment or intent are in place for each listed source, except the increase in HOME funding and the developer contribution of existing project reserves. Syndication proceeds are based on a \$.89 raise rate, which is typical in the current market.

For analysis of "Uses," see Development Budget.

### Development Budget

Since the October 2017 HOME approval, the sources and uses has changed significantly. In response to a gap of over \$1 million, Avesta has solved MOST of the gap by reducing their own return – lowering the property sales price by more than half, including existing project reserves as a source, and lowering developer fee by over \$1 million. Avesta is requesting an additional \$200,00 in HOME funds to fill in the final \$200,000 gap. This gap is caused by some upward pressure in a range of softs costs, including most notably a \$135,000 increase in relocation expense, described in more detail below.

#### Construction Costs:

Hard costs have not shifted significantly since the prior approval, though the cost per unit has risen as the total number of units has declined by 5 per historic and planning board approvals. Total hard cost per unit is now \$143,469, reflecting the blended cost of new construction and renovation. Due to the significant cuts to acquisition price and developer fee, construction costs now represent 75% of the total development cost, making this quite a lean deal.

#### Soft Costs:

Some soft costs increases have occurred since October 2017, with the most significant increase in relocation from \$15,000 to \$150,000. The earlier relocation budget was based on the model that the existing 13 residents would remain in their units during most of the construction period, relocating only briefly and within the property. The current budget relocates all residents for the duration of construction. This is a much more appropriate strategy. Trying to accomplish the already intricate mix of demolition, renovation and new construction in a tight urban setting with residents in place was a recipe for continuous conflict.

### *Contingency:*

Hard cost contingency has dropped slightly to 6.23%. This is low for this stage in budget estimating, based on 5% for new construction and somewhat higher for renovation. This concern is partially mitigated by the fact that much of the renovation budget is essentially new construction of residential units within an existing shell, which reduces the unknowns which can unexpectedly drive up renovation costs. Soft cost contingency is now a very thin 1.6%.

### *Acquisition:*

Acquisition price is one of the places the budget has been significantly cut. The limited partnership will acquire the properties from Avesta for an acquisition price of \$732,500, down from a proposed price of \$1,500,000 in October 2017. This price is for the 3 parcels which will be retained in the development, excluding the historic structure.

An appraisal as of August 30, 2016 supported an “as is, as restricted” valuation of \$2,080,000 of the existing FOUR parcels, including the historic structure. The appraisal considered only the income approach to valuation and did not break out the value of the separate parcels. This makes it difficult to evaluate the reasonableness of the proposed acquisition price. Though the drop in acquisition price makes it less likely to be problematic, it is still the case that a current appraisal for the parcels acquired, plus an “as built” valuation, should be required prior to closing to establish the limited partnership is not over paying for the 3 parcels retained as the project site.

## **Operating Budget & 20 Year Cashflow Projection**

### *Project Income:*

This mixed income project will serve households at range of incomes from 40% AMI to market rate. The very high demand for affordable units insures that the units affordable to households at 40% and 50% AMI will be rented – Avesta has a waiting list of over 100 households for the 13 existing 3 bedroom units.

The market rate units require some additional care because there is more market rate construction under way which may ultimately depress rents at the top of market range. In addition, market rate units in affordable project sometimes require a discount to market rate due to potential negative perception among market rate renters about living in a complex which is majority affordable units. This does not seem to be the case for Avesta’s Portland portfolio. Avesta’s Portland portfolio is operating with a 1.4% vacancy rate overall, and no noticeable difference in vacancy rate or marketing times for their market rate units according to their property management staff. The current operating budget uses the market rents concluded by their market study without a discount for efficiency and 1 bedroom units, and discounts the 2 bedroom units by \$20 from \$1,635 to \$1,615.

The market study dated January 31, 2018, though documenting the capture rate for the affordable units (1.33% in 2019) does not address capture rate for market units. If another update to the market study is commissioned, it should include the capture rate for the market rate units and an estimated lease up schedule for the market units. However, given the very tight market for housing in central Portland at all income levels and the limited number of units under construction or proposed, I do not believe this oversight is a material concern.



Other budgeted income is \$8,250/year laundry income and a 75%, 30 year TIF with an estimated year 1 value of \$111,086.

### *Operating Expense*

Operating expenses per unit per year appear to be at the moderately high end of industry standard at \$7,356, in large part because this includes the full property tax liability as an expense. A property with a PILOT which provided the comparable level of property tax relief to the TIF would show operating expenses of \$5,875, which is in the low range for affordable housing nationally. In addition, supportive services are included at \$15,787, which is \$210/unit/year. Once the TIF and supportive service funding are factored out, the operating costs are definitely in the low range for industry standard. Maintenance expense (\$1,753/unit) and replacement reserves (\$450/unit) have been trimmed from the high end of normal to more typical values, and should be adequate for a project which is primarily new construction. This operating budget is no longer fat, but should be adequate for a new property with an experienced property management team.

### *20 Year Cashflow & Debt Service Coverage Ratio (DSCR)*

Avesta's pro forma reflects a year 1 debt service coverage at 1.15 with a 5% vacancy, just meeting the requirement of the first mortgage lender, while the cashflow attached shows a 1.14 year 1 debt service coverage ratio. This difference is because Avesta is projecting increase in rents between now and the first full year of operations – not an unreasonable strategy, but a sign of thin margin. With industry standard inflators of 2% for income and 3% for expense, the DSCR increases to 1.20 in year 13 before dipping slightly to 1.19 in years 18- 20. Given the nature of the Portland housing market, with very limited supply of affordable units relative to demand, a 5% vacancy is reasonable, perhaps even a bit conservative. A more likely scenario is the market units operating at a 5% vacancy and the affordable units operating at 3% (or lower) vacancy. Running an average of 4% vacancy results in a dscr of 1.17 in year 1, then gradually increasing to 1.23 in 13 and holding steady at 1.23 through year 20. In either scenario, there is sufficient margin to address unforeseen circumstances.

With a 5% average vacancy, the 20 year cashflow projection estimates the HOME loan could be fully repaid to City of Portland from 50% of cashflow in year 15. (In the October 2017 financing plan, there was a \$1 million developer fee loan which also had to be retired out of cashflow. A lower percentage of cashflow had to be allocated to the HOME repayment in order to fully repay the developer loan, per syndicator requirements. However, in the current financing plan, there is no developer fee loan, so a larger share of cashflow is both feasible and appropriate, considering the increased size of the loan request.)

### *Developer Financials*

Avesta is in good, and improving, financial condition. Avesta has provided audits for 2014, 2015, 2016, and internal financial statements for 2017. Prior year audits have been received by Avesta in late May or early June, so while not ideal to review unaudited financials for 2017, it is not out of line with the timing of audit finalization in prior years.



Current assets in 2016 of \$9.6 million (audited) rise to \$11.8 million in 2017 (unaudited), while current liabilities in 2016 of \$4.9 million (audited) rise to \$6.1 million 2017 (unaudited). The resulting Current Ratios (current assets divided by current liabilities) are healthy for their scale of operations -- 1.97 (2016 audited) and 1.93 (2017 unaudited). Net assets were \$123 million in 2016 (audited) and \$132 million in 2017 (unaudited). There has been significant sustained growth in net assets – which have more than doubled in the 5 years since 2012, when net assets were \$66 million. In 2017, revenue continued to grow and exceed budget while operating expenses were held under budget. Depreciation resulted in a paper loss of \$2,973,841, which is typical for a company with this financial structure, but this paper loss was more than outweighed by the growth in real estate equity.

This developer has the financial capacity to intervene in a development facing unexpected set backs and or cost over-runs to keep the development process moving forward. Their financial strength as an organization mitigates the risk of the thin soft cost contingency and the possibility of leaner than projected operating surpluses.

### Recommendations

I recommend a loan in the amount of \$500,000, zero percent interest, with annual payment of 50% of cashflow, with any remaining balance due in 30 years, with the following conditions prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14.5% of net construction costs.
2. Satisfactory review of a final development budget and operating pro forma which is consistent with the commitments of all source, including a cashflow waterfall acceptable to the City;
3. Any net proceeds of the sale of 73 Deering Place (after debt is retired, payment of settlement expenses, adjustment for any operating losses during the pre-development holding period, and any legal expense related to separation of the parcels) to be used to reduce the HOME loan amount.
4. Satisfactory review of a current appraisal (“current” as of date of loan closing) which breaks out the “as is” and “as built” values for each of the four existing parcels, to insure the limited partnership is not overpaying for the site.
5. Final rent schedules to be compared to maximum allowable rents and applicable utility allowance charts to determine final maximum rent rates.

# Development Permanent

Date October 20, 2017 vs. May 16, 2018  
 Project Name Deering Place  
 Project Address 510 Cumberland & 61 Deering Place  
 Developer/Sponsor Avesta

2017 2018  
 Total Units 80 75 Units

May 2018

|                               | <u>Total</u>        | <u>Change</u>        | <u>Per Unit</u>  |
|-------------------------------|---------------------|----------------------|------------------|
| <b>Sources of Funds</b>       |                     |                      |                  |
| HUD 221(d)(4) - 1st Lien      | \$ 6,030,457        | \$310,517            | \$80,406         |
| City of Portland HOME         | \$ 500,000          | \$200,000            | \$6,667          |
| MSHA Subsidy                  | \$ -                | (\$1,000,000)        | \$0              |
| AHP Subsidy + TD Grant        | \$ 500,000          | (\$325,000)          | \$6,667          |
| Deferred development fee      | \$ -                | (\$1,039,123)        | \$0              |
| Existing Project Reserves     | \$ 60,000           | \$60,000             | \$800            |
| Net Syndication Proceeds      | \$ 7,223,800        | \$47,018             | \$96,317         |
| <b>Total Sources of Funds</b> | <b>\$14,314,257</b> | <b>(\$1,746,588)</b> | <b>\$190,857</b> |
| Surplus/(GAP)                 |                     | (\$1) Surplus/(GAP)  |                  |

## Uses of Funds

|  |                     |                |                  |
|--|---------------------|----------------|------------------|
| <b>Hard Costs</b>                          |                     |                |                  |
| Site Improvements                          | \$562,500           | \$0            | \$7,500          |
| Rehabilitation                             | \$ -                |                | \$0              |
| New Construction                           | \$ 8,240,955        | \$61,636       | \$109,879        |
| Contractor's Profit, C                     | 14.5% \$ 1,269,811  | \$5,768        | \$16,931         |
| Hazardous Materials abatement              | \$ -                |                | \$0              |
| Demolition Cost (if contracted separately) | \$ -                |                | \$0              |
| Bond Premium                               | \$ 93,964           | \$1,106        | \$1,253          |
| Other                                      | \$ -                |                | \$0              |
| Hard Cost Continger                        | 6.5% \$ 592,939     | (\$67,481)     | 6.23%            |
| <b>Total Hard Costs</b>                    | <b>\$10,760,169</b> | <b>\$1,029</b> | <b>\$143,469</b> |

|  |                  |                 |                |
|--|------------------|-----------------|----------------|
| <b>Soft Costs</b>                        |                  |                 |                |
| Building Permit & Fees                   | \$ 128,570       | \$18,527        | \$1,714        |
| Survey & Engineering                     | \$ 51,000        | \$0             | \$680          |
| Design & Permitting                      | 3.9% \$ 404,876  | \$61,976        | \$5,398        |
| Borrower Legal (all closings, excluding) | \$ 48,000        | \$0             | \$640          |
| Title & Recording                        | \$ 13,312        | (\$1,688)       | \$177          |
| Accounting                               | \$ 10,000        | \$0             | \$133          |
| Construction Period Taxes                | \$ 12,513        | (\$487)         | \$167          |
| Construction Period Insurance            | \$ 30,000        | \$0             | \$400          |
| Other: FF&E, Security                    | \$ 37,000        | \$4,000         | \$493          |
| Other                                    | \$ -             |                 | \$0            |
| <b>Total Soft Costs</b>                  | <b>\$735,271</b> | <b>\$82,328</b> | <b>\$9,804</b> |

| <b>Financing Costs</b>             |                  |           |              |
|------------------------------------|------------------|-----------|--------------|
| Construction Loan Origination Fees | \$ 8,660         | \$808     | \$115        |
| Construction Period Interest       | \$ 258,057       | \$33,568  | \$3,441      |
| Lender Inspection Fees             | \$ -             |           | \$0          |
| Letter of Credit Fee               | \$ -             |           | \$0          |
| Permanent Loan Fees & FHA fees     | \$ 202,020       | \$17,342  | \$2,694      |
| Construction Lender Legal          | \$ -             |           | \$0          |
| Other                              | \$ 36,200        | (\$4,950) | \$483        |
| <b>Total Financing Costs</b>       | <b>\$504,937</b> | \$46,768  | <b>15.4%</b> |

| <b>Miscellaneous</b>             |                  |            |         |
|----------------------------------|------------------|------------|---------|
| Market Survey                    | \$ 8,000         | \$2,500    | \$107   |
| Appraisal                        | \$ 7,500         | \$1,500    | \$100   |
| Environmental Study              | \$ 5,000         | \$1,500    | \$67    |
| LIHTC Fees -- prepaid monitoring | \$ 100,410       | \$10,535   | \$1,339 |
| Other: Commissioning             | \$ 12,000        | (\$50,000) | \$160   |
| Relocation Costs                 | \$ 150,000       | \$135,000  | \$2,000 |
| Other                            | \$ -             | \$0        | \$0     |
| Soft Cost Contingent             | \$ 25,000        | (\$23,989) | \$333   |
| <b>Total Miscellaneous:</b>      | <b>\$307,910</b> | \$77,046   | \$4,105 |

| <b>Acquisition</b>       |                  |             |         |
|--------------------------|------------------|-------------|---------|
| Acquisition: Buildings   | \$ 382,500       | (\$217,500) | \$5,100 |
| Acquisition: Land        | \$ 350,000       | (\$550,000) | \$4,667 |
| Acquisition: Legal       | \$ -             | \$0         | \$0     |
| Other                    | \$ -             | \$0         | \$0     |
| <b>Total Acquisition</b> | <b>\$732,500</b> | (\$767,500) | \$9,767 |

| <b>Reserves and Developer Fee</b>       |                    |               |          |
|---|--------------------|---------------|----------|
| Operating Deficit Escrow                | \$ 301,523         | (\$175,721)   | \$4,020  |
| Prefunded Replacement Reserve           | \$ 93,872          | (\$1,490)     | \$1,252  |
| Taxes & Insurance Escrow                | \$ 100,241         | (\$5,759)     | \$1,337  |
| Developer Overhead                      | \$ 562,500         | (\$187,500)   | \$7,500  |
| Developer Profit                        | \$ -               | (\$964,123)   | \$0      |
| Rent Up Reserve & Marketing             | \$ 50,000          | (\$17,000)    | \$667    |
| Other: Const Interest Reserve           | \$ 165,335         | \$165,335     | \$2,204  |
| <b>Total Reserves and Developer Fee</b> | <b>\$1,273,471</b> | (\$1,186,258) | \$16,980 |

|                            |                     |               |           |
|----------------------------|---------------------|---------------|-----------|
| <b>Total Uses of Funds</b> | <b>\$14,314,258</b> | (\$1,746,587) | \$190,857 |
|----------------------------|---------------------|---------------|-----------|

Developer Fee Analysis:

4.31% (excluding reserves & developer fee)

## Project Operating Pro Forma

|                   |                                   |
|-------------------|-----------------------------------|
| Date              | May 22, 2018                      |
| Project Name      | Deering Place                     |
| Project Address   | 510 Cumberland & 61 Deering Place |
| Developer/Sponsor | Avesta                            |

### Rental Income

| Unit Type     | Number of Units | Per Unit Sq Ft | Total Sq Ft | Restriction on % Median Inc. | Per Unit Monthly Gross Rent | Utility Deductions | Rent Subsidy | Per Unit Monthly Net Rent | Per Unit Net Rent Per Sq Ft | Total Monthly Net Income | Total Annual Net Rent |
|---------------|-----------------|----------------|-------------|------------------------------|-----------------------------|--------------------|--------------|---------------------------|-----------------------------|--------------------------|-----------------------|
| 0 BR          | 9               |                | 0           | 50%                          | \$718                       | \$45               |              | \$673                     |                             | \$6,057                  | \$72,684              |
| 0 BR          | 6               |                | 0           | market                       | \$1,165                     | \$0                |              | \$1,165                   |                             | \$6,990                  | \$83,880              |
| 1 BR          | 14              |                | 0           | 50%                          | \$770                       | \$52               |              | \$718                     |                             | \$10,052                 | \$120,624             |
| 1 BR          | 24              |                | 0           | market                       | \$1,350                     | \$0                |              | \$1,350                   |                             | \$32,400                 | \$388,800             |
| 2 BR          | 4               |                | 0           | 50%                          | \$923                       | \$64               |              | \$859                     |                             | \$3,436                  | \$41,232              |
| 2 BR          | 5               |                | 0           | 40%                          | \$738                       | \$64               |              | \$674                     |                             | \$3,370                  | \$40,440              |
| 2 BR          | 0               |                | 0           | market                       | \$1,615                     | \$0                |              | \$1,615                   |                             | \$0                      | \$0                   |
| 3 BR          | 8               |                | 0           | 40%                          | \$788                       | \$78               |              | \$710                     |                             | \$5,680                  | \$68,160              |
| 3 BR          | 5               |                | 0           | 50%                          | \$973                       | \$78               |              | \$895                     |                             | \$4,475                  | \$53,700              |
| 4 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       |                             | \$0                      | \$0                   |
| 4 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       |                             | \$0                      | \$0                   |
| Other         |                 |                | 0           | 50%                          |                             |                    |              | \$0                       |                             | \$0                      | \$0                   |
| Other         |                 |                | 0           | 60%                          |                             |                    |              | \$0                       |                             | \$0                      | \$0                   |
| <b>Total:</b> | <b>75</b>       |                | <b>0</b>    |                              |                             |                    |              |                           |                             | <b>\$72,460</b>          | <b>\$869,520</b>      |

- \$87,000 change from 10/17

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

Note: Year 1 is the first full year of stabilized operations

|                                 | Change from '17   | Year 1           | Year 1/Unit     | Year 2           | Year 3           | Year 4       | Year 5             | Year 6             | Year 7             | Year 8             | Year 9             | Year 10            |
|---------------------------------|-------------------|------------------|-----------------|------------------|------------------|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Income</b>                   |                   |                  |                 |                  |                  |              |                    |                    |                    |                    |                    |                    |
| Sch. Gross Income - Residential |                   | \$869,520        | \$11,594        | \$886,910        | \$904,649        | \$922,742    | \$941,196          | \$960,020          | \$979,221          | \$998,805          | \$1,018,781        | \$1,039,157        |
| Vacancy Loss                    | 5.0%              | (\$43,476)       | (\$580)         | (\$44,346)       | (\$45,232)       | (\$46,137)   | (\$47,060)         | (\$48,001)         | (\$48,961)         | (\$49,940)         | (\$50,939)         | (\$51,958)         |
| Other income (laundry)          |                   | \$8,250          | \$110           | \$8,415          | \$8,583          | \$8,755      | \$8,930            | \$9,109            | \$9,291            | \$9,477            | \$9,666            | \$9,860            |
| TIF                             |                   | \$111,086        | \$1,481         | \$113,308        | \$115,574        | \$117,885    | \$120,243          | \$122,648          | \$125,101          | \$127,603          | \$130,155          | \$132,758          |
| <b>Effective Gross Income</b>   | <b>(\$92,542)</b> | <b>\$945,380</b> | <b>\$12,605</b> | <b>\$964,288</b> | <b>\$983,573</b> | <b>#####</b> | <b>\$1,023,310</b> | <b>\$1,043,776</b> | <b>\$1,064,651</b> | <b>\$1,085,944</b> | <b>\$1,107,663</b> | <b>\$1,129,817</b> |

| <b>Administrative</b>       |                   |                 |                |                 |                 |                  |                  |                  |                  |                  |                  |                  |
|-----------------------------|-------------------|-----------------|----------------|-----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Management Fee              |                   | \$42,954        | \$573          | \$44,243        | \$45,570        | \$46,937         | \$48,345         | \$49,795         | \$51,289         | \$52,828         | \$54,413         | \$56,045         |
| Management Charges          |                   | \$42,954        | \$573          | \$44,243        | \$45,570        | \$46,937         | \$48,345         | \$49,795         | \$51,289         | \$52,828         | \$54,413         | \$56,045         |
| Marketing Expense           |                   | \$150           | \$2            | \$155           | \$159           | \$164            | \$169            | \$174            | \$179            | \$184            | \$190            | \$196            |
| Legal                       |                   | \$1,000         | \$13           | \$1,030         | \$1,061         | \$1,093          | \$1,126          | \$1,159          | \$1,194          | \$1,230          | \$1,267          | \$1,305          |
| Audit & Accounting          |                   | \$5,500         | \$73           | \$5,665         | \$5,835         | \$6,010          | \$6,190          | \$6,376          | \$6,567          | \$6,764          | \$6,967          | \$7,176          |
| Admin Other                 |                   | \$0             | \$0            | \$0             | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Administrative</b> | <b>(\$35,840)</b> | <b>\$92,558</b> | <b>\$1,234</b> | <b>\$95,335</b> | <b>\$98,195</b> | <b>\$101,141</b> | <b>\$104,175</b> | <b>\$107,300</b> | <b>\$110,519</b> | <b>\$113,835</b> | <b>\$117,250</b> | <b>\$120,767</b> |

| <b>Supportive Services</b> |   |          |       |          |          |          |          |          |          |          |          |          |
|----------------------------|---|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
|                            | 0 | \$15,787 | \$210 | \$16,261 | \$16,748 | \$17,251 | \$17,768 | \$18,301 | \$18,851 | \$19,416 | \$19,998 | \$20,598 |

| <b>Utilities</b>       |                  |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|------------------------|------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Fuel Oil               |                  |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Natural Gas            |                  | \$45,000         | \$600          | \$46,350         | \$47,741         | \$49,173         | \$50,648         | \$52,167         | \$53,732         | \$55,344         | \$57,005         | \$58,715         |
| Electric               |                  | \$27,000         | \$360          | \$27,810         | \$28,644         | \$29,504         | \$30,389         | \$31,300         | \$32,239         | \$33,207         | \$34,203         | \$35,229         |
| Water / Sewer          |                  | \$31,875         | \$425          | \$32,831         | \$33,816         | \$34,831         | \$35,876         | \$36,952         | \$38,060         | \$39,202         | \$40,378         | \$41,590         |
| Other                  |                  |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Utilities</b> | <b>(\$6,925)</b> | <b>\$103,875</b> | <b>\$1,385</b> | <b>\$106,991</b> | <b>\$110,201</b> | <b>\$113,507</b> | <b>\$116,912</b> | <b>\$120,420</b> | <b>\$124,032</b> | <b>\$127,753</b> | <b>\$131,586</b> | <b>\$135,533</b> |

| <b>Maintenance</b>            |                   |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-------------------------------|-------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Grounds                       |                   | \$25,000         | \$333          | \$25,750         | \$26,523         | \$27,318         | \$28,138         | \$28,982         | \$29,851         | \$30,747         | \$31,669         | \$32,619         |
| Maintenance                   |                   |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Trash Removal                 |                   |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Security                      |                   |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Trash Removal                 |                   |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Building Systems Maintenance  |                   | \$56,500         | \$753          | \$58,195         | \$59,941         | \$61,739         | \$63,591         | \$65,499         | \$67,464         | \$69,488         | \$71,573         | \$73,720         |
| Building Maintenance Contract |                   | \$50,000         | \$667          | \$51,500         | \$53,045         | \$54,636         | \$56,275         | \$57,964         | \$59,703         | \$61,494         | \$63,339         | \$65,239         |
| Other                         |                   |                  | \$0            | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Maintenance</b>      | <b>(\$31,000)</b> | <b>\$131,500</b> | <b>\$1,753</b> | <b>\$135,445</b> | <b>\$139,508</b> | <b>\$143,694</b> | <b>\$148,004</b> | <b>\$152,445</b> | <b>\$157,018</b> | <b>\$161,728</b> | <b>\$166,580</b> | <b>\$171,578</b> |



Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

|                                 | Year 11            | Year 12            | Year 13            | Year 14            | Year 15            | Year 16            | Year 17            | Year 18            | Year 19            | Year 20            |
|---------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Income</b>                   |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |
| Sch. Gross Income - Residential | \$1,059,940        | \$1,081,139        | \$1,102,762        | \$1,124,817        | \$1,147,313        | \$1,170,259        | \$1,193,665        | \$1,217,538        | \$1,241,889        | \$1,266,726        |
| Vacancy Loss                    | 5.0%               | (\$52,997)         | (\$54,057)         | (\$55,138)         | (\$56,241)         | (\$57,366)         | (\$58,513)         | (\$59,683)         | (\$60,877)         | (\$63,336)         |
| Other income (laundry)          | \$10,057           | \$10,258           | \$10,463           | \$10,672           | \$10,886           | \$11,103           | \$11,325           | \$11,552           | \$11,783           | \$12,019           |
| Supportive Services Funding     | \$135,413          | \$138,121          | \$140,884          | \$143,702          | \$146,576          | \$149,507          | \$152,497          | \$155,547          | \$158,658          | \$161,831          |
| <b>Effective Gross Income</b>   | <b>\$1,152,413</b> | <b>\$1,175,461</b> | <b>\$1,198,970</b> | <b>\$1,222,950</b> | <b>\$1,247,409</b> | <b>\$1,272,357</b> | <b>\$1,297,804</b> | <b>\$1,323,760</b> | <b>\$1,350,235</b> | <b>\$1,377,240</b> |

| <b>Administrative</b>         |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Advertising                   | \$57,727         | \$59,458         | \$61,242         | \$63,079         | \$64,972         | \$66,921         | \$68,929         | \$70,996         | \$73,126         | \$75,320         |
| Office Payroll & Benefits     | \$57,727         | \$59,458         | \$61,242         | \$63,079         | \$64,972         | \$66,921         | \$68,929         | \$70,996         | \$73,126         | \$75,320         |
| Office Supplies, Phone, Misc. | \$202            | \$208            | \$214            | \$220            | \$227            | \$234            | \$241            | \$248            | \$255            | \$263            |
| Mngr or Super Rent Free Unit  | \$1,344          | \$1,384          | \$1,426          | \$1,469          | \$1,513          | \$1,558          | \$1,605          | \$1,653          | \$1,702          | \$1,754          |
| Audit & Accounting            | \$7,392          | \$7,613          | \$7,842          | \$8,077          | \$8,319          | \$8,569          | \$8,826          | \$9,091          | \$9,363          | \$9,644          |
| Admin Other                   | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Administrative</b>   | <b>\$124,390</b> | <b>\$128,122</b> | <b>\$131,966</b> | <b>\$135,925</b> | <b>\$140,002</b> | <b>\$144,202</b> | <b>\$148,528</b> | <b>\$152,984</b> | <b>\$157,574</b> | <b>\$162,301</b> |

| <b>Supportive Services</b> | Year 11  | Year 12  | Year 13  | Year 14  | Year 15  | Year 16  | Year 17  | Year 18  | Year 19  | Year 20  |
|----------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
|                            | \$21,216 | \$21,853 | \$22,508 | \$23,184 | \$23,879 | \$24,596 | \$25,334 | \$26,094 | \$26,876 | \$27,683 |

| <b>Utilities</b>       |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Fuel Oil               | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Electric               | \$60,476         | \$62,291         | \$64,159         | \$66,084         | \$68,067         | \$70,109         | \$72,212         | \$74,378         | \$76,609         | \$78,908         |
| Gas                    | \$36,286         | \$37,374         | \$38,496         | \$39,650         | \$40,840         | \$42,065         | \$43,327         | \$44,627         | \$45,966         | \$47,345         |
| Water / Sewer          | \$42,837         | \$44,122         | \$45,446         | \$46,810         | \$48,214         | \$49,660         | \$51,150         | \$52,685         | \$54,265         | \$55,893         |
| Other                  | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Utilities</b> | <b>\$139,599</b> | <b>\$143,787</b> | <b>\$148,101</b> | <b>\$152,544</b> | <b>\$157,120</b> | <b>\$161,834</b> | <b>\$166,689</b> | <b>\$171,690</b> | <b>\$176,840</b> | <b>\$182,145</b> |

| <b>Maintenance</b>             | Year 11          | Year 12          | Year 13          | Year 14          | Year 15          | Year 16          | Year 17          | Year 18          | Year 19          | Year 20          |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Janitorial                     | \$33,598         | \$34,606         | \$35,644         | \$36,713         | \$37,815         | \$38,949         | \$40,118         | \$41,321         | \$42,561         | \$43,838         |
| Exterminating                  | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Trash Removal                  | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Security                       | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Grounds                        | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Maintenance                    | \$75,931         | \$78,209         | \$80,555         | \$82,972         | \$85,461         | \$88,025         | \$90,666         | \$93,386         | \$96,187         | \$99,073         |
| Elevator, HVAC, pool contracts | \$67,196         | \$69,212         | \$71,288         | \$73,427         | \$75,629         | \$77,898         | \$80,235         | \$82,642         | \$85,122         | \$87,675         |
| Other                          | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Maintenance</b>       | <b>\$176,725</b> | <b>\$182,027</b> | <b>\$187,488</b> | <b>\$193,112</b> | <b>\$198,906</b> | <b>\$204,873</b> | <b>\$211,019</b> | <b>\$217,349</b> | <b>\$223,870</b> | <b>\$230,586</b> |



*Order 26-18/19  
Tab 38 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROPRIATING  
HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS  
IN THE AMOUNT OF \$300,000 TO THE  
AVESTA HOUSING DEVELOPMENT CORPORATION  
RE: 977 BRIGHTON AVENUE APARTMENTS**

**ORDERED**, that the amount of \$300,000 in Home Investment Partnerships (HOME) Program funds is hereby appropriated to the Avesta Housing Development Corporation for development costs for 977 Brighton Avenue Apartments ; and

**BE IT FURTHER ORDERED**, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the grant, and otherwise carry out the intent of this order.

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

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

**FROM:** Planning and Urban Development Department  
Housing and Community Development Division

**DATE:** July 5, 2018

**SUBJECT:** Order Authorizing Financial Assistance in the amount of \$300,000 in HOME Program Funds to the Avesta Housing Development Corporation Project entitled 977 Brighton Avenue Apartments

**SPONSOR:** Jill Duson, Chair, Housing Committee  
(June 27, 2018; voted 3-0 in favor)

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading July 16, 2018 Final Action August 13, 2018

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

**PRESENTATION: (List the presenter(s), type and length of presentation)**  
Mary Davis, HCD Division Director will be available to answer any questions

**I. ONE SENTENCE SUMMARY**

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+). The development will include 6 units at market rate, 24 units affordable to households at or below 50% of the area median income and 10 units affordable to households at or below 60% of the area median income. AHDC is requesting financial assistance from the City in the form of (1) a HOME Loan in the amount of \$300,000 and (2) Affordable Housing TIF (AHTIF) to assist with the project.

The HOME loan request is detailed in this memo. The AHTIF request is discussed in a separate memo.

**II. AGENDA DESCRIPTION**

Avesta Housing Development Corporation (AHDC) is proposing to construct 40 1-bedroom units for seniors (55+) on a site they own located at 977 Brighton Avenue. The development will include:

| 977 Brighton Avenue  |                                    |    |
|----------------------|------------------------------------|----|
| 1-Bedroom Units (40) | at or below 50% area median income | 24 |
|                      | at or below 60% area median income | 10 |
|                      | Market Rate                        | 6  |
| Total Units          |                                    | 40 |

Eight (8) units will have project based rental assistance. As stated in the developer's application:

*"The 0.73-acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project consists of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot of 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents."*

AHDC has requested two forms of financial assistance.

- (1) HOME funds request: \$300,000, 0% interest rate loan, deferred for 30 years.

Total City HOME Investment of \$300,000/unit - \$7,500.

Total City HOME Investment of \$300,000/affordable unit = \$8,824.

- (2) Affordable Housing Tax Increment Financing (AHTIF). The AHTIF request was presented as first read on the June 18 council agenda and as a second read with council action on the July 16 council agenda. If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280. The remaining increased taxable value will be general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below.

The third party underwriting report makes the following recommendations:

Subject to availability of funding, a HOME loan in the amount of no more than \$300,000, at zero percent interest, deferred for 30 years.

The HOME Affordable Housing Development Application made funding available in the amount of \$1,080,174. The City received four applications requesting \$1,741,540 in funding.

The staff recommendation to the Housing Committee did not include HOME funding for the project at 977 Brighton Avenue. The staff recommendation to the Housing Committee included funding for Deering Place at an additional \$200,000, Front Street at \$510,174 and 178 Kennebec Street at \$370,000.

The Housing Committee voted to recommend HOME funding for Deering Place at an additional \$200,000, Front Street at \$580,174, 178 Kennebec Street at \$0 and 977 Brighton Avenue at \$300,000.

### **III. BACKGROUND**

Avesta purchased the site in 2015. The development site contains eight contiguous lots in the Nasons Corner neighborhood and currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction.

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

Increase access to rental and ownership housing that is safe and affordable for working and low-income families.

### **V. FINANCIAL IMPACT**

The property is currently assessed at \$291,100. When completed the project's estimated tax assessed value is \$3.2 million. HOME funds: \$300,000, at zero percent interest, deferred for 30 years.

Total City HOME Investment of \$300,000/unit - \$7,500.

Total City HOME Investment of \$300,000/affordable unit = \$8,824.

Tax Increment Financing request: If approved, the Affordable Housing TIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$65,150, with an estimated total of \$1,954,486 in captured revenue returned to the developer to off-set project operating costs. The proposed project will be taxable with an estimated annual assessment of \$3,200,000 and estimated annual taxes of \$69,280. The remaining increased taxable value will be general fund revenue.

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

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party

analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below. With that being said, the third party report makes the following recommendations:

Subject to the availability of funding, a HOME loan in the amount of no more than \$300,000, at zero percent interest, deferred for 30 years, with the following conditions prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.
2. Satisfactory review of relocation budget.
3. Satisfactory appraisal

As part of the Maine State Housing Authority's (MSHA) Qualified Allocation Plan (QAP) application due in February, the developers will need letters of commitment of support for their projects prior to the QAP submission deadline. If the Council agrees with the Housing Committee's recommendation, this letter would include the recommendations of the third party underwriter and be conditioned on the completion of the following additional requirements:

1. The commitment will be subject to compliance with all HOME Program regulations including, but not limited to, satisfactory underwriting analysis, cost allocation, designation of HOME units and compliance with the new HOME Final Rule (effective August 23, 2013) and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013.
2. The commitment will include the requirement that the environmental review process be satisfactorily completed. The City's agreement to provide funds will be conditioned on the determination to proceed with, modify or cancel the project based on the results of the environmental review.
3. Commitment of funds to be stated as "an amount up to the funding request based on maximization of LIHTC equity raise", to ensure that the City's contribution is leveraged to the maximum extent possible.
4. If applicable, documentation acceptable to the City that the acquisition cost is reasonably related to market value. This is a HOME Program requirement.
5. Commitment should be subject to the projections and assumptions noted in the project budgets and pro-forma submitted, for both HOME and TIF funding, and the City reserves the

right to reconsider and adjust their commitment if any significant alterations occur in the budget. A final commitment will be subject to a final budget.

6. Any substantial changes to the composition of the project, or the financial investment required, will be brought back to the Housing Committee and the City Council for review and approval.

A recommendation for City HOME funding by the City Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Any funding awarded will be contingent on the project's final approval by the Planning Board.

## **VII. RECOMMENDATION**

Approval by the City Council of the Housing Committee's recommendation of HOME funding in the amount of \$300,000 at zero percent interest, with repayment deferred for 30 years.

## **VIII. LIST ATTACHMENTS**

Excerpt HOME Application Information for 977 Brighton Avenue  
Third Party Underwriting Analysis

Prepared by: Mary P. Davis, HCD Division Director  
Date: July 5, 2018



## City of Portland HOME Funds Application

### Project: 977 Brighton Avenue Apartments

Avesta Housing is requesting \$300,000 of HOME funds from the City of Portland for our 977 Brighton Avenue Apartments project ("977 Brighton") at 977 Brighton Avenue in Portland, Maine.

The development involves the new construction of 40 1-bedroom rental apartments for seniors (55+ years of age), in one 4-story building. 34 of the apartments will be affordable and 6 will be market rate. 24 units will be affordable to households at or below 50% of area median income and 10 will be affordable to households at or below 60% of area median income. Portland Housing Authority has awarded project-based rental assistance to eight of the units at the project. All units with affordability restrictions will have a utility allowance factored into the tenant rent payment.

977 Brighton represents an opportunity to create much-needed affordable senior housing in an accessible location within Portland. The development site contains eight contiguous lots located in a highly walkable area in the Nasons Corner section of Portland. The project is located near many amenities and services, making it a prime location for housing; retail stores, a pharmacy, trails and restaurants are all located within a half mile. The site is also located within a tenth of a mile to a bus stop on the extensive Portland public transportation bus system, connecting residents with Portland's downtown as well as adjoining communities.

See the attached maps for more information about the project's siting within the City and relative to numerous nearby amenities.

As shown in the attached pictures, the 0.73-acre site currently contains a single-family home and a garage, both of which will be demolished and cleared prior to construction. The project will consist of one 4-story building, placed at the front of the property so as to create maximum active street frontage. There will also be a parking lot for 32 cars and an external gathering area or patio for residents. Vegetative screening will be used to create a level of privacy for residents. Storm water management systems will be used to ensure that the project does not adversely impact the vicinity of the subject parcel. Avesta will work with City staff and the Planning Board to ensure that the design of the project is consistent with neighborhood design characteristics.

Each apartment will be approximately 600 square feet and all accessibility requirements will be met. Additional amenities will include on-site laundry, a health room, a community room and resident service coordination.

977 Brighton Avenue Apartments will continue Avesta Housing's commitment to construct and manage buildings designed to maximize energy performance, minimize adverse environmental impacts, provide healthy living spaces, conserve natural resources, and promote smart growth and sustainable development. All requirements of the City of Portland's Green Building Ordinance will be met. Additionally, as alluded to in the attached information provided by the property manager, Avesta Housing Development Corporation, smoking at the project will be prohibited and educational materials on tobacco treatment programs will be provided to tenants.

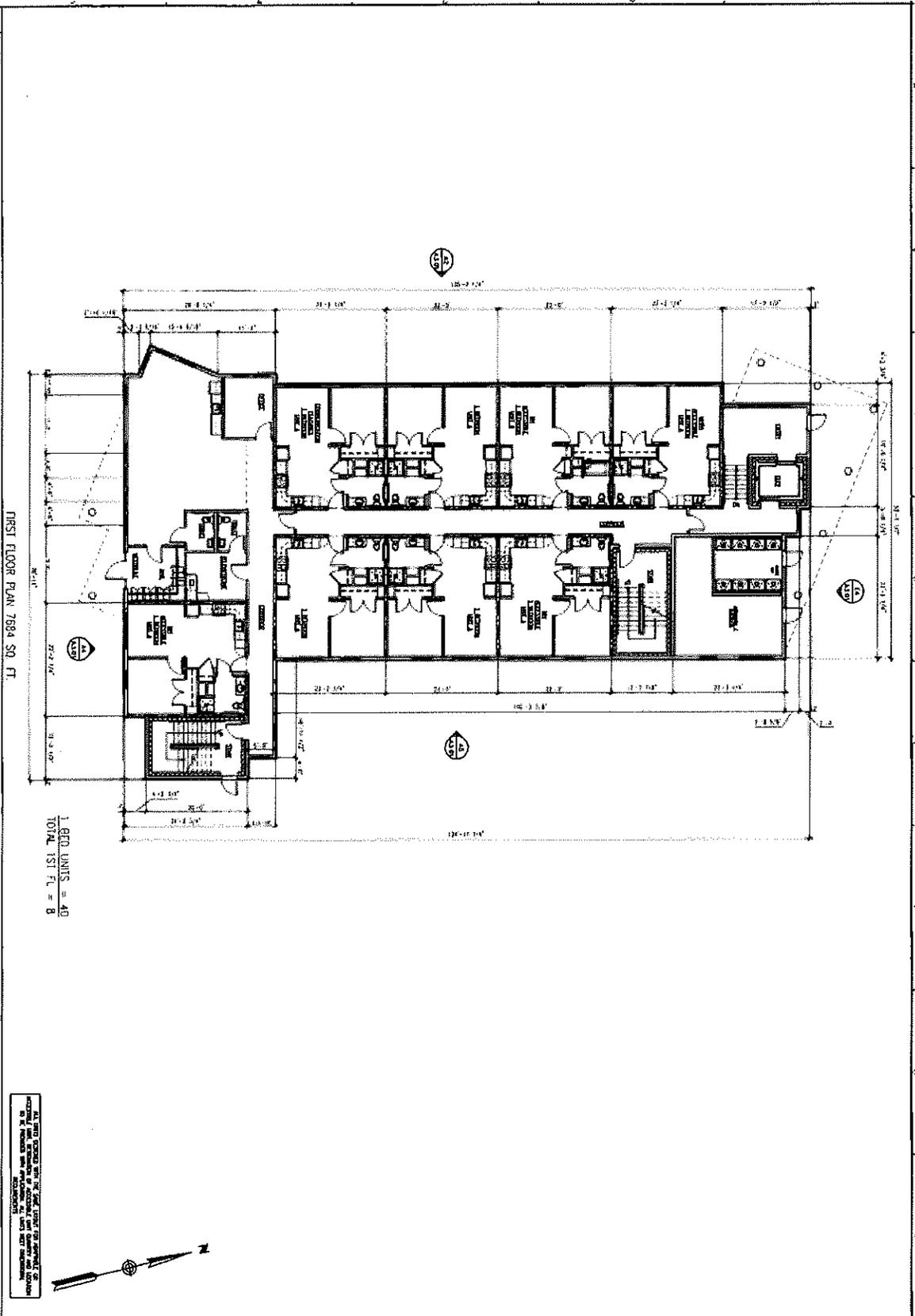
These affordable units at 977 Brighton Avenue come at a critical time for the City. Vacancies in Portland are at historic lows while rents remain too high for thousands of local renter households. In 2017, Avesta alone received requests for affordable housing from nearly 3,800 households (over 1,300 of which were senior-led households) but was only able to provide housing to 393.

977 Brighton Avenue Apartments will create much-needed senior affordable rental housing in an area of the city that is rich with transit, services, and neighborhood amenities.



**A5** FIRST FLOOR PLAN

DATE: 07.11.17



FIRST FLOOR PLAN 7684 SQ. FT.

1 BED UNITS = 40  
TOTAL 1ST FL. = 8

ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. DIMENSIONS TO CENTERLINE OF WALLS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF DOORS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF WINDOWS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF STAIRS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF ELEVATORS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF RAMPWAYS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF BALCONIES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF TERRACES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF PATIOS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF PORCHES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF GARAGES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF DRIVEWAYS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF STAIRS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF ELEVATORS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF RAMPWAYS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF BALCONIES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF TERRACES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF PATIOS ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF PORCHES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF GARAGES ARE SHOWN IN PARENTHESES. DIMENSIONS TO CENTERLINE OF DRIVEWAYS ARE SHOWN IN PARENTHESES.

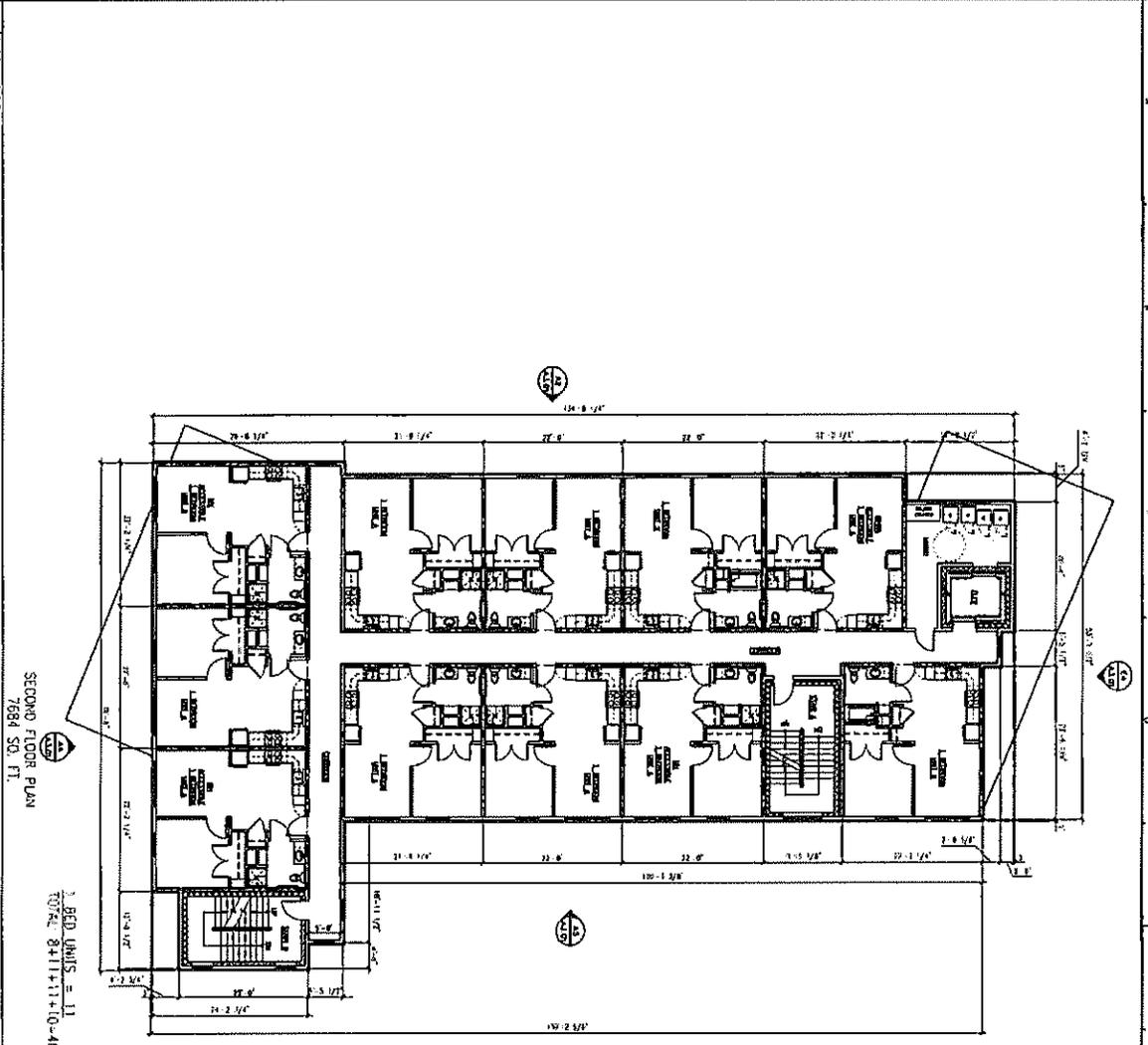


| REVISIONS | DRAWING          | PROJECT                            | OWNER  | DESIGNER   |
|-----------|------------------|------------------------------------|--|--|
|           | FIRST FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS & INTERIORS<br>1000 AVENUE 404<br>SUITE 100<br>BOSTON, MA 02118<br>TEL: 617.552.1111<br>WWW.CWSARCHITECTS.COM |

SCALE: AS SHOWN  
DATE: 07/11/17

**CWS ARCHITECTS**  
ARCHITECTS & INTERIORS  
1000 AVENUE 404  
SUITE 100  
BOSTON, MA 02118  
TEL: 617.552.1111  
WWW.CWSARCHITECTS.COM

AS SECOND FLOOR PLAN  
 7694 SQ. FT.



SECOND FLOOR PLAN  
 7694 SQ. FT.

1 BED UNITS = 11  
 TOTAL 8411+11+10=40

ALL WORK SHOWN ON THIS PLAN IS SUBJECT TO THE APPROVAL OF THE CITY OF BIRMINGHAM. ANY CHANGES TO BE MADE MUST BE APPROVED BY THE CITY ENGINEER. EXCEPT AS NOTED OTHERWISE.



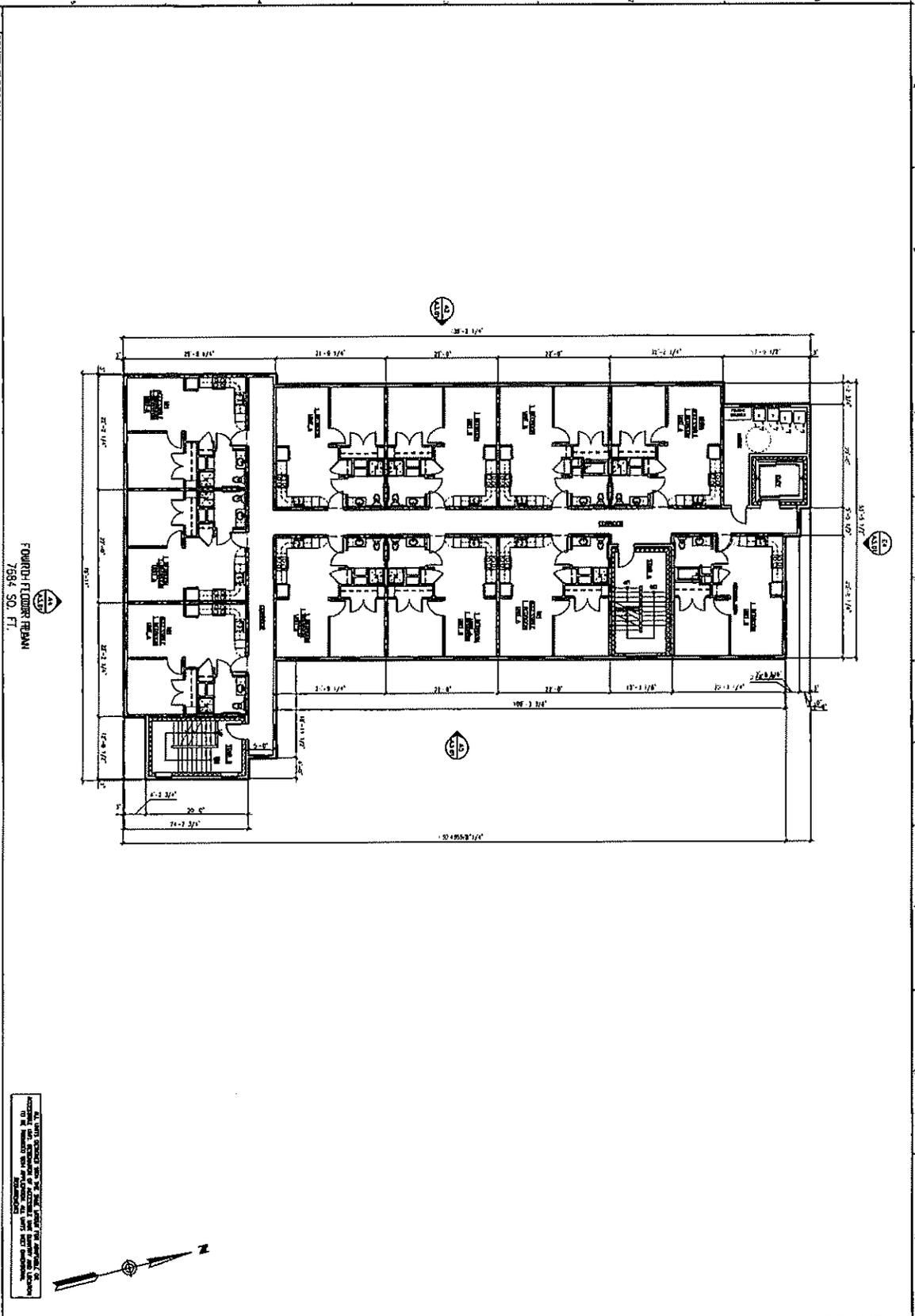
| REVISIONS | DRAWING           | PROJECT                            | OWNER  | DESIGNER  |
|-----------|-------------------|------------------------------------|--|---|
|           | SECOND FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS & INTERIORS, LLC<br>1120 10TH AVENUE SOUTH<br>SUITE 200<br>BIRMINGHAM, AL 35203<br>P. 205.975.4411<br>F. 205.975.4412<br>WWW.CWSARCHITECTS.COM |

SCALE  
 AS SHOWN  
 12/27/2017

CWS ARCHITECTS  
 ARCHITECTS & INTERIORS, LLC  
 1120 10TH AVENUE SOUTH  
 SUITE 200  
 BIRMINGHAM, AL 35203  
 P. 205.975.4411  
 F. 205.975.4412  
 WWW.CWSARCHITECTS.COM



AS FOURTH FLOOR PLAN SCALE 1/8" = 1'-0"



FOURTH FLOOR PLAN  
7584 S.D. FL.

ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.



| REVISIONS | DRAWING           | PROJECT                            | OWNER  | DESIGNER  |
|-----------|-------------------|------------------------------------|--|---|
|           | FOURTH FLOOR PLAN | 977 BRIGHTON AVE SENIOR APARTMENTS | AVESTA 977 BRIGHTON LP<br>c/o AVESTA HOUSING | CWS ARCHITECTS<br>ARCHITECTS, L.P.<br>10000 W. 10TH AVENUE<br>SUITE 100<br>DENVER, CO 80231<br>TEL: 303.755.4444<br>WWW.CWSARCHITECTS.COM |

SCALE: AS SHOWN  
DATE: 10/27/2017

AS 17.40

DATE: 10/27/2017

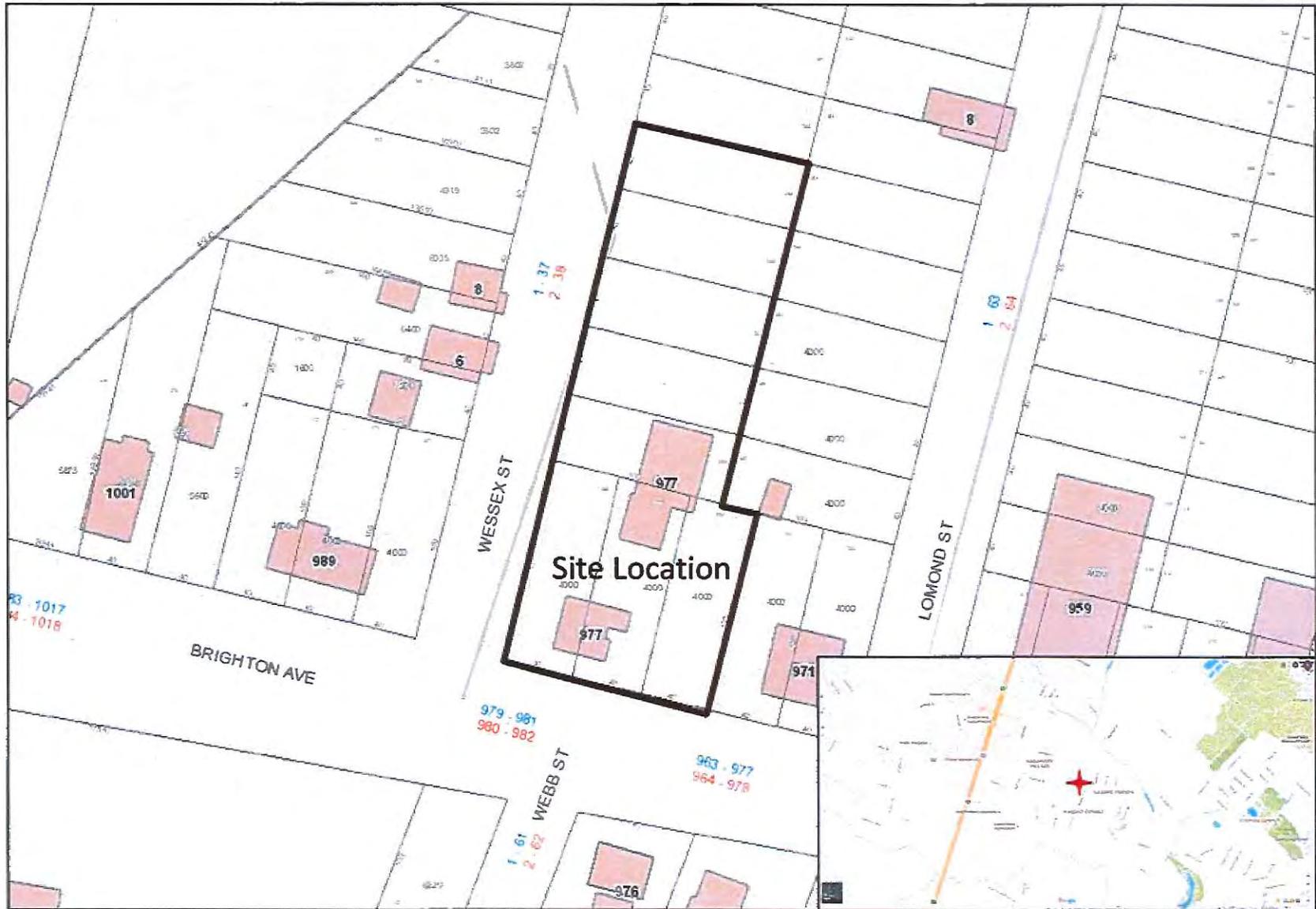
CWS ARCHITECTS  
10000 W. 10TH AVENUE  
SUITE 100  
DENVER, CO 80231  
TEL: 303.755.4444  
WWW.CWSARCHITECTS.COM

**977 BRIGHTON AVENUE APARTMENTS**

**Project Completion Schedule**

| Activity                             | Actual/Scheduled Date<br>Month/Year |
|--------------------------------------|-------------------------------------|
| <b>A. SITE</b>                       |                                     |
| Option/Contract                      | 07/13/15                            |
| Site Acquisition                     | 10/06/15                            |
| Municipal Approval                   | 06/01/18                            |
| <b>B. FINANCING</b>                  |                                     |
| Construction Loan Commitment         | 09/01/18                            |
| Permanent Loan Commitment            | 09/01/18                            |
| Other Sources Committed              | 12/01/18                            |
| <b>C. PLANS AND SPECIFICATIONS</b>   |                                     |
| 50%                                  | 02/01/19                            |
| 90%                                  | 03/01/19                            |
| 100%                                 | 04/01/19                            |
| <b>D. CONSTRUCTION LOAN CLOSING</b>  | <b>05/01/19</b>                     |
| <b>E. CONSTRUCTION START</b>         | 05/01/19                            |
| <b>F. SUBSTANTIAL COMPLETION</b>     | 05/01/20                            |
| <b>G. COMPLETION OF CONSTRUCTION</b> | <b>06/01/20</b>                     |
| <b>H. LEASE-UP</b>                   |                                     |
| Lease-up Begins                      | 05/01/20                            |
| Sustained (95%) Occupancy            | 11/01/20                            |

# 977 Brighton Avenue, Portland, Me.



PROJECT NAME: 977 Brighton Avenue  
 LOCATION: Portland

Date: 04/30/18

| DEVELOPMENT ASSUMPTIONS       |       |    |                       |        |          |           |
|-------------------------------|-------|----|-----------------------|--------|----------|-----------|
| Total Units                   |       | 40 | Inflation Adjustments | Yr 1-5 | Yr. 6-15 | Yr. 16-30 |
| # @ 50% AMI (PBVs)            | 20.0% | 8  | Rent                  | 2.00%  | 2.50%    | 2.00%     |
| # @ 50% AMI (LIHTC/High HOME) | 40.0% | 16 | Operating Expense     | 3.00%  | 3.00%    | 3.00%     |
| # @ 60% AMI (LIHTC/High HOME) | 0.0%  | 0  | Other Income          | 2.00%  | 2.50%    | 2.00%     |
| # @ 60% AMI (LIHTC)           | 25.0% | 10 | Debt Coverage Ratio   | 0.00   |          |           |
| # @ Market                    | 15.0% | 6  | Vacancy               | 5%     |          |           |
| Appraised Market Value        |       |    | Market Value/Unit     |        |          |           |

4,590,846

| PRO FORMA DEVELOPMENT BUDGET       |                  |                |            |                  |
|------------------------------------|------------------|----------------|------------|------------------|
|                                    | Residential      | Per Unit       | Commercial | Total            |
| Site Improvements                  | 572,194          | 14,305         |            | 572,194          |
| Construction                       | 5,227,444        | 130,686        |            | 5,227,444        |
| Solar                              | 0                | 0              |            | 0                |
| General Requirements               | 0                | 0              |            | 0                |
| Builder Overhead                   | 0                | 0              |            | 0                |
| Builder Profit                     | 0                | 0              |            | 0                |
| Bond Premium                       | 0                | 0              |            | 0                |
| Construction Contingency           | 5%               | 289,982        | 7,250      | 289,982          |
| <b>Subtotal Construction Costs</b> | <b>6,089,620</b> | <b>152,240</b> | <b>0</b>   | <b>6,089,620</b> |
| Building Permits and Fees          | 81,936           | 2,048          |            | 81,936           |
| Survey & Engineering               | 38,000           | 950            |            | 38,000           |
| Architectural & Design             | 461,000          | 11,525         |            | 461,000          |
| Legal                              | 65,000           | 1,625          |            | 65,000           |
| Title & Recording                  | 5,885            | 147            |            | 5,885            |
| Accounting                         | 10,000           | 250            |            | 10,000           |
| Construction Period Tax            | 12,000           | 300            |            | 12,000           |
| Construction Period Insurance      | 12,000           | 300            |            | 12,000           |
| <b>Subtotal Soft Costs</b>         | <b>685,821</b>   | <b>17,146</b>  | <b>0</b>   | <b>685,821</b>   |
| Construction Loan Origination Fees | 10,000           | 250            |            | 10,000           |
| Construction Loan Interest         | 157,266          | 3,932          |            | 157,266          |
| Letter of Credit Fee               | 3,630            | 91             |            | 3,630            |
| Escrow Agent Fee                   | 0                | 0              |            | 0                |
| Perm Loan Commitment Fee           | 10,000           | 250            |            | 10,000           |
| Construction Lender Legal          | 12,000           | 300            |            | 12,000           |
| <b>Subtotal Finance Costs</b>      | <b>192,896</b>   | <b>4,822</b>   | <b>0</b>   | <b>192,896</b>   |
| Market Survey                      | 3,500            | 88             |            | 3,500            |
| Appraisal                          | 6,200            | 155            |            | 6,200            |
| Environmental                      | 12,700           | 318            |            | 12,700           |
| LIHTC Fees                         | 40,000           | 1,000          |            | 40,000           |
| Soft Cost Contingency              | 25,000           | 625            |            | 25,000           |
| 3rd Party Consultants              | 18,000           | 450            |            | 18,000           |
| FF&E                               | 61,000           | 1,525          |            | 61,000           |
| <b>Subtotal Miscellaneous</b>      | <b>166,400</b>   | <b>4,160</b>   | <b>0</b>   | <b>166,400</b>   |
| Acquisition: Buildings             | 0                | 0              |            | 0                |
| Acquisition: Land                  | 280,000          | 7,000          |            | 280,000          |
| Carrying Costs                     | 0                | 0              |            | 0                |
| <b>Subtotal Acquisition</b>        | <b>280,000</b>   | <b>7,000</b>   | <b>0</b>   | <b>280,000</b>   |
| Operating Deficit Escrow           | 141,859          | 3,546          |            | 141,859          |
| Pre-funded Replacements            | 52,274           | 1,307          |            | 52,274           |
| Tax & Insurance Escrow             | 28,500           | 713            |            | 28,500           |
| Developer Overhead                 | 487,500          | 12,188         |            | 487,500          |
| Developer Profit                   | 0                | 0              |            | 0                |
| Marketing & Rent-Up Reserve        | 40,000           | 1,000          |            | 40,000           |
| <b>Subtotal Fee and Reserves</b>   | <b>750,133</b>   | <b>18,753</b>  | <b>0</b>   | <b>750,133</b>   |
| <b>Total Development</b>           | <b>8,164,870</b> | <b>204,122</b> | <b>0</b>   | <b>8,164,870</b> |

|              |           |
|--------------|-----------|
| LIHTC Alloc  | 638,000   |
| Equity yield | 0.830     |
| Synd. %      | 99.99%    |
| Equity Raise | 5,294,870 |

|                     |        |
|---------------------|--------|
| Historic Credit FED | 0      |
| Equity yield        | 0.99   |
| Synd. %             | 99.99% |
| Equity Raise        | 0      |

|                       |        |
|-----------------------|--------|
| Number of Tax-payers  | 1      |
| Historic Credit STATE | 0      |
| Equity yield          | 0      |
| Synd. %               | 99.99% |
| Equity Raise          | 0      |

|               |           |
|---------------|-----------|
| Total Equity: | 5,294,870 |
|---------------|-----------|

|                          |     |
|--------------------------|-----|
| Gross Square Footage     | 0   |
| Construction Cost/Sq ft. | \$0 |

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Notes:

|                                 |           |
|---------------------------------|-----------|
| MAXIMUM DEVELOPER FEE AVAILABLE | 650,000   |
| ACTUAL DEVELOPER FEE            | 1,208,430 |
| % OF MAXIMUM DEVELOPER FEE      | 185.9%    |
| NET DEVELOPER FEE COLLECTED     | 1,208,430 |
| % OF MAXIMUM DEVELOPER FEE      | 185.9%    |

7,983,011

199,575

< 175000 = 4PTS

FLOW OF FUNDS

| Sources                    | CLC<br>May-19    | During Construction |                  |                  |                  | PLC<br>Jul-20    | Mar-21         | Aug-21        | Total             |
|----------------------------|------------------|---------------------|------------------|------------------|------------------|------------------|----------------|---------------|-------------------|
|                            |                  | Jul-19              | Oct-19           | Jan-20           | Apr-20           |                  |                |               |                   |
| Beginning Cash             | 0                | 0                   | 0                | 0                | 0                | 0                | 0              | 0             | 0                 |
| Capital Contribution       | 1,058,974        |                     | 1,058,974        |                  |                  | 2,956,922        | 170,000        | 50,000        | 5,294,870         |
| Construction Loan          | 406,143          | 1,272,405           | 213,431          | 1,522,405        | 1,522,405        |                  |                |               | 4,936,788         |
| GP Bridge Loan             |                  |                     |                  |                  |                  |                  |                |               | 0                 |
| MSHA Subsidy               |                  |                     |                  |                  |                  |                  |                |               | 0                 |
| MSHA Amortizing Mortgage   |                  |                     |                  |                  |                  | 0                |                |               | 0                 |
| AHP Grant                  | 0                | 250,000             | 250,000          |                  |                  |                  |                |               | 500,000           |
| AHP Loan                   |                  |                     |                  |                  |                  | 2,070,000        |                |               | 2,070,000         |
| City HOME                  | 0                | 0                   |                  |                  |                  | 300,000          |                |               | 300,000           |
| Solar Equity               | 0                | 0                   |                  |                  |                  | 0                |                |               | 0                 |
| Other: Sponsor Loan        | 0                |                     |                  |                  |                  |                  |                |               | 0                 |
| Other                      |                  |                     |                  |                  |                  |                  |                |               | 0                 |
| Development Fee Loan       | 0                |                     |                  |                  |                  |                  |                |               | 0                 |
| <b>TOTAL SOURCES</b>       | <b>1,465,117</b> | <b>1,522,405</b>    | <b>1,522,405</b> | <b>1,522,405</b> | <b>1,522,405</b> | <b>5,326,922</b> | <b>170,000</b> | <b>50,000</b> | <b>13,101,658</b> |
| <b>Uses</b>                |                  |                     |                  |                  |                  |                  |                |               |                   |
| Acquisition                | 280,000          |                     |                  |                  |                  |                  |                |               | 280,000           |
| Construction               |                  | 1,522,405           | 1,522,405        | 1,522,405        | 1,522,405        |                  |                |               | 6,089,620         |
| Soft Costs                 | 685,821          |                     |                  |                  |                  |                  |                |               | 685,821           |
| Financing Costs            | 192,896          |                     |                  |                  |                  |                  |                |               | 192,896           |
| Miscellaneous              | 166,400          |                     |                  |                  |                  | 40,000           |                |               | 206,400           |
| Dev Fee                    | 140,000          |                     |                  |                  |                  | 127,500          | 170,000        | 50,000        | 487,500           |
| Reserves                   |                  |                     |                  |                  |                  | 222,633          |                |               | 222,633           |
| <b>TOTAL DEV. COSTS</b>    | <b>1,465,117</b> | <b>1,522,405</b>    | <b>1,522,405</b> | <b>1,522,405</b> | <b>1,522,405</b> | <b>390,133</b>   | <b>170,000</b> | <b>50,000</b> | <b>8,164,870</b>  |
| Repay GP Bridge Loan       |                  |                     |                  |                  |                  | 0                |                |               | 0                 |
| Repay Construction Loan    |                  |                     |                  |                  |                  | 4,936,788        |                |               | 4,936,788         |
| SUBTOTAL OTHER ITEMS       | 0                | 0                   | 0                | 0                | 0                | 4,936,788        | 0              | 0             | 4,936,788         |
| <b>TOTAL USES OF FUNDS</b> | <b>1,465,117</b> | <b>1,522,405</b>    | <b>1,522,405</b> | <b>1,522,405</b> | <b>1,522,405</b> | <b>5,326,922</b> | <b>170,000</b> | <b>50,000</b> | <b>13,101,658</b> |
| Ending Cash                | 0                | 0                   | 0                | 0                | 0                | 0                | 0              | 0             | 0                 |

PROJECT FINANCING

| Source                                | Amount           | Rate   | Term | Lien     | Annual D/S |          |           |
|---------------------------------------|------------------|--------|------|----------|------------|----------|-----------|
|                                       |                  |        |      |          | Yr. 1-5    | Yr. 6-15 | Yr. 16-30 |
| Source 1: MSHA Subsidy                | 0                | 0.00%  | 30   |          | 0          | 0        | 0         |
| Source 2: MSHA Interest Only Mortgage | 0                | 6.00%  | 30   |          | 0          | 0        | 0         |
| Source 3: AHP Grant                   | 500,000          | 0.00%  | 30   | Co-First | 0          | 0        | 0         |
| Source 4: AHP Loan                    | 2,070,000        | 3.60%  | 30   | First    | 112,934    | 112,934  | 112,934   |
| Source 5: City HOME                   | 300,000          | 0.00%  | 30   | Co-First |            | Grant    |           |
| Source 6: Solar Equity                | 0                |        |      |          |            |          |           |
| Source 7: Other: Sponsor Loan         |                  |        |      |          |            |          |           |
| Source 8: Development Fee Loan        | 0                |        |      |          |            |          |           |
| Source 9: Net Syndication             | 5,294,870        | \$0.83 |      |          |            |          |           |
| Capitalization Gap (Surplus)          | (0)              |        |      |          |            |          |           |
| <b>Total</b>                          | <b>8,164,870</b> |        |      |          |            |          |           |

|  |
|--|
|  |
|  |
|  |

\$0.0706

| PROPOSED RENT SCHEDULE |           |         |                        |                   |            |             |               |            |
|------------------------|-----------|---------|------------------------|-------------------|------------|-------------|---------------|------------|
| Type                   | AMI       | # Units | Rents from Applicant   | Program Max Rents | Gross Rent | Market Rent | Utility Allow | Total Rent |
| Efficiency             | 50% PBVs  | 0       |                        | 911               | 911        | \$955       | 0             | 0          |
|                        | 50% LIHTC | 0       |                        | 718               | 718        | \$955       | 0             | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 60% LIHTC | 0       |                        | 862               | 862        | \$955       | 0             | 0          |
|                        | 0 Market  |         |                        |                   |            |             |               | 0          |
| 1BR                    | 50% PBVs  | 8       |                        | 1028              | 1,028      | \$1,050     |               | 98,688     |
|                        | 50% LIHTC | 16      |                        | 770               | 770        | \$1,050     | 0             | 147,840    |
|                        | 60% HOME  |         |                        |                   |            | \$1,050     |               | 0          |
|                        | 60% LIHTC | 10      |                        | 924               | 924        | \$1,050     | 0             | 110,680    |
|                        | 40 Market | 6       |                        |                   | 1,050      | \$1,050     |               | 75,600     |
| 2BR                    | 50% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 50% LIHTC |         |                        | 923               | 923        | \$1,250     | 0             | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 60% LIHTC |         |                        | 1108              | 1,108      | \$1,250     | 0             | 0          |
|                        | 0 Market  |         |                        |                   |            |             |               | 0          |
| 3BR                    | 50% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 50% LIHTC |         |                        |                   |            |             | 0             | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 60% LIHTC |         |                        |                   |            |             | 0             | 0          |
|                        | 0 Market  |         |                        |                   |            |             |               | 0          |
| 4BR                    | 50% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 50% LIHTC |         |                        |                   |            |             | 0             | 0          |
|                        | 60% HOME  |         |                        |                   |            |             | 0             | 0          |
|                        | 60% LIHTC |         |                        |                   |            |             | 0             | 0          |
|                        | 0 Market  |         |                        |                   |            |             |               | 0          |
| Other:                 |           |         |                        |                   |            |             | 0             |            |
| Subtotals              |           | 40      |                        |                   |            |             |               | 433,008    |
|                        |           |         | Other Income           |                   | Laundry    |             |               | 3,156      |
|                        |           |         | Vacancy Rate           |                   | 5%         |             |               | (21,808)   |
|                        |           |         | Other Income           |                   | TIF        | 65%         |               | 30,765     |
|                        |           |         | Effective Gross Income |                   |            |             |               | 445,120    |

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current taxes 4,670

| OPERATING EXPENSES                  |                |                 |                  |
|-------------------------------------|----------------|-----------------|------------------|
| Expense                             | Annual         | Annual Per Unit | Monthly Per Unit |
| <b>Administrative Expenses:</b>     |                |                 |                  |
| Management Fees                     | 24,672         | 617             | 51               |
| Management Charges                  | 24,672         | 617             | 51               |
| Marketing Expenses                  | 0              | 0               | 0                |
| Legal Expenses                      | 1,500          | 38              | 3                |
| Auditing Expenses                   | 5,000          | 125             | 10               |
| Bad Debts                           | 0              | 0               | 0                |
| Other Administrative Expenses       | 6,000          | 150             | 13               |
| <b>Administrative Expenses</b>      | <b>61,844</b>  | <b>1,546</b>    | <b>129</b>       |
| <b>Operating Expenses:</b>          |                |                 |                  |
| Janitorial Payroll                  | 0              | 0               | 0                |
| Janitorial Supplies and Equipment   | 0              | 0               | 0                |
| Janitorial Contractual Services     | 6,600          | 165             | 14               |
| Fuel and Gas                        | 18,000         | 450             | 38               |
| Electricity                         | 34,000         | 850             | 71               |
| Water and Sewer                     | 16,000         | 400             | 33               |
| Garbage and Trash Removal           | 4,000          | 100             | 8                |
| Vehicle and Equipment Expenses      | 0              | 0               | 0                |
| Other Operating Expenses            | 0              | 0               | 0                |
| <b>Operating Expenses</b>           | <b>78,600</b>  | <b>1,965</b>    | <b>164</b>       |
| <b>Maintenance Expenses:</b>        |                |                 |                  |
| Grounds Maintenance Payroll         | 0              | 0               | 0                |
| Grounds Tools and Supplies          | 0              | 0               | 0                |
| Grounds Contractual Services        | 25,000         | 625             | 52               |
| Miscellaneous Ground Maintenance    | 0              | 0               | 0                |
| Tenant Damage Charges - Grounds     | 0              | 0               | 0                |
| Building Maintenance Payroll        | 0              | 0               | 0                |
| Building Tools and Supplies         | 5,000          | 125             | 10               |
| Building Contractual Services       | 20,000         | 500             | 42               |
| Building Systems Maintenance        | 25,000         | 625             | 52               |
| Miscellaneous Building Maintenance  | 0              | 0               | 0                |
| Tenant Damage Charges - Building    | 0              | 0               | 0                |
| <b>Maintenance Expenses</b>         | <b>75,000</b>  | <b>1,875</b>    | <b>156</b>       |
| <b>General Expenses:</b>            |                |                 |                  |
| Property Taxes                      | 52,000         | 1,300           | 108              |
| Property and Liability Insurance    | 15,000         | 375             | 31               |
| Tenant Computer Network Expense     | 0              | 0               | 0                |
| Tenant Service Expenses             | 12,199         | 305             | 25               |
| <b>General Expenses</b>             | <b>79,199</b>  | <b>1,980</b>    | <b>165</b>       |
| Replacement Reserve Funding         | 18,000         | 450             | 38               |
| Commercial Expenses (if applicable) |                | 0               | 0                |
| <b>Total</b>                        | <b>312,643</b> | <b>7,816</b>    | <b>651</b>       |

| AFFORDABLE MORTGAGE CALCULATION |         |
|---------------------------------|---------|
| Effective Gross Income          | 445,120 |
| Annual Operating Expense        | 312,643 |
| Stabilized NOI                  | 132,477 |
| DSC                             |         |
| \$ Avail for D/S                |         |
| Other DS                        | 112,934 |
| Balance                         | 1.17    |
| Affordable Mortgage             |         |

| BREAKEVEN ANALYSIS: | RENT SENSITIVITY |  | OCCUPANCY           |         |
|---------------------|------------------|--|---------------------|---------|
|                     | Total            |  | Annual              |         |
| Operating Expense   | 312,643          |  | Gross Revenues      | 466,929 |
| Debt Service        | 112,934          |  |                     |         |
| Breakeven Rent      | 887              |  | Breakeven Occupancy | 91%     |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT |         |          |          |          |          |          |          |          |          |          |          |          |
|---|---------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 5 Months  |         |          |          |          |          |          |          |          |          |          |          |          |
|   | 7/24/20 | 12/31/20 | 12/31/21 | 12/31/22 | 12/31/23 | 12/31/24 | 12/31/25 | 12/31/26 | 12/31/27 | 12/31/28 | 12/31/29 | 12/31/30 |
| Effective Gross Income                          |         | 185,467  | 445,120  | 454,023  | 463,103  | 472,365  | 481,813  | 493,858  | 506,204  | 518,859  | 531,831  | 545,127  |
| Less Operating Expense                          |         | 130,268  | 312,643  | 322,022  | 331,883  | 341,834  | 351,883  | 362,439  | 373,312  | 384,512  | 396,047  | 407,928  |
| Net Operating Income                            |         | 55,199   | 132,477  | 132,000  | 131,420  | 130,732  | 129,930  | 131,419  | 132,892  | 134,348  | 135,784  | 137,198  |
| Less RLP Repay                                  |         |          | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Less Other Repay                                |         | 47,056   | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  | 112,934  |
| Cash Flow                                       |         | 8,143    | 19,543   | 19,066   | 18,486   | 17,798   | 16,996   | 18,485   | 19,958   | 21,414   | 22,850   | 24,264   |
| Cash Flow per Unit                              |         | 489      | 489      | 477      | 462      | 445      | 425      | 462      | 499      | 535      | 571      | 607      |
| Debt Coverage Ratio(RLP)                        |         | 1.17     | 1.17     | 1.17     | 1.16     | 1.16     | 1.15     | 1.16     | 1.18     | 1.19     | 1.20     | 1.21     |
| Operating Reserve Balance                       | 141,859 | 148,952  | 156,400  | 164,220  | 172,431  | 181,052  | 190,105  | 199,610  | 209,590  | 220,070  | 231,073  | 242,627  |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued |         |         |          |          |          |         |          |          |          |         |          |          |
|--|---------|---------|----------|----------|----------|---------|----------|----------|----------|---------|----------|----------|
| Yr 15  |         |         |          |          |          |         |          |          |          |         |          |          |
|  |         | 1/1/32  | 12/31/32 | 12/31/33 | 12/31/34 | 1/1/36  | 12/31/36 | 12/31/37 | 12/31/38 | 1/1/40  | 12/31/40 | 12/31/41 |
| Effective Gross Income                                     |         | 558,755 | 572,724  | 587,042  | 601,718  | 616,761 | 629,096  | 641,678  | 654,511  | 667,602 | 680,954  | 694,573  |
| Less Operating Expense                                     |         | 420,166 | 432,771  | 445,754  | 459,127  | 472,901 | 487,088  | 501,701  | 516,752  | 532,254 | 548,222  | 564,668  |
| Net Operating Income                                       |         | 138,589 | 139,952  | 141,287  | 142,591  | 143,860 | 142,008  | 139,977  | 137,760  | 135,348 | 132,732  | 129,904  |
| Less RLP Repay   |         | 0       | 0        | 0        | 0        | 0       | 0        | 0        | 0        | 0       | 0        | 0        |
| Less Other Repay   |         | 112,934 | 112,934  | 112,934  | 112,934  | 112,934 | 112,934  | 112,934  | 112,934  | 112,934 | 112,934  | 112,934  |
| Cash Flow  |         | 25,655  | 27,019   | 28,353   | 29,657   | 30,926  | 29,074   | 27,043   | 24,826   | 22,414  | 19,798   | 16,971   |
| Cash Flow per Unit   |         | 641     | 675      | 709      | 741      | 773     | 727      | 676      | 621      | 560     | 495      | 424      |
| Debt Coverage Ratio(RLP)                                   |         | 1.23    | 1.24     | 1.25     | 1.26     | 1.27    | 1.26     | 1.24     | 1.22     | 1.20    | 1.18     | 1.15     |
| Operating Reserve Balance                                  | 242,627 | 254,758 | 267,496  | 280,871  | 294,915  | 309,660 | 325,143  | 341,401  | 358,471  | 376,394 | 395,214  | 414,975  |

| PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued |         |          |         |          |          |          |         |          |          |          |
|--|---------|----------|---------|----------|----------|----------|---------|----------|----------|----------|
|  |         | 12/31/42 | 1/1/44  | 12/31/44 | 12/31/45 | 12/31/46 | 1/1/48  | 12/31/48 | 12/31/49 | 7/30/50  |
| Effective Gross Income                                     |         | 708,464  | 722,634 | 737,086  | 751,828  | 766,864  | 782,202 | 797,846  | 813,803  | 484,213  |
| Less Operating Expense                                     |         | 581,608  | 599,057 | 617,028  | 635,539  | 654,605  | 674,244 | 694,471  | 715,305  | 429,779  |
| Net Operating Income                                       |         | 126,856  | 123,577 | 120,058  | 116,289  | 112,259  | 107,958 | 103,375  | 98,498   | 54,434   |
| Less RLP Repay   |         | 0        | 0       | 0        | 0        | 0        | 0       | 0        | 0        | 0        |
| Less Other Repay   |         | 112,934  | 112,934 | 112,934  | 112,934  | 112,934  | 112,934 | 112,934  | 112,934  | 112,934  |
| Cash Flow  |         | 13,922   | 10,643  | 7,124    | 3,355    | (575)    | (4,976) | (9,559)  | (14,436) | (58,500) |
| Cash Flow per Unit   |         | 348      | 266     | 178      | 84       | (17)     | (124)   | (239)    | (361)    | (2,507)  |
| Debt Coverage Ratio(RLP)                                   |         | 1.12     | 1.09    | 1.06     | 1.03     | 0.99     | 0.96    | 0.92     | 0.87     | 0.48     |
| Operating Reserve Balance                                  | 414,975 | 435,723  | 457,510 | 480,385  | 504,404  | 528,950  | 550,422 | 568,384  | 582,367  | 552,985  |



**To:** Mary Davis, City of Portland  
**From:** Anne Boynton, Urban Ventures, Inc.  
**Re:** 977 Brighton Ave, proposed by Avesta  
**Date:** June 12, 2018

## Executive Summary

Avesta requests \$300,000 in HOME funding and a 75% TIF to support their development of a 40 unit new construction senior apartment complex at 977 Brighton Ave. Avesta purchased the site proposed for this development in 2015. The lots currently contain a house and a garage, which will both be demolished. Though the area is suburban, the site is a short walk from the Pine Tree Shopping Center, providing access to a pharmacy and other shopping and dining options, and is less than 1/10<sup>th</sup> of a mile from a bus stop.

## Sources and Uses

|                       |             |   |                  |
|-----------------------|-------------|---|------------------|
| AHP loan              | \$2,070,000 | Construction (incl. site & contingency)   | \$6,089,620      |
| AHP grant             | \$500,000   | Soft costs (incl financing & contingency) | \$1,045,117      |
| LIHTC Equity          | \$5,294,870 | Acquisition                               | \$280,000        |
| City of Portland HOME | \$300,000   | Pre funded Reserves                       | \$262,633        |
|                       |             | Developer Fee                             | <u>\$487,500</u> |
| Total Sources:        | \$8,164,870 | Total Uses:                               | \$8,164,870      |

Avesta has received a commitment of funds for the AHP loan and \$500,000 grant. Bangor Savings has issued a term sheet for both construction and permanent first mortgages. Avesta plans to submit an application for 9% LIHTCs in the upcoming round opening in September. Avesta seeks the \$300,000 HOME and 75% TIF to support the application for LIHTCs.

For analysis of "Uses," see Development Budget.

## Development Budget

### Construction Costs:

Construction costs are based on a letter of estimate from CWS Architects. This is a very broad brush estimate, without even a break out of demolition, site improvements, and anticipated cost per square foot for improvements provided in the architect's letter. However, based on Avesta's break out of site work, the estimated \$170/sq foot for improvements should be more than sufficient for a pretty straightforward design and should accommodate some price inflation prior to construction start.

### Soft Costs:

Soft costs are in the range of normal, with a few exceptions. Architectural seems high for a straightforward design, and the relatively small number of units drives the per unit architectural expense up to over \$11,000 per unit. This does include \$45,000 for owner's representative construction management, which is typically a good investment in quality construction and smooth construction



process, with minimal change orders. FF&E is also high at \$61,000, which is \$1,525 per unit. This is \$25,000 for security cameras, \$6,000 for custodial equipment, and \$30,000 for common area and exterior furnishings. Since the “common area” is a single office and one interior lobby, plus exterior space, that seems quite high.

#### **Contingency:**

Contingency is budgeted at standard 5% for construction and a minimalist \$25,000 for soft costs. These are insufficient given the stage of development. However, the construction figure seems high enough to cover a range of unanticipated price increases, and from a practical perspective, I consider much of the FF&E item to be contingency.

#### **Acquisition:**

Avesta proposes to sell the sites to the LLC for \$280,000. Their acquisition price was \$283,000. The assessed value is \$291,100. While this seems a fair price, an appraisal supporting that price is a condition of any recommendation.

### **Operating Budget & 20 Year Cashflow Projection**

#### **Project Income:**

Avesta plans a mixed income building, with 24 units for households below 50% AMI (\$770 LIHTC, \$1,028 w Project Based Vouchers), 10 units for households below 60% AMI (\$924/mo), and 6 market rate units (\$1,050/mo). Avesta has a commitment for 8 project based vouchers from the Housing Authority to provide a deeper subsidy for 8 of the 24 households at 50% AMI. Consistent with Portland policy, 4 units must house homeless seniors.

#### **Operating Expense**

The budgeted per unit operating cost appears high at \$8,122, however, factoring out the TIF shows operating expenses of \$6,918 per unit, which is in the middle range for affordable housing. Supportive services are budgeted consistent with Maine Housings requirements at \$12,199. Utilities are generously budgeted at \$1,700 per unit per year for 600 sq foot units of new construction meeting green standards. Maintenance also seems high at \$2,140 for newly constructed, small, senior units, including \$25,000 for grounds. They will be able to operate a bit leaner than these costs suggest.

#### **20 Year Cashflow & Debt Service Coverage Ratio (DSCR)**

Cashflow starts out at a comfortable 1.22 DSCR in year one with a 5% vacancy. However, with industry standard inflators of 2% for income and 3% for expenses, the cashflow gradually erodes. By year 20, DSCR is down to 1.05. Avestas projections show positive cashflow for 20 years by using a 2.5% income inflator for years 6-15. Creating positive cashflow by using more aggressive income inflators puts project success in the hands of one variable the developer does NOT control – increases in market price of rent. If, on the other hand, Avesta can find a way to trim maintenance from \$2,140 to \$2,015 per unit per year (for instance, trim grounds expense from \$25,000 to \$20,000), the year 1 DSCR is 1.26 and is 1.13 in year 20. There are ways the developer can control both the operating expenses and the rent revenue (out performing the budgeted 5% vacancy rate) which will support positive cashflow which don't require aggressive assumptions regarding income inflation.



## Developer Financials

Avesta is in good, and improving, financial condition. Avesta has provided audits for 2014, 2015, 2016, and internal financial statements for 2017. Prior year audits have been received by Avesta in late May or early June, so while not ideal to review unaudited financials for 2017, it is not out of line with the timing of audit finalization in prior years.

Current assets in 2016 of \$9.6 million (audited) rise to \$11.8 million in 2017 (unaudited), while current liabilities in 2016 of \$4.9 million (audited) rise to \$6.1 million 2017 (unaudited). The resulting Current Ratios (current assets divided by current liabilities) are healthy for their scale of operations -- 1.97 (2016 audited) and 1.93 (2017 unaudited). Net assets were \$123 million in 2016 (audited) and \$132 million in 2017 (unaudited). There has been significant sustained growth in net assets – which have more than doubled in the 5 years since 2012, when net assets were \$66 million. In 2017, revenue continued to grow and exceed budget while operating expenses were held under budget. Depreciation resulted in a paper loss of \$2,973,841, which is typical for a company with this financial structure, but this paper loss was more than outweighed by the growth in real estate equity.

This developer has the financial capacity to intervene in a development facing unexpected set backs and or cost over-runs to keep the development process moving forward. Their financial strength as an organization mitigates the risk of the thin soft cost contingency and the possibility of leaner than projected operating surpluses.

## Recommendations

Subject to availability of funding, I recommend a loan in the amount of \$300,000, zero percent interest, payment deferred for 30 years, and a 75% TIF, with the following conditions prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.
2. Satisfactory review of relocation budget.
3. Satisfactory appraisal

# Development Budget with Permanent Sources

Date 6/7/2018  
 Project Name 977 Brighton  
 Project Address 977 Brighton  
 Developer/Sponsor Avesta

Total Units 40  
 Total Square Feet 30,736

|                                | <u>Total</u>       | <u>Per Unit</u>  | <u>Per Sq Ft</u> |
|--------------------------------|--------------------|------------------|------------------|
| <b>Sources of Funds</b>        |                    |                  |                  |
| Permanent Financing - AHP Loan | \$2,070,000        | \$51,750         | \$67             |
| AHP Grant                      | \$500,000          | \$12,500         | \$16             |
| Equity (net LIHTC proceeds)    | \$5,294,870        | \$132,372        | \$172            |
| Deferred development fee       | \$0                | \$0              | \$0              |
| City of Portland HOME          | \$300,000          | \$7,500          | \$10             |
| Other                          | \$0                | \$0              | \$0              |
| <b>Total Sources of Funds</b>  | <b>\$8,164,870</b> | <b>\$204,122</b> | <b>\$266</b>     |

## Uses of Funds

|  |                    |                  |              |
|--|--------------------|------------------|--------------|
| <b>Hard Costs</b>  |                    |                  |              |
| Site Improvements  | \$572,194          | \$14,305         | \$19         |
| Rehabilitation   |                    | \$0              | \$0          |
| New Construction   | \$5,227,444        | \$130,686        | \$170        |
| Contractor's Profit, Overhead, & Gen. Requirements       | 0.0%               | \$0              | \$0          |
| Hazardous Materials abatement (if contracted separately) |                    | \$0              | \$0          |
| Demolition Cost (if contracted separately)               |                    | \$0              | \$0          |
| Bond Premium   |                    | \$0              | \$0          |
| Other  |                    | \$0              | \$0          |
| Hard Cost Contingency (% of hard costs)                  | 5.0%               | \$289,982        | \$7,250      |
| <b>Total Hard Costs</b>                                  | <b>\$6,089,620</b> | <b>\$152,241</b> | <b>\$198</b> |

|  |      |                  |                 |
|--|------|------------------|-----------------|
| <b>Soft Costs</b>  |      |                  |                 |
| Building Permit & Fees                                     |      | \$81,936         | \$2,048         |
| Survey & Engineering                                       |      | \$38,000         | \$950           |
| Design & Permitting (% of const exp)                       | 8.6% | \$461,000        | \$11,525        |
| Borrower Legal (all closings, excluding syndication legal) |      | \$65,000         | \$1,625         |
| Title & Recording  |      | \$5,885          | \$147           |
| Accounting   |      | \$10,000         | \$250           |
| Construction Period Taxes                                  |      | \$12,000         | \$300           |
| Construction Period Insurance                              |      | \$12,000         | \$300           |
| Other: FF&E, Security                                      |      | \$61,000         | \$1,525         |
| Other  |      | \$0              | \$0             |
| <b>Total Soft Costs</b>                                    |      | <b>\$746,821</b> | <b>\$18,671</b> |

|                                    |  |           |         |
|------------------------------------|--|-----------|---------|
| <b>Financing Costs</b>             |  |           |         |
| Construction Loan Origination Fees |  | \$10,000  | \$250   |
| Construction Period Interest       |  | \$157,266 | \$3,932 |
| Lender Inspection Fees             |  | \$3,630   | \$91    |

|                              |                  |                |            |
|------------------------------|------------------|----------------|------------|
| Letter of Credit Fee         |                  | \$0            | \$0        |
| Permanent Loan Fee           | \$10,000         | \$250          | \$0        |
| Construction Lender Legal    | \$12,000         | \$300          | \$0        |
| Other                        | \$0              | \$0            | \$0        |
| <b>Total Financing Costs</b> | <b>\$192,896</b> | <b>\$4,822</b> | <b>\$6</b> |

|  |                  |                |             |
|--|------------------|----------------|-------------|
| <b>Miscellaneous</b>                                 |                  |                |             |
| Market Survey  | \$3,500          | \$88           | \$0         |
| Appraisal  | \$6,200          | \$155          | \$0         |
| Environmental Study                                  | \$12,700         | \$318          | \$0         |
| LIHTC Fees -- prepaid monitoring                     | \$40,000         | \$1,000        | \$1         |
| Other: Commissioning                                 |                  | \$0            | \$0         |
| Relocation Costs                                     | \$0              | \$0            | \$0         |
| Other -- 3rd Party Consultants                       | \$18,000         | \$450          | \$1         |
| Soft Cost Contingency (% of soft costs excl Dev Fee) | 1.43%            | \$625          | \$1         |
| <b>Total Miscellaneous:</b>                          | <b>\$105,400</b> | <b>\$2,635</b> | <b>\$10</b> |

|                          |                  |                |            |
|--------------------------|------------------|----------------|------------|
| <b>Acquisition</b>       |                  |                |            |
| Acquisition: Buildings   | \$0              | \$0            | \$0        |
| Acquisition: Land        | \$280,000        | \$7,000        | \$9        |
| Acquisition: Legal       | \$0              | \$0            | \$0        |
| Other                    | \$0              | \$0            | \$0        |
| <b>Total Acquisition</b> | <b>\$280,000</b> | <b>\$7,000</b> | <b>\$9</b> |

|   |                  |                 |             |
|---|------------------|-----------------|-------------|
| <b>Reserves and Developer Fee</b>       |                  |                 |             |
| Operating Deficit Escrow                | \$141,859        | \$3,546         | \$5         |
| Prefunded Replacement Reserve           | \$52,274         | \$1,307         | \$2         |
| Taxes & Insurance Escrow                | \$28,500         | \$713           | \$1         |
| Developer Overhead                      | \$487,500        | \$12,188        | \$16        |
| Developer Profit                        |                  | \$0             | \$0         |
| Rent Up Reserve & Marketing             | \$40,000         | \$1,000         | \$1         |
| Other                                   | \$0              | \$0             | \$0         |
| <b>Total Reserves and Developer Fee</b> | <b>\$750,133</b> | <b>\$18,753</b> | <b>\$24</b> |

|                            |                    |                  |              |
|----------------------------|--------------------|------------------|--------------|
| <b>Total Uses of Funds</b> | <b>\$8,164,870</b> | <b>\$204,122</b> | <b>\$272</b> |
|----------------------------|--------------------|------------------|--------------|

Developer Fee Analysis:            Total Fees: \$487,500  
Percent of TDC:            6.54% (excluding reserves & developer fee)

# Project Operating Pro Forma

Date June 12, 2018  
 Project Name 977 Brighton  
 Project Address 977 Brighton  
 Developer/Sponsor Avesta

## Rental Income

| Unit Type     | Number of Units | Per Unit Sq Ft | Total Sq Ft | Restriction on % Median Inc. | Per Unit Monthly Gross Rent | Utility Deductions | Rent Subsidy | Per Unit Monthly Net Rent | Per Unit Net Rent Per Sq Ft | Total Monthly Net Income | Total Annual Net Rent |
|---------------|-----------------|----------------|-------------|------------------------------|-----------------------------|--------------------|--------------|---------------------------|-----------------------------|--------------------------|-----------------------|
| 1 BR          | 8               |                | 0           | 50%                          | \$1,028                     | \$0                |              | \$1,028                   | #DIV/0!                     | \$8,224                  | \$98,688              |
| 1 BR          | 16              |                | 0           | 50%                          | \$770                       | \$0                |              | \$770                     | #DIV/0!                     | \$12,320                 | \$147,840             |
| 1 BR          | 10              |                | 0           | 60%                          | \$924                       | \$0                |              | \$924                     | #DIV/0!                     | \$9,240                  | \$110,880             |
| 1 BR          | 6               |                | 0           | market                       | \$1,050                     | \$0                |              | \$1,050                   | #DIV/0!                     | \$6,300                  | \$75,600              |
| 2 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 2 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 3 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 3 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 4 BR          |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| 4 BR          |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| Other         |                 |                | 0           | 50%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| Other         |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| <b>Total:</b> | <b>40</b>       |                | <b>0</b>    |                              |                             |                    |              |                           |                             | <b>\$36,084</b>          | <b>\$433,008</b>      |

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

Note: Year 1 is the first full year of stabilized operations

|                                 | <u>Year 1</u>    | <u>Year 1/Unit</u> | <u>Year 2</u>    | <u>Year 3</u>    | <u>Year 4</u>    | <u>Year 5</u>    | <u>Year 6</u>    | <u>Year 7</u>    | <u>Year 8</u>    | <u>Year 9</u>    | <u>Year 10</u>   |            |
|---------------------------------|------------------|--------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------|
| <b>Income</b>                   |                  |                    |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Sch. Gross Income - Residential | \$433,008        | \$10,825           | \$441,668        | \$450,502        | \$459,512        | \$468,702        | \$478,076        | \$487,637        | \$497,390        | \$507,338        | \$517,485        |            |
| Vacancy Loss                    | 5.0%             | (\$21,650)         | (\$541)          | (\$22,083)       | (\$22,525)       | (\$22,976)       | (\$23,435)       | (\$23,904)       | (\$24,382)       | (\$24,870)       | (\$25,367)       | (\$25,874) |
| Other income (laundry)          | \$2,998          | \$75               | \$3,058          | \$3,119          | \$3,182          | \$3,245          | \$3,310          | \$3,376          | \$3,444          | \$3,513          | \$3,583          |            |
| TIF -- 75% requested            | \$48,171         | \$1,204            | \$49,616         | \$51,105         | \$52,638         | \$54,217         | \$55,843         | \$57,519         | \$59,244         | \$61,022         | \$62,852         |            |
| <b>Effective Gross Income</b>   | <b>\$462,527</b> | <b>\$11,563</b>    | <b>\$472,259</b> | <b>\$482,200</b> | <b>\$492,355</b> | <b>\$502,729</b> | <b>\$513,326</b> | <b>\$524,151</b> | <b>\$535,209</b> | <b>\$546,505</b> | <b>\$558,046</b> |            |
| <b>Administrative</b>           |                  |                    |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Management Fee                  | \$24,672         | \$617              | \$25,412         | \$26,175         | \$26,960         | \$27,769         | \$28,602         | \$29,460         | \$30,343         | \$31,254         | \$32,191         |            |
| Management Charges              | \$24,672         | \$617              | \$25,412         | \$26,175         | \$26,960         | \$27,769         | \$28,602         | \$29,460         | \$30,343         | \$31,254         | \$32,191         |            |
| Marketing Expense               | \$0              | \$0                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| Legal                           | \$1,500          | \$38               | \$1,545          | \$1,591          | \$1,639          | \$1,688          | \$1,739          | \$1,791          | \$1,845          | \$1,900          | \$1,957          |            |
| Audit & Accounting              | \$5,000          | \$125              | \$5,150          | \$5,305          | \$5,464          | \$5,628          | \$5,796          | \$5,970          | \$6,149          | \$6,334          | \$6,524          |            |
| Admin Other                     | \$6,000          | \$150              | \$6,180          | \$6,365          | \$6,556          | \$6,753          | \$6,956          | \$7,164          | \$7,379          | \$7,601          | \$7,829          |            |
| <b>Total Administrative</b>     | <b>\$61,844</b>  | <b>\$1,546</b>     | <b>\$63,699</b>  | <b>\$65,610</b>  | <b>\$67,579</b>  | <b>\$69,606</b>  | <b>\$71,694</b>  | <b>\$73,845</b>  | <b>\$76,060</b>  | <b>\$78,342</b>  | <b>\$80,692</b>  |            |
| <b>Supportive Services</b>      | <b>\$12,199</b>  | <b>\$305</b>       | <b>\$12,565</b>  | <b>\$12,942</b>  | <b>\$13,330</b>  | <b>\$13,730</b>  | <b>\$14,142</b>  | <b>\$14,566</b>  | <b>\$15,003</b>  | <b>\$15,453</b>  | <b>\$15,917</b>  |            |
| <b>Utilities</b>                |                  |                    |                  |                  |                  |                  |                  |                  |                  |                  |                  |            |
| Fuel Oil                        | \$18,000         | \$450              | \$18,540         | \$19,096         | \$19,669         | \$20,259         | \$20,867         | \$21,493         | \$22,138         | \$22,802         | \$23,486         |            |
| Natural Gas                     |                  | \$0                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| Electric                        | \$34,000         | \$850              | \$35,020         | \$36,071         | \$37,153         | \$38,267         | \$39,415         | \$40,598         | \$41,816         | \$43,070         | \$44,362         |            |
| Water / Sewer                   | \$16,000         | \$400              | \$16,480         | \$16,974         | \$17,484         | \$18,008         | \$18,548         | \$19,105         | \$19,678         | \$20,268         | \$20,876         |            |
| Other                           |                  | \$0                | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |            |
| <b>Total Utilities</b>          | <b>\$68,000</b>  | <b>\$1,700</b>     | <b>\$70,040</b>  | <b>\$72,141</b>  | <b>\$74,305</b>  | <b>\$76,535</b>  | <b>\$78,831</b>  | <b>\$81,196</b>  | <b>\$83,631</b>  | <b>\$86,140</b>  | <b>\$88,725</b>  |            |

| Maintenance                    | Year 1   | Year 1/Unit | Year 2   | Year 3   | Year 4   | Year 5   | Year 6   | Year 7    | Year 8    | Year 9    | Year 10   |
|--------------------------------|----------|-------------|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|
| Grounds                        | \$25,000 | \$625       | \$25,750 | \$26,523 | \$27,318 | \$28,138 | \$28,982 | \$29,851  | \$30,747  | \$31,669  | \$32,619  |
| Janitorial                     | \$6,600  | \$165       | \$6,798  | \$7,002  | \$7,212  | \$7,428  | \$7,651  | \$7,881   | \$8,117   | \$8,361   | \$8,612   |
| Trash Removal                  | \$4,000  | \$100       | \$4,120  | \$4,244  | \$4,371  | \$4,502  | \$4,637  | \$4,776   | \$4,919   | \$5,067   | \$5,219   |
| Security                       |          | \$0         | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       | \$0       | \$0       |
| Equipment & Supplies           | \$5,000  | \$125       | \$5,150  | \$5,305  | \$5,464  | \$5,628  | \$5,796  | \$5,970   | \$6,149   | \$6,334   | \$6,524   |
| Maintenance                    | \$25,000 | \$625       | \$25,750 | \$26,523 | \$27,318 | \$28,138 | \$28,982 | \$29,851  | \$30,747  | \$31,669  | \$32,619  |
| Maintenance contracts (HVAC, e | \$20,000 | \$500       | \$20,600 | \$21,218 | \$21,855 | \$22,510 | \$23,185 | \$23,881  | \$24,597  | \$25,335  | \$26,095  |
| Other                          |          | \$0         | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       | \$0       | \$0       |
| Total Maintenance              | \$85,600 | \$2,140     | \$88,168 | \$90,813 | \$93,537 | \$96,344 | \$99,234 | \$102,211 | \$105,277 | \$108,436 | \$111,689 |

| Taxes & Insurance   |          |         |          |          |          |          |          |          |          |           |           |
|---|----------|---------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|
| Real Estate Taxes or PILOT                                    | \$64,229 | \$1,606 | \$66,156 | \$68,141 | \$70,185 | \$72,290 | \$74,459 | \$76,693 | \$78,994 | \$81,363  | \$83,804  |
| Payroll Taxes / Fidelity Bond /<br>Workers Comp / Health Ins. |          | \$0     | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       |
| Insurance (property, liability)                               | \$15,000 | \$375   | \$15,450 | \$15,914 | \$16,391 | \$16,883 | \$17,389 | \$17,911 | \$18,448 | \$19,002  | \$19,572  |
| Other   |          | \$0     | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0       | \$0       |
| Total Taxes & Insurance                                       | \$79,229 | \$1,981 | \$81,606 | \$84,054 | \$86,576 | \$89,173 | \$91,848 | \$94,604 | \$97,442 | \$100,365 | \$103,376 |

|                      |          |       |          |          |          |          |          |          |          |          |          |
|----------------------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Replacement Reserves | \$18,000 | \$450 | \$18,540 | \$19,096 | \$19,669 | \$20,259 | \$20,867 | \$21,493 | \$22,138 | \$22,802 | \$23,486 |
| Operating Reserves   |          | \$0   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Total Expenses</b> | <b>\$324,872</b> | <b>\$8,122</b> | <b>\$334,618</b> | <b>\$344,657</b> | <b>\$354,996</b> | <b>\$365,646</b> | <b>\$376,616</b> | <b>\$387,914</b> | <b>\$399,552</b> | <b>\$411,538</b> | <b>\$423,884</b> |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

|                             |                  |                |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|-----------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Net Operating Income</b> | <b>\$137,655</b> | <b>\$3,441</b> | <b>\$137,641</b> | <b>\$137,544</b> | <b>\$137,359</b> | <b>\$137,083</b> | <b>\$136,710</b> | <b>\$136,236</b> | <b>\$135,657</b> | <b>\$134,967</b> | <b>\$134,161</b> |
|-----------------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|

| Debt Service                  |           |         |           |           |           |           |           |           |           |           |           |
|-------------------------------|-----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| First Lien                    | \$112,934 | \$2,823 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 |
| Second Lien                   |           | \$0     | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Other                         |           | \$0     | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Total Debt Service (Must Pay) | \$112,934 | \$2,823 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 | \$112,934 |

|                                 |          |       |          |          |          |          |          |          |          |          |          |
|---------------------------------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Cash Flow (after Must Pay Debt) | \$24,721 | \$618 | \$24,707 | \$24,610 | \$24,425 | \$24,149 | \$23,776 | \$23,302 | \$22,723 | \$22,033 | \$21,227 |
| Debt Service Coverage Ratio     | 1.22     |       | 1.22     | 1.22     | 1.22     | 1.21     | 1.21     | 1.21     | 1.20     | 1.20     | 1.19     |

| Cash Flow Debt Payments              |      |                 |              |                 |                 |                 |                 |                 |                 |                 |                 |
|--------------------------------------|------|-----------------|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| City of Portland                     | 0.0% | \$0             | \$0          | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Developer Fee Loan                   | 0.0% | \$0             | \$0          | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| <b>Cash Flow Retained by Project</b> |      | <b>\$24,721</b> | <b>\$618</b> | <b>\$24,707</b> | <b>\$24,610</b> | <b>\$24,425</b> | <b>\$24,149</b> | <b>\$23,776</b> | <b>\$23,302</b> | <b>\$22,723</b> | <b>\$21,227</b> |

Retained Cash Flow % 8%

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

|                                 | Year 11          | Year 12          | Year 13          | Year 14          | Year 15          | Year 16          | Year 17          | Year 18          | Year 19          | Year 20          |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Income</b>                   |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
| Sch. Gross Income - Residential | \$527,834        | \$538,391        | \$549,159        | \$560,142        | \$571,345        | \$582,772        | \$594,427        | \$606,316        | \$618,442        | \$630,811        |
| Vacancy Loss                    | 5.0% (\$26,392)  | (\$26,920)       | (\$27,458)       | (\$28,007)       | (\$28,567)       | (\$29,139)       | (\$29,721)       | (\$30,316)       | (\$30,922)       | (\$31,541)       |
| Other income (laundry)          | \$3,655          | \$3,728          | \$3,802          | \$3,878          | \$3,956          | \$4,035          | \$4,116          | \$4,198          | \$4,282          | \$4,368          |
| TIF -- 75% requested            | \$64,738         | \$66,680         | \$68,680         | \$70,741         | \$72,863         | \$75,049         | \$77,300         | \$79,619         | \$82,008         | \$84,468         |
| <b>Effective Gross Income</b>   | <b>\$569,835</b> | <b>\$581,879</b> | <b>\$594,184</b> | <b>\$606,754</b> | <b>\$619,597</b> | <b>\$632,717</b> | <b>\$646,122</b> | <b>\$659,817</b> | <b>\$673,810</b> | <b>\$688,106</b> |

|                               |                 |                 |                 |                 |                 |                 |                 |                  |                  |                  |
|-------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|
| <b>Administrative</b>         |                 |                 |                 |                 |                 |                 |                 |                  |                  |                  |
| Advertising                   | \$33,157        | \$34,152        | \$35,176        | \$36,232        | \$37,319        | \$38,438        | \$39,591        | \$40,779         | \$42,002         | \$43,263         |
| Office Payroll & Benefits     | \$33,157        | \$34,152        | \$35,176        | \$36,232        | \$37,319        | \$38,438        | \$39,591        | \$40,779         | \$42,002         | \$43,263         |
| Office Supplies, Phone, Misc. | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0              | \$0              | \$0              |
| Mngr or Super Rent Free Unit  | \$2,016         | \$2,076         | \$2,139         | \$2,203         | \$2,269         | \$2,337         | \$2,407         | \$2,479          | \$2,554          | \$2,630          |
| Audit & Accounting            | \$6,720         | \$6,921         | \$7,129         | \$7,343         | \$7,563         | \$7,790         | \$8,024         | \$8,264          | \$8,512          | \$8,768          |
| Admin Other                   | \$8,063         | \$8,305         | \$8,555         | \$8,811         | \$9,076         | \$9,348         | \$9,628         | \$9,917          | \$10,215         | \$10,521         |
| <b>Total Administrative</b>   | <b>\$83,113</b> | <b>\$85,607</b> | <b>\$88,175</b> | <b>\$90,820</b> | <b>\$93,545</b> | <b>\$96,351</b> | <b>\$99,241</b> | <b>\$102,219</b> | <b>\$105,285</b> | <b>\$108,444</b> |

|                            |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
|----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Supportive Services</b> | <b>\$16,394</b> | <b>\$16,886</b> | <b>\$17,393</b> | <b>\$17,915</b> | <b>\$18,452</b> | <b>\$19,006</b> | <b>\$19,576</b> | <b>\$20,163</b> | <b>\$20,768</b> | <b>\$21,391</b> |
|----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|

|                        |                 |                 |                 |                 |                  |                  |                  |                  |                  |                  |
|------------------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Utilities</b>       |                 |                 |                 |                 |                  |                  |                  |                  |                  |                  |
| Fuel Oil               | \$24,190        | \$24,916        | \$25,664        | \$26,434        | \$27,227         | \$28,043         | \$28,885         | \$29,751         | \$30,644         | \$31,563         |
| Electric               | \$0             | \$0             | \$0             | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| Gas                    | \$45,693        | \$47,064        | \$48,476        | \$49,930        | \$51,428         | \$52,971         | \$54,560         | \$56,197         | \$57,883         | \$59,619         |
| Water / Sewer          | \$21,503        | \$22,148        | \$22,812        | \$23,497        | \$24,201         | \$24,927         | \$25,675         | \$26,446         | \$27,239         | \$28,056         |
| Other                  | \$0             | \$0             | \$0             | \$0             | \$0              | \$0              | \$0              | \$0              | \$0              | \$0              |
| <b>Total Utilities</b> | <b>\$91,386</b> | <b>\$94,128</b> | <b>\$96,952</b> | <b>\$99,860</b> | <b>\$102,856</b> | <b>\$105,942</b> | <b>\$109,120</b> | <b>\$112,394</b> | <b>\$115,765</b> | <b>\$119,238</b> |



*Order 27-18/19  
Tab 39 7-16-18*

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROPRIATING  
HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS  
IN THE AMOUNT OF \$580,174 TO THE  
PORTLAND HOUSING DEVELOPMENT CORPORATION  
RE: FRONT STREET**

**ORDERED**, that the amount of \$580,174 in Home Investment Partnerships (HOME) Program funds is hereby appropriated to the Portland Housing Development Corporation for development costs for Front Street ; and

**BE IT FURTHER ORDERED**, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the grant, and otherwise carry out the intent of this order.

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

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

**FROM:** **Planning and Urban Development Department  
Housing and Community Development Division**

**DATE:** **July 5, 2018**

**SUBJECT:** **Order Authorizing Financial Assistance in the amount of \$580,174 in HOME Program Funds to the Portland Housing Development Corporation Project entitled Front Street**

**SPONSOR:** **Jill Duson, Chair, Housing Committee  
(June 27, 2018; voted 3-0 in favor)**

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
**1<sup>st</sup> reading July 16, 2018 Final Action August 13, 2018**

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

**PRESENTATION: (List the presenter(s), type and length of presentation)**  
**Mary Davis, HCD Division Director will be available to answer any questions**

**I. ONE SENTENCE SUMMARY**

Portland Housing Development Corporation is requesting HOME funding to assist in the re-development of affordable family rental housing on Front Street.

**II. AGENDA DESCRIPTION**

Portland Housing Development Corporation is requesting HOME funding to assist in the re-development of affordable family rental housing on Front Street. The developer is proposing to demolish and re-develop the existing 50 units of housing and add an additional 61 units of mixed-income rental housing.

The development will include:

| Front Street         |  |     |
|----------------------|--|-----|
| 1-Bedroom Units (29) | at or below 50% area median income     | 7   |
|                      | at or below 50% area median income PBV | 11  |
|                      | Market Rate                            | 11  |
| 2-Bedroom Units (38) | at or below 50% area median income     | 19  |
|                      | at or below 50% area median income PBV | 7   |
|                      | Market Rate                            | 12  |
| 3-Bedroom Units (27) | at or below 50% area median income     | 5   |
|                      | at or below 50% area median income PBV | 19  |
|                      | at or below 60% area median income     | 3   |
| 4-Bedroom Units (13) | at or below 50% area median income PBV | 13  |
| 5-Bedroom Units (4)  | at or below 50% area median income PBV | 4   |
| Total Units          |  | 111 |

This project is seeking 4% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing. It will not proceed on the same timetable as the other three proposals who will be seeking 9% Low Income Housing Tax Credits. The developer has engaged in significant public outreach in the East Deering Neighborhood. A neighborhood meeting was held on November 7, 2017 and the Planning Board held a workshop on November 14, 2017. The Planning Department has made significant commitments to the neighborhood to ensure that the design of the project is contextual to the neighborhood. To ensure these commitments are met, staff is recommending funding for this project.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is an experienced developer and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below.

The HOME Affordable Housing Development Application made funding available in the amount of \$1,080,174. The City received four applications requesting \$1,741,540 in funding.

The staff recommendation to the Housing Committee included HOME funding for Deering Place at an additional \$200,000, Front Street at \$510,174, 178 Kennebec Street at \$370,000 and 977 Brighton Avenue at \$0.

The Housing Committee voted to recommend HOME funding for Deering Place at an additional \$200,000, Front Street at \$580,174, 178 Kennebec Street at \$0 and 977 Brighton Avenue at \$300,000.

### **III. BACKGROUND**

As stated in the developer's application *"Front Street is currently a 50-unit Public Housing community in the East Deering neighborhood of Portland, Maine. The project was built in 1971 as part of Portland's Urban Renewal effort and the creation of Franklin Arterial to connect the interstate with the Downtown tourist are of the Portland peninsula. Over 200 residential structures, considered a blighted area, were taken by eminent domain and demolished in Portland's Bayside neighborhood. A portion of those families were moved to temporary housing at Front Street....."*

*"47 years later, this "temporary" housing was identified in Portland Housing Authority's Strategic Vision Plan of 2015 as the top priority for re-development due to deterioration of buildings due to poor construction quality and structural issues due to poor soils."*

*"PHA is proposing a single phase approach to not only demolish and re-develop the existing 50 units of housing, but add an additional 61 units of mixed-income family rental housing....."*

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

Increase access to rental and ownership housing that is safe and affordable for working and low-income families.

### **V. FINANCIAL IMPACT**

HOME Funds: \$580,174 at zero percent interest, deferred for 30 years.

Total City HOME Investment of \$580,174/unit - \$5,227.

Total City HOME Investment of \$580,174/affordable unit - \$6,593.

At a later date, developer has indicated that they will seek additional city assistance through an affordable housing tax increment financing district/credit enhancement agreement as well as funding from the Housing Trust Fund in an amount up to \$851,094 (total city HOME and HTF investment requested \$1,431,268).

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

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for City HOME funding. The third party analysis is attached. The report indicates that the developer is well positioned to secure the remaining financing needed to move forward with this project and has the financial capacity to keep the development process moving forward.

It is important to note that the initial underwriting has been done based on other funding sources that are anticipated but have yet to be secured. While significant progress has been made towards securing these financing sources, the final development budget and operating pro forma

will need to be reviewed and analyzed to confirm the appropriateness of the initial HOME funding recommendation noted below. Conditions to be met prior to loan closing:

1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.
2. Commitment of all sources on terms and conditions acceptable to City of Portland, including acceptable cashflow waterfall, and cashflow projection which shows retirement of developer fee loan and City of Portland loans;
3. Revised operating budget reflective of higher utility costs and cashflow projection satisfactory to City.

As part of the Maine State Housing Authority's (MSHA) Qualified Allocation Plan (QAP) application due in February, the developers will need letters of commitment of support for their projects prior to the QAP submission deadline. If the Council agrees with the Housing Committee's recommendation, this letter would include the recommendations of the third party underwriter and be conditioned on the completion of the following additional requirements:

1. The commitment will be subject to compliance with all HOME Program regulations including, but not limited to, satisfactory underwriting analysis, cost allocation, designation of HOME units and compliance with the new HOME Final Rule (effective August 23, 2013) and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013.
2. The commitment will include the requirement that the environmental review process be satisfactorily completed. The City's agreement to provide funds will be conditioned on the determination to proceed with, modify or cancel the project based on the results of the environmental review.
3. Commitment of funds to be stated as "an amount up to the funding request based on maximization of LIHTC equity raise", to ensure that the City's contribution is leveraged to the maximum extent possible.
4. If applicable, documentation acceptable to the City that the acquisition cost is reasonably related to market value. This is a HOME Program requirement.
5. Commitment should be subject to the projections and assumptions noted in the project budgets and pro-forma submitted, for both HOME and TIF funding, and the City reserves the right to reconsider and adjust their commitment if any significant alterations occur in the budget. A final commitment will be subject to a final budget.
6. Any substantial changes to the composition of the project, or the financial investment required, will be brought back to the Housing Committee and the City Council for review and approval.

A recommendation for City HOME funding by the City Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Any funding awarded will be contingent on the project's final approval by the Planning Board.

## **VII. RECOMMENDATION**

Approval by the City Council of the Housing Committee's recommendation of HOME funding in the amount of \$580,174 at zero percent interest, with repayment deferred for 30 years.

## **VIII. LIST ATTACHMENTS**

Excerpt HOME Application Information for Front Street  
Third Party Underwriting Analysis

Prepared by: Mary P. Davis  
Date: July 5, 2018

Bear/agendarequestmemo/rev 1/23/2017

**Portland Housing Development Corporation / Front Street Housing Redevelopment, LP  
HOME Application  
Project Summary**

**Front Street Re-Development - Detailed Project Proposal**

Summary - Request for Funding

Portland Housing Development Corporation (PHDC) and Front Street Housing Redevelopment, LP are requesting \$841,540 in grant funding from the City of Portland’s HOME program to assist in the re-development of affordable family rental housing in Portland, Maine. PHDC is requesting these HOME funds as a critical early step in securing other funding to replace outdated housing and bring new housing to a mixed-income community.

Project Summary and Description of Housing

Front Street is currently a 50-unit Public Housing community in the East Deering neighborhood of Portland, Maine. The project was built in 1971 as part of Portland’s Urban Renewal effort and the creation of Franklin Arterial to connect the interstate with the Downtown tourist area of the Portland peninsula. Over 200 residential structures, considered a blighted area, were taken by eminent domain and demolished in Portland’s Bayside neighborhood. A portion of those families were moved to temporary housing at Front Street in Portland’s East Deering neighborhood.

47 years later, this “temporary” housing was identified in Portland Housing Authority’s Strategic Vision Plan of 2015 as the top priority property for re-development due to deterioration of buildings due to poor construction quality and structural issues due to poor soils. A 2012 Physical Needs Assessment concluded that the buildings are at the end of their useful life, and an Obsolescence Study in 2016 determined that renovations would be costlier than demolition and new construction.

PHA is proposing a single-phase approach to not only demolish and re-develop the existing 50 units of housing, but add an additional 61 units of mixed-income family rental housing that will be durable, beautiful and extremely energy efficient. Please note there is an adjacent 10-unit homeownership project that will be developed on the existing Front Street parcel along Illsley Street, but is not part of the rental housing project and is not part of this application.

**Existing Housing Unit Distribution**

|               |           |
|---------------|-----------|
| 1-Bedroom     | 0         |
| 2-Bedroom     | 0         |
| 3-Bedroom     | 25        |
| 4-Bedroom     | 18        |
| 5-Bedroom     | 7         |
| <b>Totals</b> | <b>50</b> |

**Front Street Utilization**

|           | Sufficient Size | Under Utilized | Over Utilized |
|-----------|-----------------|----------------|---------------|
| 1-Bedroom | N/A             |                |               |
| 2-Bedroom | N/A             |                |               |
| 3-Bedroom | 16              | 7              | 2             |
| 4-Bedroom | 10              | 6              | 1             |
| 5-Bedroom | 6               | 1              | 0             |

**Proposed Housing Unit Distribution**

| Unit Type          | # units    | Square Footage |
|--------------------|------------|----------------|
| 1-bedroom          | 29         | 550            |
| 2-bedroom          | 38         | 850            |
| 3-bedroom          | 27         | 1100           |
| 4-bedroom          | 13         | 1225           |
| 5-bedroom          | 4          | 1400           |
| <b>Total Units</b> | <b>111</b> |                |

Population Served

Households currently living at Front Street are Extremely-Low Income, (ELI), or Very-Low Income, (VLI). There are currently 49 occupied units; 35 households, (about 71%), have extremely-low incomes. Current households range in size from one-person to ten-persons. Households are predominantly between three- and six-persons. A unique feature of Front Street is its 4- and 5-bedroom units for larger families. PHA has a public housing waiting list with 1,800 families and several of those on the waiting list are looking for 4- and 5-bedroom units.

PHA is applying to HUD under Section 18 Demolition and Disposition of the Housing Act of 1937 to re-develop Front Street public housing. Section 18 allows all residents the right to compensation for temporary relocation and PHA is pledging 100% Right of Return. Residents will be relocated with Tenant Protection Vouchers in private housing or will be able to move to some of the other 1,000 units of public housing owned by PHA in Portland. We are anticipating at least half of the current families will choose to return to the re-developed Front Street. PHA is pledging 50 Project Based Vouchers to the new project. These will ensure those returning after relocation will have a subsidized unit. 23 units (20%) will be market rate with a goal of protecting existing ELI families while diversifying incomes in the development and neighborhood. The balance of units will be at or below 50% and 60% of Area Median Income.

### Proposed Use of Funds, Market Demand and Measures of Success

Our first and foremost measure of success will be 111 new units of affordable housing. Portland has over 3,000 people on the Section 8 waiting list and there are over 13,000 people statewide who often have to wait 3-5 years for an affordable home. This project will clearly have an effect on over a hundred families. Please see the attached market study to understand the market demand.

The Front Street Redevelopment project has partnered with local social service providers to go beyond beautiful new apartments for its residents and provide critical services to help residents thrive in the community. The focus of these services is to enable empowerment and self-sufficiency. The following services are committed to the project and letters of commitment are available upon request:

- Boys and Girls Club of Southern Maine – After School programs
- Goodwill – Employment and job training supportive services
- LearningWorks – English language and literacy programs and YouthBuild Program
- The Opportunity Alliance – Early Head Start Family Visiting Program

### Financial Feasibility

There is no doubt that Front Street's legacy of a placing low-income housing on a former City dump with poor structural soils combined with drastic cuts to public housing over the life of the project has left this property in desperate need of redevelopment. It also means the project has costs that many other projects do not have: The size of the site is two City blocks spanning 4 acres. 50 families will be temporarily moved, re-housed and returned, all with financial support required in the Uniform Relocation Act. The project has a DEP VRAP plan for remediation of the soils. Hazardous materials will need to be removed from the buildings prior to demolition.

These initial costs are considered "Seller's costs." PHA has received \$250,000 of CDBG funds from the City of Portland as well as a \$125,000 grant from the TD Charitable Foundation Housing for Everyone competition in 2017. These funds, as well as potential EPA Brownfields funds and PHA non-federal reserves will pay for all "Seller Cost" that are NOT part of this application.

The project has already secured \$3,900,000 of AHP funds from the Federal Home Loan Bank of Boston through our construction lender, Bath Savings. We are applying to MaineHousing for 4% LIHTC and Tax-Exempt Debt and will request a City of Portland Housing Trust Fund 0% loan as well. Please see the attached pro forma development budget, sources and uses, operating budget and 15-year operating pro forma.

### Capacity to Develop the Project

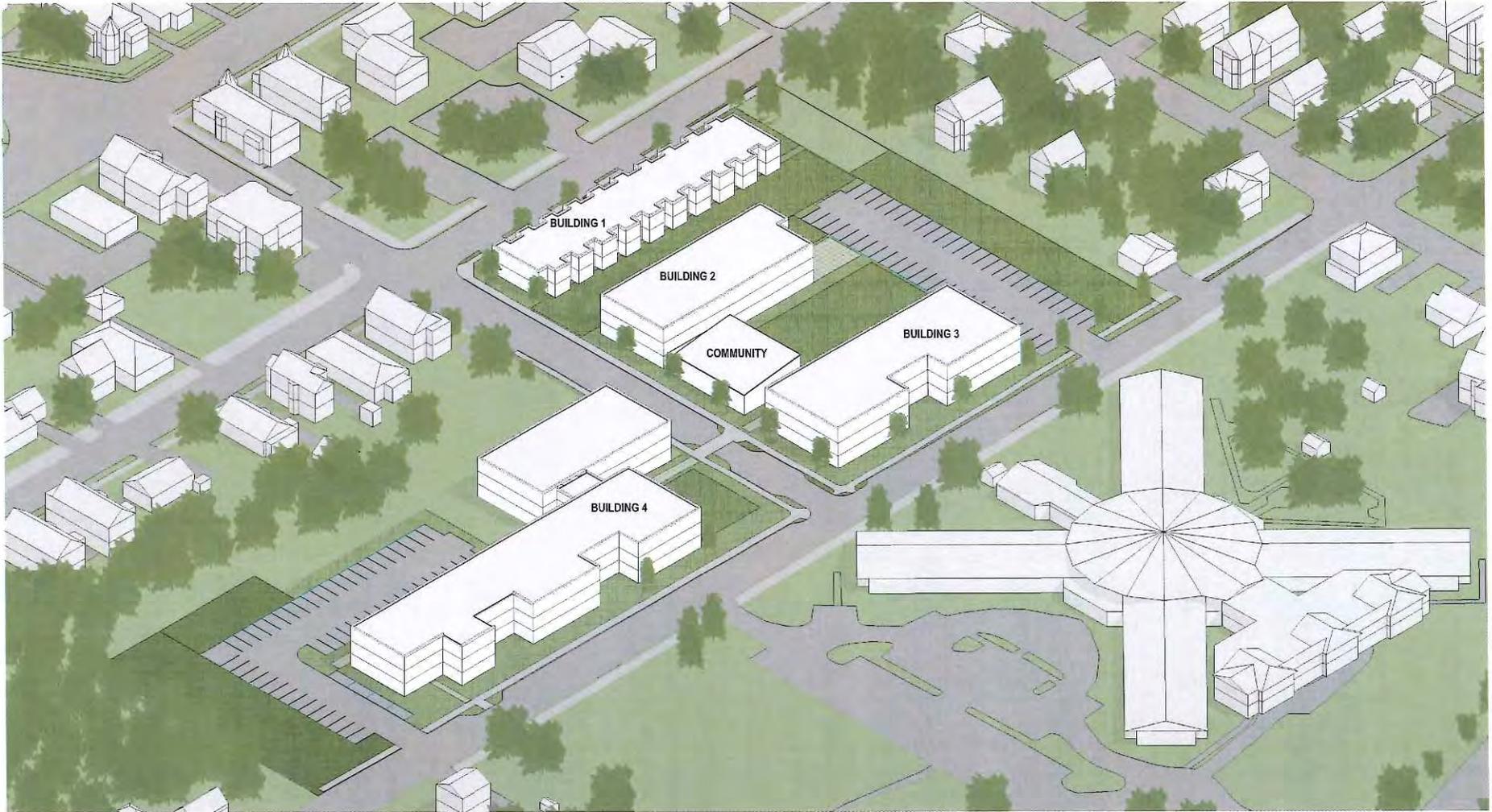
The Portland Housing Authority hired Jay Waterman as their Real Estate Development Director over three years ago. Since that time, Bayside Anchor, a 45-unit mixed-income multi-family affordable housing project has been built and occupied. Mr. Waterman is the project manager for the Front Street project. Mark Adelson, PHA's Executive Director, is also integrally involved in the project, assisting with the Relocation Plan for temporary relocation of Front Street families. Our HUD application process is being supported by Joe Schiff, a former HUD deputy undersecretary. Our relocation planning is being supported by Andrew Daniels of MAPPLAN Partners. Gary Vogel of Drummond Woodsum is our legal counsel. Our property management firm will be Avesta Housing.

PHA has assembled a top-notch design team for the project, including Utile Architecture and Planning from Boston, Carroll Associates Landscape Architects, Allied Engineering, Ransom Environmental Consulting, and Thornton Tomasetti to assist with Passive House certification.

### Neighborhood and Design Compatibility

Front Street has been affordable public housing for the last 47 years. The project has been a low-density development that has the potential for significantly more density with the Division 30 changes. We feel the proposed design will have a more connective fabric with the surrounding neighborhood than the existing building. Walkability, scale, connectivity and permeability are all part of the design. We have worked with City planning and urban design staff for the last 18 months on this project and will continue to work with them as we bring this to the planning board in the Summer of 2018.

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DISCLAIMER: These plans are conceptual only. They have not been subject to a comprehensive code and regulatory review, nor have they been tested against any as-built surveys. Discoveries in such an analysis may result in fundamental changes to the original concept.

PHA FRONT STREET DEVELOPMENT  
PRESUMPCOT STREET  
PORTLAND, ME 04103

ISOMETRIC VIEW - PROPOSED MASSING  
MARCH 14, 2018



Architecture  
& Planning

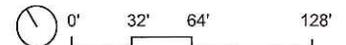
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PHA FRONT STREET DEVELOPMENT  
 PRESUMPCOT STREET  
 PORTLAND, ME 04103

SITE PLAN  
 MARCH 14, 2018

DISCLAIMER: These plans are conceptual only. They have not been subject to a comprehensive code and regulatory review, nor have they been tested against any so-called surveys. Discoveries in such an analysis may result in fundamental changes to the original concept.



Architecture  
 & Planning

**utile**

**Project Completion Schedule**

| Activity                      | Actual/Scheduled Date<br>Month/Year |
|-------------------------------|-------------------------------------|
| A. SITE                       |                                     |
| Option/Contract               | 01/05/17                            |
| Site Acquisition              | 06/15/19                            |
| Zoning Approval               | 08/15/18                            |
| Site Analysis                 | 10/15/17                            |
| B. FINANCING                  |                                     |
| Construction Loan Commitment  | 09/01/18                            |
| Permanent Loan Commitment     | 09/01/18                            |
| Other Sources Committed       | 09/01/18                            |
| C. PLANS AND SPECIFICATIONS   |                                     |
| 50%                           | 10/15/18                            |
| 90%                           | 02/01/19                            |
| 100%                          | 03/15/19                            |
| D. CONSTRUCTION LOAN CLOSING  | 06/15/19                            |
| E. CONSTRUCTION START         | 06/20/19                            |
| F. COMPLETION OF CONSTRUCTION | 09/01/20                            |
| G. LEASE-UP                   |                                     |
| Initial Lease-up              | 09/15/20                            |
| Sustained (95%) Occupancy     | 05/01/21                            |

Please account for application processing - approximately 60 days from the application due date.

| DEVELOPMENT ASSUMPTIONS    |        |            |                       |           |          |           |
|----------------------------|--------|------------|-----------------------|-----------|----------|-----------|
| Total Units                |        | 111        | Inflation Adjustments | Yr 1-5    | Yr. 6-15 | Yr. 16-30 |
| # @ 40% AMI                | 0.0%   | 0          | Rent                  | 2.00%     | 2.00%    | 2.00%     |
| # @ 50% AMI (PBV Low HOME) | 45.0%  | 50         | Operating Expense     | 3.00%     | 3.00%    | 3.00%     |
| # @ 50% AMI (LIHTC)        | 31.5%  | 35         | Other Income          | 2.00%     | 2.00%    | 2.00%     |
| # @ 80% AMI (High HOME)    | 0.0%   | 0          | Debt Coverage Ratio   | 1.15      |          |           |
| # @ 80% AMI (LIHTC)        | 2.7%   | 3          | Vacancy               | 5%        |          |           |
| # @ Market                 | 20.7%  | 23         |                       |           |          |           |
| Appraised Market Value     | 100.0% | 17,190,480 | Market Value/Unit     | \$154,889 |          |           |

| Pro Forma Development Budget               |                   |                |            |                   |
|--|-------------------|----------------|------------|-------------------|
|  | Residential       | Per Unit       | Commercial | Total             |
| Site Improvements                          | 1,326,000         | 11,946         |            | 1,326,000         |
| Construction                               | 18,421,902        | 165,963        |            | 18,421,902        |
| Demolition                                 | 0                 | 0              |            | 0                 |
| Builder Overhead                           | 400,000           | 3,604          |            | 400,000           |
| Builder Profit                             | 780,000           | 7,027          |            | 780,000           |
| Bond Premium                               | 50,000            | 450            |            | 50,000            |
| Construction Contingency                   | 5% 1,048,895      | 9,450          |            | 1,048,895         |
| <b>Subtotal Construction Costs</b>         | <b>22,026,797</b> | <b>198,440</b> | <b>0</b>   | <b>22,026,797</b> |
| Building Permits and Fees                  | 322,613           | 2,906          |            | 322,613           |
| Survey & Engineering                       | 103,900           | 936            |            | 103,900           |
| Architectural & Design                     | 945,000           | 8,514          |            | 945,000           |
| Legal                                      | 73,000            | 658            |            | 73,000            |
| Title & Recording                          | 15,000            | 135            |            | 15,000            |
| Accounting                                 | 8,000             | 72             |            | 8,000             |
| Construction Period Tax                    | 2,000             | 18             |            | 2,000             |
| Construction Period Insurance              | 25,000            | 225            |            | 25,000            |
| Soft Cost Contingency                      | 42,000            | 378            |            | 42,000            |
| <b>Subtotal Soft Costs</b>                 | <b>1,536,513</b>  | <b>13,842</b>  | <b>0</b>   | <b>1,536,513</b>  |
| Construction Loan Origination Fees         | 8,500             | 77             |            | 8,500             |
| Construction Loan Interest                 | 700,000           | 6,306          |            | 700,000           |
| Constr Partic. Fee/Perm Loan Fee           | 282,500           | 2,545          |            | 282,500           |
| Lend Inspec, Const legal, Letter of Credit | 28,750            | 259            |            | 28,750            |
| <b>Subtotal Finance Costs</b>              | <b>1,019,750</b>  | <b>9,187</b>   | <b>0</b>   | <b>1,019,750</b>  |
| Market Survey                              | 5,200             | 47             |            | 5,200             |
| Appraisal                                  | 6,000             | 54             |            | 6,000             |
| Environmental Study                        | 13,500            | 122            |            | 13,500            |
| LIHTC Fees/ prepd monitor                  | 142,625           | 1,285          |            | 142,625           |
| Commissioning                              | 47,080            | 424            |            | 47,080            |
| FF&E                                       | 89,000            | 802            |            | 89,000            |
| <b>Subtotal Miscellaneous</b>              | <b>303,405</b>    | <b>2,733</b>   | <b>0</b>   | <b>303,405</b>    |
| Acquisition: Buildings                     | 0                 | 0              |            | 0                 |
| Acquisition: Land                          | 0                 | 0              |            | 0                 |
| Acquisition: Legal                         | 0                 | 0              |            | 0                 |
| <b>Subtotal Acquisition</b>                | <b>0</b>          | <b>0</b>       | <b>0</b>   | <b>0</b>          |
| Operating Deficit Escrow                   | 925,000           | 8,333          |            | 925,000           |
| Pre-funded Replacements                    | 196,519           | 1,770          |            | 196,519           |
| Tax & Insurance Escrow                     | 126,592           | 1,140          |            | 126,592           |
| Working Capital / Relocation               | 0                 | 0              |            | 0                 |
| GP Contribution                            | 0                 | 0              |            | 0                 |
| Developer Overhead                         | 2,000,000         | 18,018         |            | 2,000,000         |
| Developer Profit                           | 1,900,000         | 17,117         |            | 1,900,000         |
| Rent-up & Marketing                        | 50,000            | 450            |            | 50,000            |
| <b>Subtotal Fee and Reserves</b>           | <b>5,198,111</b>  | <b>46,830</b>  | <b>0</b>   | <b>5,198,111</b>  |
| <b>Total Project Costs</b>                 | <b>30,084,575</b> | <b>271,032</b> | <b>0</b>   | <b>30,084,575</b> |
| <b>Total Development Costs (MSHA)</b>      | <b>28,526,950</b> | <b>257,000</b> |            |                   |
| <b>Total Development Cost (MSHA) Index</b> |                   | <b>208,190</b> |            |                   |

|              |           |
|--------------|-----------|
| LIHTC Alloc. | 933,564   |
| Equity yield | 0.89      |
| Synd. %      | 99.99%    |
| Equity Raise | 8,307,892 |

|                     |        |
|---------------------|--------|
| Historic Credit FED | 0      |
| Equity yield        | 0.85   |
| Synd. %             | 99.99% |
| Equity Raise        | 0      |

|                       |        |
|-----------------------|--------|
| Historic Credit STATE | 0      |
| Equity yield          | 0.88   |
| Synd. %               | 99.99% |
| Equity Raise          | 0      |

Total Equity: 8,307,892

|                          |          |
|--------------------------|----------|
| Gross Square Footage     | 132,000  |
| Construction Cost/Sq ft. | \$158.92 |

| Front Street Re-Development - Sources and Uses |                   |                           |
|--|-------------------|---------------------------|
| <b>Sources</b>                                 |                   |                           |
| Development Fee Loan                           | 2,400,000         |                           |
| Tax Exempt Bond Loan                           | 14,045,415        |                           |
| AHP Loan                                       | 3,406,000         |                           |
| FHLB Subsidy                                   | 500,000           |                           |
| City Housing Trust Funds                       | 589,728           |                           |
| <b>City HOME Funds</b>                         | <b>841,540</b>    |                           |
| Net Syndication                                | 8,307,892         | 933,564 Credit Allocation |
| Sponsor Loan                                   | 0                 |                           |
| <b>Total</b>                                   | <b>30,084,575</b> |                           |
| <b>Uses</b>                                    |                   |                           |
| Construction                                   | 22,026,797        | \$158.92 /sf Construction |
| Soft Costs                                     | 1,536,513         |                           |
| Finance Costs                                  | 1,019,750         |                           |
| Miscellaneous                                  | 303,405           |                           |
| Acquisition                                    | 0                 |                           |
| Reserves                                       | 1,298,111         |                           |
| Developer Fee                                  | 3,900,000         |                           |
| <b>Total</b>                                   | <b>30,084,575</b> | 271.032 Gross TDC / Unit  |
|  |                   | 257,000 Adj. TDC / unit   |
| <b>Changes to this pro forma version</b>       |                   |                           |
| 111 units                                      |                   |                           |
| Trending at 2% income / 3% expenses            |                   |                           |
| New LIHTC and PBV rents as of April 2018       |                   |                           |
| OPEX increased to \$7,700/unit                 |                   |                           |
| No MSHA subsidy                                |                   |                           |
| City HOME funds                                |                   |                           |
| Adjusted TDC index calculation                 |                   |                           |

|                                 |           |
|---------------------------------|-----------|
| MAXIMUM DEVELOPER FEE AVAILABLE | 3,927,686 |
| ACTUAL DEVELOPER FEE            | 3,900,000 |
| % OF MAXIMUM DEVELOPER FEE      | 99.3%     |
| NET DEVELOPER FEE COLLECTED     | 1,500,000 |
| % OF MAXIMUM DEVELOPER FEE      | 38.2%     |

| FLOW OF FUNDS               |                  |                     |                  |                  |                  |                   |                  |                  |                   |
|-----------------------------|------------------|---------------------|------------------|------------------|------------------|-------------------|------------------|------------------|-------------------|
| Sources                     | CLC              | During Construction |                  |                  |                  | PLC               | 2018             | 2019             | Total             |
|                             | 10/15/18         | 1/13/19             | 4/13/19          | 7/12/19          | 10/10/19         | 12/14/19          |                  |                  |                   |
| Beginning Cash              | 0                | 0                   | 0                | 0                | 0                | 0                 | 3,084,605        | 2,992,302        | 0                 |
| Capital Contribution        | 830,789          |                     | 0                | 2,076,973        |                  | 4,984,735         | 207,697          | 207,698          | 8,307,892         |
| Construction Loan           | 1,563,245        | 5,006,699           | 5,506,699        | 3,429,726        | 5,556,699        |                   |                  |                  | 21,063,069        |
| GP Bridge Loan              |                  |                     |                  |                  |                  |                   |                  |                  | 0                 |
| MH Subsidy                  | 0                |                     |                  |                  |                  | 0                 |                  |                  | 0                 |
| Tax Exempt Bond Loan        |                  |                     |                  |                  |                  | 14,045,415        |                  |                  | 14,045,415        |
| Conventional First Mortgage |                  |                     |                  |                  |                  |                   |                  |                  | 0                 |
| AHP Loan                    |                  |                     |                  |                  |                  | 3,400,000         |                  |                  | 3,400,000         |
| Seller Note                 |                  |                     |                  |                  |                  | 0                 |                  |                  | 0                 |
| City Housing Trust Fund     | 294,864          |                     |                  |                  |                  | 294,864           |                  |                  | 589,728           |
| City FedHOME                | 420,770          |                     | 0                |                  |                  | 420,770           |                  |                  | 841,540           |
| AHP Subsidy                 | 0                | 500,000             |                  |                  |                  |                   |                  |                  | 500,000           |
| Development Fee Loan        |                  |                     |                  |                  |                  | 2,400,000         |                  |                  | 2,400,000         |
| <b>TOTAL SOURCES</b>        | <b>3,109,668</b> | <b>5,506,699</b>    | <b>5,506,699</b> | <b>5,506,699</b> | <b>5,556,699</b> | <b>25,545,784</b> | <b>3,292,302</b> | <b>3,200,000</b> | <b>51,147,644</b> |
| <b>Uses</b>                 |                  |                     |                  |                  |                  |                   |                  |                  |                   |
| Acquisition                 | 0                |                     |                  |                  |                  |                   |                  |                  | 0                 |
| Construction                |                  | 5,506,699           | 5,506,699        | 5,506,699        | 5,506,699        |                   |                  |                  | 22,026,797        |
| Soft Costs                  | 1,536,513        | 0                   | 0                | 0                | 0                | 0                 |                  |                  | 1,536,513         |
| Financing Costs             | 1,019,750        |                     |                  |                  |                  | 0                 |                  |                  | 1,019,750         |
| Miscellaneous               | 303,405          |                     |                  |                  |                  | 0                 |                  |                  | 303,405           |
| Dev Fee                     | 250,000          |                     |                  |                  |                  | 150,000           | 300,000          | 3,200,000        | 3,900,000         |
| Reserves                    |                  |                     |                  |                  | 50,000           | 1,248,111         |                  |                  | 1,298,111         |
| <b>TOTAL DEV. COSTS</b>     | <b>3,109,668</b> | <b>5,506,699</b>    | <b>5,506,699</b> | <b>5,506,699</b> | <b>5,556,699</b> | <b>1,398,111</b>  | <b>300,000</b>   | <b>3,200,000</b> | <b>30,084,575</b> |
| Repay GP Bridge Loan        |                  |                     |                  |                  |                  | 0                 |                  |                  | 0                 |
| Repay Construction Loan     |                  |                     |                  |                  |                  | 21,063,069        |                  |                  | 21,063,069        |
| Other Syndication Costs     | 0                |                     |                  |                  |                  | 0                 |                  |                  | 0                 |
| SUBTOTAL OTHER ITEMS        | 0                | 0                   | 0                | 0                | 0                | 21,063,069        | 0                | 0                | 21,063,069        |
| <b>TOTAL USES OF FUNDS</b>  | <b>3,109,668</b> | <b>5,506,699</b>    | <b>5,506,699</b> | <b>5,506,699</b> | <b>5,556,699</b> | <b>22,461,179</b> | <b>300,000</b>   | <b>3,200,000</b> | <b>51,147,644</b> |
| Ending Cash                 | 0                | 0                   | 0                | 0                | 0                | 3,084,605         | 2,992,302        | 0                | 0                 |

Total loan SXXXXXX incl. \$500k City

CLC  
PLC  
8609  
Stabilized

| PROJECT FINANCING                 |                   |       |      |           |            |          |           |
|-----------------------------------|-------------------|-------|------|-----------|------------|----------|-----------|
| Source                            | Amount            | Rate  | Term | Lien      | Annual D/S |          |           |
|                                   |                   |       |      |           | Yr. 1-5    | Yr. 6-15 | Yr. 16-30 |
| Source 1: MH Subsidy              | 0                 | 0.00% | 30   | First     | 0          | 0        | 0         |
| Source 2: Tax Exempt Bond Loan    | 14,045,415        | 5.50% | 30   | First     | 772,498    | 772,498  | 772,498   |
| Source 3: AHP Loan                | 3,400,000         | 5.00% | 30   | First     | 219,023    | 219,023  | 219,023   |
| Source 4: Seller Note             | 0                 | 0.00% | 30   |           | 0          | 0        | 0         |
| Source 5: City Housing Trust Fund | 589,728           |       |      |           |            |          |           |
| Source 7: City FedHOME            | 841,540           | 0.00% | 30   | Third     | 0          |          | 0         |
| Source 8: AHP Subsidy             | 500,000           |       |      | Third     |            | Grant    |           |
| Source 9: Development Fee Loan    | 2,400,000         |       |      | cash flow | 0          | 0        | 0         |
| Source 10: Net Syndication        | 8,307,892         | 50.89 |      |           |            |          |           |
| Capitalization Gap                | 0                 |       |      |           |            |          |           |
| <b>Total</b>                      | <b>30,084,575</b> |       |      |           |            |          |           |

| COLLATERAL COVERAGE         |            |          |
|-----------------------------|------------|----------|
|                             | Total      | Per Unit |
| Projected Mortgage          | 14,045,415 | 126,535  |
| Appraised Market Value      | 17,190,480 | 154,869  |
| Loan to Value Ratio         | 82%        |          |
| Market Rent Differential    | 248,892    | 187      |
| Subsidy per Low Income Unit |            | 0        |

| PROPOSED RENT SCHEDULE |               |           |                        |                   |            |             |                |            |
|------------------------|---------------|-----------|------------------------|-------------------|------------|-------------|----------------|------------|
| Type                   | AMI           | # Units   | Rents from Applicant   | Program Max Rents | Gross Rent | Market Rent | Utility Allow. | Total Rent |
| 0BR                    | 40% LIHTC     | 0         |                        |                   |            | \$1,000     | 0              | 0          |
|                        | 50% LIHTC PBV | 0         | 788                    | 788               | 788        | \$1,000     | 0              | 0          |
|                        | 50% LIHTC     | 0         | 788                    | 788               | 788        | \$1,000     | 0              | 0          |
|                        | 60% HOME      | 0         |                        |                   |            | \$1,000     | 0              | 0          |
|                        | 60% LIHTC     | 0         | 946                    | 946               | 946        | \$1,000     | 0              | 0          |
|                        | Market        | 0         | \$900                  | \$900             | 900        | \$1,000     | 0              | 0          |
| 1BR                    | 40% LIHTC     | 0         |                        |                   |            | \$1,100     | 0              | 0          |
|                        | 50% LIHTC PBV | 7         | 845                    | 845               | 845        | \$1,100     | 0              | 70,980     |
|                        | 50% LIHTC     | 11        | 845                    | 845               | 845        | \$1,100     | 0              | 111,540    |
|                        | 60% HOME      | 0         |                        |                   |            | \$1,100     | 0              | 0          |
|                        | 60% LIHTC     | 0         | 1014                   | 1014              | 1,014      | \$1,100     | 0              | 0          |
|                        | Market        | 11        | \$990                  | \$990             | 990        | \$1,100     | 0              | 130,680    |
| 2BR                    | 40% LIHTC     | 0         |                        |                   |            | \$1,300     | 0              | 0          |
|                        | 50% HOME      | 0         |                        |                   |            | \$1,300     | 0              | 0          |
|                        | 50% LIHTC PBV | 7         | 1013                   | 1013              | 1013       | \$1,300     | 0              | 85,092     |
|                        | 50% LIHTC     | 19        | 1013                   | 1013              | 1,013      | \$1,300     | 0              | 230,964    |
|                        | 60% LIHTC     | 0         | 1216                   | 1216              | 1216       | \$1,300     | 0              | 0          |
|                        | Market        | 12        | \$1,170                | \$1,170           | 1,170      | \$1,300     | 0              | 168,480    |
| 3BR                    | 40% LIHTC     | 0         |                        |                   |            | \$1,600     | 0              | 0          |
|                        | 50% LIHTC     | 5         | 1171                   | 1171              | 1,171      | \$1,600     | 0              | 70,260     |
|                        | 50% LIHTC PBV | 19        | 1171                   | 1171              | 1171       | \$1,600     | 0              | 266,888    |
|                        | High HOME     | 0         |                        |                   |            | \$1,600     | 0              | 0          |
|                        | 60% LIHTC     | 3         | 1,406                  | 1,406             | 1,406      | \$1,600     | 0              | 50,616     |
|                        | Market        | 0         | \$1,440                | \$1,440           | 1,440      | \$1,600     | 0              | 0          |
| 4BR                    | 50% LIHTC     | 0         | 1307                   | 1307              | 1,307      | \$1,900     | 0              | 0          |
|                        | 50% LIHTC PBV | 13        | 1307                   | 1307              | 1,307      | \$1,900     | 0              | 203,892    |
|                        | 60% HOME      | 0         |                        |                   |            | \$1,900     | 0              | 0          |
|                        | 60% LIHTC     | 0         | 1569                   | 1569              | 1,569      | \$1,900     | 0              | 0          |
|                        | Market        | 0         | \$1,615                | \$1,615           | 1,615      | \$1,900     | 0              | 0          |
|                        | 5BR           | 50% LIHTC | 0                      | \$1,442           | \$1,442    | \$1,442     | \$2,200        | 0          |
| 50% LIHTC PBV          | 4             | \$1,442   | \$1,442                | \$1,442           | \$2,200    | 0           | 69,216         |            |
| 60% HOME               | 0             |           |                        |                   | \$2,200    | 0           | 0              |            |
| 60% LIHTC              | 0             | \$1,731   | \$1,731                | \$1,731           | \$2,200    | 0           | 0              |            |
| Market                 | 0             |           |                        |                   |            |             | 0              | 0          |
| Other:                 |               |           |                        |                   |            |             |                | 0          |
| Subtotals              |               | 111       |                        |                   |            |             |                | 1,458,708  |
| # PBVs                 | 50            |           | Vacancy Rate           | 5%                |            |             |                | -96,167    |
|                        |               |           | Other Income           | PBV-HAP Diff.     |            |             |                | 464,628    |
|                        |               |           | Other Income           | Laundry           |            |             |                | 11,100     |
|                        |               |           | Other Income           | 75% TIF           |            |             |                | 146,138    |
|                        |               |           | Effective Gross Income |                   |            |             |                | 1,984,407  |

| AFFORDABLE MORTGAGE CALCULATION |       |           |
|---------------------------------|-------|-----------|
| Effective Gross Income          |       | 1,984,407 |
| Annual Operating Expense        |       | 858,060   |
| Stabilized NOI                  |       | 1,126,346 |
| DSC                             | 1.15  | 146,915   |
| \$ Avail for D/S                |       | 979,432   |
| Other DS                        |       | 772,498   |
| Balance                         |       | 206,934   |
| Affordable Mortgage             | 5.50% | 3,037,129 |

| BREAKEVEN ANALYSIS: | RENT SENSITIVITY |        | OCCUPANCY           |           |
|---------------------|------------------|--------|---------------------|-----------|
|                     | Total            | Annual | Gross Revenues      | Annual    |
| Operating Expense   | 858,060          |        |                     | 1,934,436 |
| Debt Service        | 991,521          |        |                     |           |
| Breakeven Rent      | 1,389            |        | Breakeven Occupancy | 95%       |

| OPERATING EXPENSES                                  |                    |                 |
|---|--------------------|-----------------|
| Expense   | Residential Annual | Annual Per Unit |
| <b>Administrative Expenses:</b>                     |                    |                 |
| Management Fees                                     | 109,630            | 988             |
| Management Charges                                  | 109,630            | 988             |
| Marketing Expenses                                  | 500                | 5               |
| Legal Expenses                                      | 4,000              | 36              |
| Auditing Expenses                                   | 7,000              | 63              |
| Other Administrative Expenses                       | 0                  | 0               |
| Administrative Expenses                             | 230,790            | 2,079           |
| <b>Operating Expenses:</b>                          |                    |                 |
| Janitorial Payroll                                  | 0                  | 0               |
| Janitorial Supplies and Equipment                   | 0                  | 0               |
| Janitorial Contractual Services                     | 40,000             | 360             |
| Natural Gas Heat & HW                               | 45,000             | 405             |
| Electricity   | 50,000             | 450             |
| Water and Sewer                                     | 42,000             | 378             |
| Garbage and Trash Removal                           | 35,000             | 315             |
| Vehicle and Equipment Expenses                      | 0                  | 0               |
| Other Operating Expenses                            | 0                  | 0               |
| Operating Expenses                                  | 212,000            | 1,910           |
| <b>Maintenance Expenses:</b>                        |                    |                 |
| Grounds Maintenance Payroll                         | 0                  | 0               |
| Grounds Tools and Supplies                          | 0                  | 0               |
| Grounds Contractual Services                        | 18,000             | 162             |
| Miscellaneous Ground Maintenance                    | 0                  | 0               |
| Tenant Damage Charges - Grounds                     | 0                  | 0               |
| Building Maintenance Payroll                        | 0                  | 0               |
| Building Tools and Supplies                         | 5,500              | 50              |
| Building Contractual Services                       | 45,000             | 405             |
| Building Systems Maintenance                        | 42,000             | 378             |
| Miscellaneous Building Maintenance                  | 500                | 5               |
| Tenant Damage Charges - Building                    | 0                  | 0               |
| Maintenance Expenses                                | 111,000            | 1,000           |
| <b>General Expenses:</b>                            |                    |                 |
| Property Taxes                                      | 194,850            | 1,755           |
| Property and Liability Insurance                    | 25,000             | 225             |
| Tenant Computer Network Expense                     | 2,500              | 23              |
| Tenant Service Expenses                             | 32,000             | 288             |
| General Expenses                                    | 254,350            | 2,291           |
| Replacement Reserve Funding                         | 49,950             | 450             |
| Commercial Expenses (if applicable)                 | 0                  | 0               |
| Total   | 858,060            | 7,730           |
| Operating Cost per unit without Replacement Reserve |                    | 7,280           |
| Social Service Multi-Use Space portion of rent      | 0                  |                 |

0 check versus OPEX

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT

|                           | 0 Months   |          |               |                |                |                |                |                |                |                |                |                 |                 |
|---------------------------|------------|----------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------|-----------------|
|                           | PLC        | 12/14/19 | 0<br>12/31/19 | 12<br>12/30/20 | 24<br>12/30/21 | 36<br>12/30/22 | 48<br>12/31/23 | 60<br>12/30/24 | 72<br>12/30/25 | 84<br>12/30/26 | 96<br>12/31/27 | 108<br>12/30/28 | 120<br>12/30/29 |
| Effective Gross Income    |            |          | 0             | 2,024,065      | 2,064,577      | 2,105,868      | 2,147,986      | 2,190,945      | 2,234,764      | 2,279,460      | 2,325,049      | 2,371,550       | 2,418,981       |
| Less Operating Expense    |            |          | 0             | 883,802        | 910,316        | 937,626        | 965,754        | 994,727        | 1,024,569      | 1,055,306      | 1,086,965      | 1,119,574       | 1,153,161       |
| Net Operating Income      |            |          | 0             | 1,140,263      | 1,154,261      | 1,168,243      | 1,182,231      | 1,196,218      | 1,210,195      | 1,224,154      | 1,238,084      | 1,251,976       | 1,265,819       |
| Less RLP Repay            |            |          | 0             | 772,498        | 772,498        | 772,498        | 772,498        | 772,498        | 772,498        | 772,498        | 772,498        | 772,498         | 772,498         |
| Less Other Repay          |            |          | 0             | 219,023        | 219,023        | 219,023        | 219,023        | 219,023        | 219,023        | 219,023        | 219,023        | 219,023         | 219,023         |
| Cash Flow                 |            |          | 0             | 148,772        | 162,740        | 176,722        | 190,710        | 204,697        | 218,674        | 232,633        | 246,563        | 260,455         | 274,298         |
| Cash Flow per Unit        |            |          | #DIV/0!       | 1,340          | 1,466          | 1,592          | 1,718          | 1,844          | 1,970          | 2,096          | 2,221          | 2,346           | 2,471           |
| Debt Coverage Ratio(RLP)  |            |          | 0.00          | 1.15           | 1.16           | 1.18           | 1.19           | 1.21           | 1.22           | 1.23           | 1.25           | 1.26            | 1.28            |
| MH Subsidy                |            | 0        | 0             | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0               | 0               |
| Tax Exempt Bond Loan      | 14,045,415 | #NUM!    |               | 13,856,211     | 13,656,334     | 13,445,182     | 13,222,120     | 12,986,475     | 12,737,539     | 12,474,560     | 12,196,747     | 11,903,263      | 11,593,225      |
| Principal Balance(RLP)    | 14,045,415 | #NUM!    |               | 13,856,211     | 13,656,334     | 13,445,182     | 13,222,120     | 12,986,475     | 12,737,539     | 12,474,560     | 12,196,747     | 11,903,263      | 11,593,225      |
| Operating Reserve Balance |            | 925,000  | 971,250       | 1,019,813      | 1,070,803      | 1,124,343      | 1,180,560      | 1,239,588      | 1,301,568      | 1,366,646      | 1,434,879      | 1,506,728       | 1,582,064       |

Total Cash Flow  
Projected over 12 Yrs  
2,705,143

|                           | Yr 15      |            |            |            |            |           |           |           |           |           |           |           |           |
|---------------------------|------------|------------|------------|------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|                           |            | 12/30/30   | 12/31/31   | 12/30/32   | 12/30/33   | 12/30/34  | 12/31/35  | 12/30/36  | 12/30/37  | 12/30/38  | 12/31/39  | 12/30/40  |           |
| Effective Gross Income    |            | 2,467,360  | 2,516,708  | 2,567,042  | 2,618,382  | 2,670,750 | 2,724,165 | 2,778,648 | 2,834,221 | 2,890,906 | 2,948,724 | 3,007,698 |           |
| Less Operating Expense    |            | 1,187,756  | 1,223,398  | 1,260,090  | 1,297,893  | 1,336,830 | 1,376,835 | 1,418,243 | 1,460,790 | 1,504,614 | 1,549,752 | 1,596,245 |           |
| Net Operating Income      |            | 1,279,604  | 1,293,319  | 1,306,951  | 1,320,489  | 1,333,920 | 1,347,330 | 1,360,406 | 1,373,431 | 1,386,292 | 1,398,972 | 1,411,454 |           |
| Less RLP Repay            |            | 772,498    | 772,498    | 772,498    | 772,498    | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   |           |
| Less Other Repay          |            | 219,023    | 219,023    | 219,023    | 219,023    | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   |           |
| Cash Flow                 |            | 286,083    | 301,798    | 315,430    | 328,968    | 342,399   | 355,709   | 368,884   | 381,910   | 394,771   | 407,451   | 419,932   |           |
| Cash Flow per Unit        |            | 2,595      | 2,719      | 2,842      | 2,964      | 3,085     | 3,205     | 3,323     | 3,441     | 3,556     | 3,671     | 3,783     |           |
| Debt Coverage Ratio(RLP)  |            | 1.29       | 1.30       | 1.32       | 1.33       | 1.35      | 1.36      | 1.37      | 1.39      | 1.40      | 1.41      | 1.42      |           |
| MH Subsidy                |            | 0          | 0          | 0          | 0          | 0         | 0         | 0         | 0         | 0         | 0         | 0         |           |
| Tax Exempt Bond Loan      | 11,593,225 | 11,265,698 | 10,919,695 | 10,554,176 | 10,168,038 | 9,760,119 | 9,329,191 | 8,873,954 | 8,393,039 | 7,884,996 | 7,348,296 | 6,781,322 |           |
| Principal Balance(RLP)    | 11,593,225 | 11,265,698 | 10,919,695 | 10,554,176 | 10,168,038 | 9,760,119 | 9,329,191 | 8,873,954 | 8,393,039 | 7,884,996 | 7,348,296 | 6,781,322 |           |
| Operating Reserve Balance |            | 1,582,064  | 1,661,167  | 1,744,225  | 1,831,437  | 1,923,009 | 2,019,159 | 2,120,117 | 2,226,123 | 2,337,429 | 2,454,300 | 2,577,015 | 2,705,866 |

|                           |           | 12/30/41  | 12/30/42  | 12/31/43  | 12/30/44  | 12/30/45  | 12/30/46  | 12/31/47  | 12/30/48  | 12/29/49  |           |  |
|---------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|--|
| Effective Gross Income    |           | 3,067,852 | 3,129,209 | 3,191,794 | 3,255,630 | 3,320,742 | 3,387,157 | 3,454,900 | 3,523,998 | 3,594,478 |           |  |
| Less Operating Expense    |           | 1,644,132 | 1,693,456 | 1,744,260 | 1,796,588 | 1,850,485 | 1,906,000 | 1,963,180 | 2,022,075 | 2,082,738 |           |  |
| Net Operating Income      |           | 1,423,720 | 1,435,753 | 1,447,534 | 1,459,042 | 1,470,257 | 1,481,157 | 1,491,720 | 1,501,923 | 1,511,740 |           |  |
| Less RLP Repay            |           | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   | 772,498   |           |  |
| Less Other Repay          |           | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   | 219,023   |           |  |
| Cash Flow                 |           | 432,199   | 444,232   | 456,013   | 467,521   | 478,736   | 489,636   | 500,199   | 510,402   | 520,219   |           |  |
| Cash Flow per Unit        |           | 3,894     | 4,002     | 4,108     | 4,212     | 4,313     | 4,411     | 4,506     | 4,598     | 4,687     |           |  |
| Debt Coverage Ratio(RLP)  |           | 1.44      | 1.45      | 1.46      | 1.47      | 1.48      | 1.49      | 1.50      | 1.51      | 1.52      |           |  |
| MH Subsidy                |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |           |  |
| Tax Exempt Bond Loan      | 6,781,322 | 6,182,365 | 5,549,623 | 4,881,189 | 4,175,051 | 3,429,080 | 2,641,031 | 1,808,530 | 929,069   | -0        |           |  |
| Principal Balance(RLP)    | 6,781,322 | 6,182,365 | 5,549,623 | 4,881,189 | 4,175,051 | 3,429,080 | 2,641,031 | 1,808,530 | 929,069   | -0        |           |  |
| Operating Reserve Balance |           | 2,705,866 | 2,841,159 | 2,983,217 | 3,132,378 | 3,288,997 | 3,453,447 | 3,626,119 | 3,807,425 | 3,997,797 | 4,197,687 |  |



**To:** Mary Davis, City of Portland  
**From:** Anne Boynton, Urban Ventures, Inc.  
**Re:** Front Street Housing Redevelopment LP  
 Developed by Portland Housing Development Corporation (PHDC)  
**Date:** June 3, 2018

### Executive Summary

The Front Street Redevelopment will replace 50 units of deteriorated “temporary housing” built in 1971 which is suffering from structural problems with 111 units of new rental housing and a 10 unit homeownership development (which is not part of this request). Due a range of complications including underlying soil contamination and soil structure issues throughout the 4 acre site, size of units (includes 17 units with 4 or 5 bedrooms), zoning constraints limiting project height to 3 stories, and commitments to the neighborhood on design issues, this is quite an expensive development, with a total development cost of \$30 million (which **excludes** all demolition and much of the site work.) The per unit development cost is \$271,032. PHDC is requesting a HOME loan of \$841,540 and is anticipating a Housing Trust Fund request of \$589,728, for a total capital investment from the City of Portland of \$1,431,268.

In order to make use of the 4% LIHTCs and tax exempt bond financing, PHDC is giving up their current property tax exempt ownership structure and is requesting a 75% TIF with an estimated value of \$146,148 in year 1. The TIF will return an estimated \$48,712 to the City in year 1, raising over time, from this property which would not otherwise be on the tax rolls.

### Sources and Uses

| Sources:                      |                  | Uses:                      |                    |
|-------------------------------|------------------|----------------------------|--------------------|
| 1 <sup>st</sup> Mortgage      | \$14,045,415     | Site Improvements          | \$1,326,000        |
| AHP 2 <sup>nd</sup> lien      | \$3,400,000      | Hard Construction          | \$19,651,902       |
| AHP subsidy                   | \$500,000        | Hard Cost Contingency      | \$1,048,895        |
| LIHTC Equity                  | \$8,307,892      | Soft & Misc. Costs         | \$1,839,918        |
| Deferred Dev Fee              | \$2,400,000      | Interest & Financing Costs | \$1,019,750        |
| HOME – Portland               | \$841,540        | Acquisition                | 0                  |
| Housing Trust Fund – Portland | <u>\$589,728</u> | Reserves                   | \$1,298,111        |
|                               |                  | Developer Fee              | <u>\$3,900,000</u> |
| Sources of Funds              | \$30,084,575     | Uses of Funds              | \$30,084,576       |

For analysis of “Uses,” see Development Budget.

### Development Budget

The Total Development Cost for this project is very high, particularly considering there is no acquisition cost and the units will ultimately be modest in scale and amenities (for instance, the 5 bedroom units have only 1.5 baths and a total of 1,400 square feet). Of the six projects receiving HOME commitments in the past 2 years, this project costs 32% more per unit than the next most expensive project (Boyd



Street). Unfortunately, most of this additional cost is an outgrowth of the unique site conditions and neighborhood considerations – either directly in construction costs, architectural & engineering expense, and in construction period interest. Short of abandoning the site or reconfiguring for a narrower, taller structure, there is not a lot of room to reduce costs.

#### **Construction Costs:**

Over \$1.9 million of the site preparation costs will be borne by the PHA prior to transferring the site to the Front Street LP, including hazardous material removal, demolition of existing structures, removal of contaminated soils, and relocation of existing residents. None of these expenses are included in the project budget. Even so, there is still \$1,326,000 in ADDITIONAL site improvements to be borne by the project to address inadequate soil structures and the extensive soil remediation. Construction techniques to secure the foundation on the old landfill will be more expensive than typical.

The existing development is all larger units and the new development will include 44 units of 3 bedrooms or larger. These larger units also push construction costs up – to the largest units are only 1400 sq ft with 1.5 baths, so they are not over investing in amenities. Construction costs are based on an overall conceptual design estimate by Wright-Ryan, so there is not currently much detail to evaluate in terms of value engineering opportunities.

#### **Soft Costs:**

Soft costs are generally in line with other Portland area developments except as related to the extraordinary site conditions which drives up architectural, engineering, and the high total development cost which drives up construction loan interest. Overall high costs also push up soft costs which are calculated on a percentage basis: operating reserve, replacement reserve, and developer fee. Developer fee budgeted at \$3.9 million and is calculated at the maximum allowable by Maine Housing. This works out to 15.64% of total development cost excluding reserves and developers fee. The developer commits to lend 62% of developer fee (\$2.4 million) back to the project for a cash out developer fee of \$1.5 million.

#### **Contingency:**

Hard cost contingency is at 5% which is QUITE thin considering the very preliminary stage of development. The costs are estimated based on an October 2018 start date which is not realistic, so there will be construction inflation which needs to be factored in. Also soil conditions can be very difficult to estimate. We should expect these costs to rise over time.

#### **Acquisition:**

Acquisition price is ZERO.

### **Operating Budget & 20 Year Cashflow Projection**

#### **Project Income:**

The PHA is providing 50 project based vouchers to insure that every returning resident has an affordable unit. There will be 23 market rate 1 and 2 bedroom units, with rents of \$990 & \$1,170 respectively. PHDC states these are discounted 10% vs. true market rate. There will be 38 units affordable at 50% or



60% of AMI with rents ranging from \$880 for a 1 bedroom to \$1,406 for a 3 bedroom. Vacancy is budgeted at 5%.

### **Operating Expense**

Total operating cost per unit is \$7,730, towards the upper end of affordable housing operating costs. However this does not account for the TIF. A property with an equivalent real estate tax subsidy in the form of a PILOT would show operating expenses of \$6,413, exactly in range for affordable housing. Administration is slightly high at \$2,101 per unit. Utilities are currently thin at \$1,234 per unit – given large units and large families, this is inadequate. PHDC has conducted a utility review of comparable units and agrees to increase the utility line item to \$1,527 per unit. Given energy efficient construction and a range of unit sizes, this should be sufficient. Annual contribution to Reserves for Replacement is \$450/unit, which should be sufficient even given the larger units and anticipation of some wear and tear from larger families.

### **20 Year Cashflow & Debt Service Coverage Ratio (DSCR)**

The projected year 1 Debt Service Coverage Ratio (DSCR) is an adequate 1.16. With industry standard inflators of 2% for income and 3% for expense, the projections show the DSCR gradually increasing to 1.43 in year 20.

Since there is a hefty developer fee loan -- \$2.4 mill – which the investors will insist is repaid from cashflow prior to the end of the 15 year tax credit compliance period, there is not a lot of leeway in projected cashflow to retire the City investment in the early years. If the cashflow is divided 75% to the developer fee loan, projections show the developer fee loan fully retired in year 14. Ten percent of cashflow is the minimum which should be retained by the project. If 15% of cashflow goes the City, that would be a repayment of about \$24,000 in the first year, rising to \$50,000 by year 14 when the developer fee loan is fully repaid. The percentage of cashflow paid to the City should be structured to increase at the point the developer fee loan is repaid. If the cashflow share paid to the City rises to 50% when the developer fee is repaid, the full City investment is retired in year 19.

### **Developer Financials**

Portland Housing Authority has submitted audits for FY2014, 2015, 2016 and 2017. Their fiscal year ends 6/30. Their audit as of 6/30/17 showed strong and improving financial health, with current assets of \$13.7 million and current liabilities of \$1.7 million, resulting in a current ratio of 8. The Quick Ratio (cash and cash equivalents divided by current liabilities) is a remarkably healthy 4.9. In 2017, they increased their Net Position by \$1,104,212, as growth in revenues exceeded growth in expenses. This brought their total Net Worth to over \$20 million. Overall, this organization has very strong financial health. This developer has the financial capacity to intervene in a development facing unexpected setbacks and or cost over-runs to keep the development process moving forward. Their financial strength as an organization mitigates the risk of the thin hard and soft cost contingency.

### **Recommendations**

At this time, I recommend a HOME loan in the amount of \$480,174, zero percent interest, payment from cashflow with cashflow waterfall acceptable to City, with the following conditions prior to loan closing:



1. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.
2. Commitment of all sources on terms and conditions acceptable to City of Portland, including acceptable cashflow waterfall, and cashflow projection which shows retirement of developer fee loan and City of Portland loans;
3. Revised operating budget reflective of higher utility costs and cashflow projection satisfactory to City.

# Development Budget with Permanent Sources

Date 5/15/2018  
 Project Name Front Street  
 Project Address \_\_\_\_\_  
 Developer/Sponsor \_\_\_\_\_

Total Units 111  
 Total Square Feet 60,000 incorrect \$1,431,268

|  | <u>Total</u>        | <u>Per Unit</u>  | <u>Per Sq Ft</u> |
|--|---------------------|------------------|------------------|
| <b>Sources of Funds</b>                                  |                     |                  |                  |
| Permanent Financing - 1st Lien                           | \$14,045,415        | \$126,535        | \$234            |
| Permanent Financing - AHP Loan \$3.4 mill Subsidy \$500k | \$3,900,000         | \$35,135         | \$65             |
| Equity (LIHTC/tenant contributions)                      | \$8,307,892         | \$74,846         | \$138            |
| Deferred development fee                                 | \$2,400,000         | \$21,622         | \$40             |
| HOME -- City of Portland                                 | \$841,540           | \$7,581          | \$14             |
| Housing Trust Fund -- City of Portland                   | \$589,728           | \$5,313          | \$10             |
| <b>Total Sources of Funds</b>                            | <b>\$30,084,575</b> | <b>\$271,032</b> | <b>\$501</b>     |

## Uses of Funds

|  |              |                     |                  |
|--|--------------|---------------------|------------------|
| <b>Hard Costs</b>  |              |                     |                  |
| Site Improvements  | \$1,326,000  | \$11,946            | \$22             |
| Rehabilitation   |              | \$0                 | \$0              |
| New Construction   | \$18,421,902 | \$165,963           | \$307            |
| Contractor's Profit, Overhead, & Gen. Requirements       | 6.0%         | \$1,180,000         | \$10,631         |
| Hazardous Materials abatement (if contracted separately) |              | \$0                 | \$0              |
| Demolition Cost (if contracted separately)               |              | \$0                 | \$0              |
| Bond Premium   | \$50,000     | \$450               | \$1              |
| Other  |              | \$0                 | \$0              |
| Hard Cost Contingency (% of hard costs)                  | 5.0%         | \$1,048,895         | \$9,450          |
| <b>Total Hard Costs</b>                                  |              | <b>\$22,026,797</b> | <b>\$198,440</b> |

|  |           |                    |                 |
|--|-----------|--------------------|-----------------|
| <b>Soft Costs</b>  |           |                    |                 |
| Building Permit & Fees                                     | \$322,613 | \$2,906            | \$5             |
| Survey & Engineering                                       | \$103,900 | \$936              | \$2             |
| Design & Permitting (% of const exp)                       | 5.0%      | \$945,000          | \$8,514         |
| Borrower Legal (all closings, excluding syndication legal) | \$73,000  | \$658              | \$1             |
| Title & Recording  | \$15,000  | \$135              | \$0             |
| Accounting   | \$8,000   | \$72               | \$0             |
| Construction Period Taxes                                  | \$2,000   | \$18               | \$0             |
| Construction Period Insurance                              | \$25,000  | \$225              | \$0             |
| Other: FF&E, Security                                      |           | \$0                | \$0             |
| Other  |           | \$0                | \$0             |
| <b>Total Soft Costs</b>                                    |           | <b>\$1,494,513</b> | <b>\$13,464</b> |

|                                    |           |         |      |
|------------------------------------|-----------|---------|------|
| <b>Financing Costs</b>             |           |         |      |
| Construction Loan Origination Fees | \$8,500   | \$77    | \$0  |
| Construction Period Interest       | \$700,000 | \$6,306 | \$12 |
| Lender Inspection Fees             | \$28,750  | \$259   | \$0  |
| Letter of Credit Fee               |           | \$0     | \$0  |

|                              |                    |                |             |
|------------------------------|--------------------|----------------|-------------|
| Permanent Loan Fee           | \$282,500          | \$2,545        | \$5         |
| Construction Lender Legal    |                    | \$0            | \$0         |
| Other                        | \$0                | \$0            | \$0         |
| <b>Total Financing Costs</b> | <b>\$1,019,750</b> | <b>\$9,187</b> | <b>\$17</b> |

|  |                  |                |            |
|--|------------------|----------------|------------|
| <b>Miscellaneous</b>                                 |                  |                |            |
| Market Survey  | \$5,200          | \$47           | \$0        |
| Appraisal  | \$6,000          | \$54           | \$0        |
| Environmental Study                                  | \$13,500         | \$122          | \$0        |
| LIHTC Fees -- prepaid monitoring                     | \$142,625        | \$1,285        | \$2        |
| Other: Commissioning                                 | \$47,080         | \$424          | \$1        |
| Relocation Costs                                     |                  | \$0            | \$0        |
| Other -- FF&E  | \$89,000         | \$802          | \$1        |
| Soft Cost Contingency (% of soft costs excl Dev Fee) | 0.99%            | \$42,000       | \$378      |
| <b>Total Miscellaneous:</b>                          | <b>\$345,405</b> | <b>\$3,112</b> | <b>\$6</b> |

|                          |            |            |            |
|--------------------------|------------|------------|------------|
| <b>Acquisition</b>       |            |            |            |
| Acquisition: Buildings   | \$0        | \$0        | \$0        |
| Acquisition: Land        | \$0        | \$0        | \$0        |
| Acquisition: Legal       | \$0        | \$0        | \$0        |
| Other                    | \$0        | \$0        | \$0        |
| <b>Total Acquisition</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

|   |                    |                 |             |
|---|--------------------|-----------------|-------------|
| <b>Reserves and Developer Fee</b>       |                    |                 |             |
| Operating Deficit Escrow                | \$925,000          | \$8,333         | \$15        |
| Prefunded Replacement Reserve           | \$196,519          | \$1,770         | \$3         |
| Taxes & Insurance Escrow                | \$126,592          | \$1,140         | \$2         |
| Developer Overhead                      | \$2,000,000        | \$18,018        | \$33        |
| Developer Profit                        | \$1,900,000        | \$17,117        | \$32        |
| Rent Up Reserve & Marketing             | \$50,000           | \$450           | \$1         |
| Other                                   | \$0                | \$0             | \$0         |
| <b>Total Reserves and Developer Fee</b> | <b>\$5,198,111</b> | <b>\$46,830</b> | <b>\$87</b> |

|                            |                     |                  |              |
|----------------------------|---------------------|------------------|--------------|
| <b>Total Uses of Funds</b> | <b>\$30,084,576</b> | <b>\$271,032</b> | <b>\$501</b> |
|----------------------------|---------------------|------------------|--------------|

Developer Fee Analysis:            Total Fees: \$3,900,000  
Percent of TDC:            15.64% (excluding reserves & developer fee)

## Project Operating Pro Forma

Date May 15, 2018  
 Project Name Front Street  
 Project Address \_\_\_\_\_  
 Developer/Sponsor \_\_\_\_\_

### Rental Income

| Unit Type     | Number of Units | Per Unit Sq Ft | Total Sq Ft | Restriction on % Median Inc. | Per Unit Monthly Gross Rent | Utility Deductions | Rent Subsidy | Per Unit Monthly Net Rent | Per Unit Net Rent Per Sq Ft | Total Monthly Net Income | Total Annual Net Rent |
|---------------|-----------------|----------------|-------------|------------------------------|-----------------------------|--------------------|--------------|---------------------------|-----------------------------|--------------------------|-----------------------|
| 1 BR          | 7               |                | PBV         | 50%                          | \$845                       |                    |              | \$845                     | #DIV/0!                     | \$5,915                  | \$70,980              |
| 1 BR          | 11              |                | 0           | 50%                          | \$845                       |                    |              | \$845                     | #DIV/0!                     | \$9,295                  | \$111,540             |
| 1 BR          | 11              |                | 0           | market                       | \$990                       |                    |              | \$990                     | #DIV/0!                     | \$10,890                 | \$130,680             |
| 2 BR          | 7               |                | PBV         | 50%                          | \$1,013                     |                    |              | \$1,013                   | #DIV/0!                     | \$7,091                  | \$85,092              |
| 2 BR          | 19              |                | 0           | 50%                          | \$1,013                     |                    |              | \$1,013                   | #DIV/0!                     | \$19,247                 | \$230,964             |
| 2 BR          | 12              |                | 0           | market                       | \$1,170                     |                    |              | \$1,170                   | #DIV/0!                     | \$14,040                 | \$168,480             |
| 3 BR          | 5               |                | 0           | 50%                          | \$1,171                     |                    |              | \$1,171                   | #DIV/0!                     | \$5,855                  | \$70,260              |
| 3 BR          | 19              |                | PBV         | 50%                          | \$1,171                     |                    |              | \$1,171                   | #DIV/0!                     | \$22,249                 | \$266,988             |
| 3 BR          | 3               |                | 0           | 60%                          | \$1,406                     |                    |              | \$1,406                   | #DIV/0!                     | \$4,218                  | \$50,616              |
| 4 BR          | 13              |                | PBV         | 50%                          | \$1,307                     |                    |              | \$1,307                   | #DIV/0!                     | \$16,991                 | \$203,892             |
| Other         | 4               |                | PBV         | 50%                          | \$1,442                     |                    |              | \$1,442                   | #DIV/0!                     | \$5,768                  | \$69,216              |
| Other         |                 |                | 0           | 60%                          |                             |                    |              | \$0                       | #DIV/0!                     | \$0                      | \$0                   |
| <b>Total:</b> | <b>111</b>      |                | <b>0</b>    |                              |                             |                    |              |                           |                             | <b>\$121,559</b>         | <b>\$1,458,708</b>    |

6.59% budgeted vacancy per pro forma

**Operating Expenses**

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

\$48,712 Note: Year 1 is the first full year of stabilized operations

|                                 | Year 1             | Year 1/Unit     | Year 2             | Year 3             | Year 4             | Year 5             | Year 6             | Year 7             | Year 8             | Year 9             | Year 10            |            |
|---------------------------------|--------------------|-----------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------|
| <b>Income</b>                   |                    |                 |                    |                    |                    |                    |                    |                    |                    |                    |                    |            |
| Sch. Gross Income - Residential | \$1,458,708        | \$13,142        | \$1,487,882        | \$1,517,640        | \$1,547,993        | \$1,578,952        | \$1,610,532        | \$1,642,742        | \$1,675,597        | \$1,709,109        | \$1,743,291        |            |
| Vacancy Loss                    | 5.0%               | (\$72,935)      | (\$657)            | (\$74,394)         | (\$75,882)         | (\$77,400)         | (\$78,948)         | (\$80,527)         | (\$82,137)         | (\$83,780)         | (\$85,455)         | (\$87,185) |
| Other income: PBV/HAP Diff.     | \$464,628          | \$4,186         | \$473,921          | \$483,399          | \$493,067          | \$502,928          | \$512,987          | \$523,247          | \$533,712          | \$544,386          | \$555,273          |            |
| Other income (laundry)          | \$11,100           | \$100           | \$11,322           | \$11,548           | \$11,779           | \$12,015           | \$12,255           | \$12,500           | \$12,750           | \$13,005           | \$13,266           |            |
| TIF -- 75%                      | \$146,138          | \$1,317         | \$149,061          | \$152,042          | \$155,083          | \$158,184          | \$161,348          | \$164,575          | \$167,867          | \$171,224          | \$174,648          |            |
| <b>Effective Gross Income</b>   | <b>\$2,007,639</b> | <b>\$18,087</b> | <b>\$2,047,791</b> | <b>\$2,088,747</b> | <b>\$2,130,522</b> | <b>\$2,173,133</b> | <b>\$2,216,595</b> | <b>\$2,260,927</b> | <b>\$2,306,146</b> | <b>\$2,352,269</b> | <b>\$2,399,314</b> |            |
| <b>Administrative</b>           |                    |                 |                    |                    |                    |                    |                    |                    |                    |                    |                    |            |
| Management Fee                  | \$109,630          | \$988           | \$112,919          | \$116,306          | \$119,796          | \$123,390          | \$127,091          | \$130,904          | \$134,831          | \$138,876          | \$143,042          |            |
| Management Charges              | \$109,630          | \$988           | \$112,919          | \$116,306          | \$119,796          | \$123,390          | \$127,091          | \$130,904          | \$134,831          | \$138,876          | \$143,042          |            |
| Marketing Expense               | \$500              | \$5             | \$515              | \$530              | \$546              | \$563              | \$580              | \$597              | \$615              | \$633              | \$652              |            |
| Legal                           | \$4,000            | \$36            | \$4,120            | \$4,244            | \$4,371            | \$4,502            | \$4,637            | \$4,776            | \$4,919            | \$5,067            | \$5,219            |            |
| Audit & Accounting              | \$7,000            | \$63            | \$7,210            | \$7,426            | \$7,649            | \$7,879            | \$8,115            | \$8,358            | \$8,609            | \$8,867            | \$9,133            |            |
| Tenant Computer network         | \$2,500            | \$23            | \$2,575            | \$2,652            | \$2,732            | \$2,814            | \$2,898            | \$2,985            | \$3,075            | \$3,167            | \$3,262            |            |
| <b>Total Administrative</b>     | <b>\$233,260</b>   | <b>\$2,101</b>  | <b>\$240,258</b>   | <b>\$247,466</b>   | <b>\$254,890</b>   | <b>\$262,536</b>   | <b>\$270,412</b>   | <b>\$278,525</b>   | <b>\$286,880</b>   | <b>\$295,487</b>   | <b>\$304,351</b>   |            |
| <b>Supportive Services</b>      |                    |                 |                    |                    |                    |                    |                    |                    |                    |                    |                    |            |
|                                 | \$32,000           | \$288           | \$32,960           | \$33,949           | \$34,967           | \$36,016           | \$37,097           | \$38,210           | \$39,356           | \$40,537           | \$41,753           |            |
| <b>Utilities</b>                |                    |                 |                    |                    |                    |                    |                    |                    |                    |                    |                    |            |
| Fuel Oil                        |                    | \$0             | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                |            |
| Natural Gas                     | \$45,000           | \$405           | \$46,350           | \$47,741           | \$49,173           | \$50,648           | \$52,167           | \$53,732           | \$55,344           | \$57,005           | \$58,715           |            |
| Electric                        | \$50,000           | \$450           | \$51,500           | \$53,045           | \$54,636           | \$56,275           | \$57,964           | \$59,703           | \$61,494           | \$63,339           | \$65,239           |            |
| Water / Sewer                   | \$42,000           | \$378           | \$43,260           | \$44,558           | \$45,895           | \$47,271           | \$48,690           | \$50,150           | \$51,655           | \$53,204           | \$54,800           |            |
| Other                           |                    | \$0             | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                |            |
| <b>Total Utilities</b>          | <b>\$137,000</b>   | <b>\$1,234</b>  | <b>\$141,110</b>   | <b>\$145,343</b>   | <b>\$149,704</b>   | <b>\$154,195</b>   | <b>\$158,821</b>   | <b>\$163,585</b>   | <b>\$168,493</b>   | <b>\$173,548</b>   | <b>\$178,754</b>   |            |

| Maintenance                    | Year 1    | Year 1/Unit | Year 2    | Year 3    | Year 4    | Year 5    | Year 6    | Year 7    | Year 8    | Year 9    | Year 10   |
|--------------------------------|-----------|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Grounds                        | \$18,000  | \$162       | \$18,540  | \$19,096  | \$19,669  | \$20,259  | \$20,867  | \$21,493  | \$22,138  | \$22,802  | \$23,486  |
| Tools and Supplies             | \$5,500   | \$50        | \$5,665   | \$5,835   | \$6,010   | \$6,190   | \$6,376   | \$6,567   | \$6,764   | \$6,967   | \$7,176   |
| Janitor Contract               | \$40,000  | \$360       | \$41,200  | \$42,436  | \$43,709  | \$45,020  | \$46,371  | \$47,762  | \$49,195  | \$50,671  | \$52,191  |
| Security                       |           | \$0         | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Trash Removal                  | \$35,000  | \$315       | \$36,050  | \$37,132  | \$38,245  | \$39,393  | \$40,575  | \$41,792  | \$43,046  | \$44,337  | \$45,667  |
| Maintenance                    | \$42,000  | \$378       | \$43,260  | \$44,558  | \$45,895  | \$47,271  | \$48,690  | \$50,150  | \$51,655  | \$53,204  | \$54,800  |
| Elevator, HVAC, pool contracts | \$45,000  | \$405       | \$46,350  | \$47,741  | \$49,173  | \$50,648  | \$52,167  | \$53,732  | \$55,344  | \$57,005  | \$58,715  |
| Other --Misc                   | \$500     | \$5         | \$515     | \$530     | \$546     | \$563     | \$580     | \$597     | \$615     | \$633     | \$652     |
| Total Maintenance              | \$186,000 | \$1,676     | \$191,580 | \$197,327 | \$203,247 | \$209,345 | \$215,625 | \$222,094 | \$228,757 | \$235,619 | \$242,688 |

| Taxes & Insurance  | Year 1    | Year 1/Unit | Year 2    | Year 3    | Year 4    | Year 5    | Year 6    | Year 7    | Year 8    | Year 9    | Year 10   |
|--|-----------|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Real Estate Taxes or PILOT                                 | \$194,850 | \$1,755     | \$200,696 | \$206,716 | \$212,918 | \$219,305 | \$225,885 | \$232,661 | \$239,641 | \$246,830 | \$254,235 |
| Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins. |           | \$0         | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Insurance (property, liability)                            | \$25,000  | \$225       | \$25,750  | \$26,523  | \$27,318  | \$28,138  | \$28,982  | \$29,851  | \$30,747  | \$31,669  | \$32,619  |
| Other  |           | \$0         | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Total Taxes & Insurance                                    | \$219,850 | \$1,981     | \$226,446 | \$233,239 | \$240,236 | \$247,443 | \$254,866 | \$262,512 | \$270,388 | \$278,499 | \$286,854 |

|                      |          |       |          |          |          |          |          |          |          |          |          |
|----------------------|----------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Replacement Reserves | \$49,950 | \$450 | \$51,449 | \$52,992 | \$54,582 | \$56,219 | \$57,906 | \$59,643 | \$61,432 | \$63,275 | \$65,173 |
| Operating Reserves   |          | \$0   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                  |                |                  |                  |                  |                  |                  |                    |                    |                    |                    |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Total Expenses</b> | <b>\$858,060</b> | <b>\$7,730</b> | <b>\$883,802</b> | <b>\$910,316</b> | <b>\$937,625</b> | <b>\$965,754</b> | <b>\$994,727</b> | <b>\$1,024,569</b> | <b>\$1,055,306</b> | <b>\$1,086,965</b> | <b>\$1,119,574</b> |
|-----------------------|------------------|----------------|------------------|------------------|------------------|------------------|------------------|--------------------|--------------------|--------------------|--------------------|

|                             |                    |                 |                    |                    |                    |                    |                    |                    |                    |                    |                    |
|-----------------------------|--------------------|-----------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Net Operating Income</b> | <b>\$1,149,579</b> | <b>\$10,357</b> | <b>\$1,163,990</b> | <b>\$1,178,431</b> | <b>\$1,192,897</b> | <b>\$1,207,378</b> | <b>\$1,221,869</b> | <b>\$1,236,359</b> | <b>\$1,250,840</b> | <b>\$1,265,304</b> | <b>\$1,279,740</b> |
|-----------------------------|--------------------|-----------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|

| Debt Service                  | Year 1    | Year 1/Unit | Year 2    | Year 3    | Year 4    | Year 5    | Year 6    | Year 7    | Year 8    | Year 9    | Year 10   |
|-------------------------------|-----------|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| First Lien -- Tax Exempt Bond | \$772,498 | \$6,959     | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 |
| Second Lien -- AHP Loan       | \$219,023 | \$1,973     | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 |
| Other                         |           | \$0         | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Total Debt Service (Must Pay) | \$991,521 | \$8,933     | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 |

|                                 |           |         |           |           |           |           |           |           |           |           |           |
|---------------------------------|-----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Cash Flow (after Must Pay Debt) | \$158,058 | \$1,424 | \$172,469 | \$186,910 | \$201,376 | \$215,857 | \$230,348 | \$244,838 | \$259,319 | \$273,783 | \$288,219 |
| Debt Service Coverage Ratio     | 1.16      |         | 1.17      | 1.19      | 1.20      | 1.22      | 1.23      | 1.25      | 1.26      | 1.28      | 1.29      |

|                                      |                 |              |                 |                 |                 |                 |                 |                 |                 |                 |                 |
|--------------------------------------|-----------------|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Cash Flow Debt Payments</b>       | \$1,407,559     |              | \$1,381,689     | \$1,353,653     | \$1,323,446     | \$1,291,068     | \$1,256,515     | \$1,219,790     | \$1,180,892     | \$1,139,824     | \$1,096,592     |
| City of Portland                     | 15.0%           | \$23,709     | \$214           | \$25,870        | \$28,037        | \$30,206        | \$32,379        | \$34,552        | \$36,726        | \$38,898        | \$41,067        |
| Developer Fee Loan                   | 75.0%           | \$118,543    | \$1,068         | \$129,351       | \$140,183       | \$151,032       | \$161,893       | \$172,761       | \$183,628       | \$194,489       | \$205,337       |
| <b>Cash Flow Retained by Project</b> | <b>\$15,806</b> | <b>\$142</b> | <b>\$17,247</b> | <b>\$18,691</b> | <b>\$20,138</b> | <b>\$21,586</b> | <b>\$23,035</b> | <b>\$24,484</b> | <b>\$25,932</b> | <b>\$27,378</b> | <b>\$28,822</b> |

Retained Cash Flow % 2%

Operating Expenses

|                        |      |
|------------------------|------|
| Rent Increase Rate     | 2.0% |
| Expenses Increase Rate | 3.0% |

|                                 | Year 11            | Year 12            | Year 13            | Year 14            | Year 15            | Year 16            | Year 17            | Year 18            | Year 19            | Year 20            |             |
|---------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|-------------|
| <b>Income</b>                   |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |             |
| Sch. Gross Income - Residential | \$1,778,157        | \$1,813,720        | \$1,849,994        | \$1,886,994        | \$1,924,734        | \$1,963,229        | \$2,002,493        | \$2,042,543        | \$2,083,394        | \$2,125,062        |             |
| Vacancy Loss                    | 5.0%               | (\$88,908)         | (\$90,686)         | (\$92,500)         | (\$94,350)         | (\$96,237)         | (\$98,161)         | (\$100,125)        | (\$102,127)        | (\$104,170)        | (\$106,253) |
| Other income (laundry)          | \$566,379          | \$577,707          | \$589,261          | \$601,046          | \$613,067          | \$625,328          | \$637,835          | \$650,591          | \$663,603          | \$676,875          |             |
| Other income (laundry)          | \$13,531           | \$13,801           | \$14,077           | \$14,359           | \$14,646           | \$14,939           | \$15,238           | \$15,543           | \$15,854           | \$16,171           |             |
| TIF -- 75%                      | \$178,141          | \$181,704          | \$185,338          | \$189,045          | \$192,826          | \$196,683          | \$200,616          | \$204,628          | \$208,721          | \$212,895          |             |
| <b>Effective Gross Income</b>   | <b>\$2,447,300</b> | <b>\$2,496,246</b> | <b>\$2,546,171</b> | <b>\$2,597,095</b> | <b>\$2,649,036</b> | <b>\$2,702,017</b> | <b>\$2,756,058</b> | <b>\$2,811,179</b> | <b>\$2,867,402</b> | <b>\$2,924,750</b> |             |
| <b>Administrative</b>           |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |             |
| Advertising                     | \$147,334          | \$151,754          | \$156,306          | \$160,995          | \$165,825          | \$170,800          | \$175,924          | \$181,202          | \$186,638          | \$192,237          |             |
| Office Payroll & Benefits       | \$147,334          | \$151,754          | \$156,306          | \$160,995          | \$165,825          | \$170,800          | \$175,924          | \$181,202          | \$186,638          | \$192,237          |             |
| Office Supplies, Phone, Misc.   | \$672              | \$692              | \$713              | \$734              | \$756              | \$779              | \$802              | \$826              | \$851              | \$877              |             |
| Mngr or Super Rent Free Unit    | \$5,376            | \$5,537            | \$5,703            | \$5,874            | \$6,050            | \$6,232            | \$6,419            | \$6,611            | \$6,810            | \$7,014            |             |
| Audit & Accounting              | \$9,407            | \$9,690            | \$9,980            | \$10,280           | \$10,588           | \$10,906           | \$11,233           | \$11,570           | \$11,917           | \$12,275           |             |
| Admin Other                     | \$3,360            | \$3,461            | \$3,564            | \$3,671            | \$3,781            | \$3,895            | \$4,012            | \$4,132            | \$4,256            | \$4,384            |             |
| <b>Total Administrative</b>     | <b>\$313,482</b>   | <b>\$322,886</b>   | <b>\$332,573</b>   | <b>\$342,550</b>   | <b>\$352,827</b>   | <b>\$363,411</b>   | <b>\$374,314</b>   | <b>\$385,543</b>   | <b>\$397,110</b>   | <b>\$409,023</b>   |             |
| <b>Supportive Services</b>      |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |             |
|                                 | \$43,005           | \$44,295           | \$45,624           | \$46,993           | \$48,403           | \$49,855           | \$51,351           | \$52,891           | \$54,478           | \$56,112           |             |
| <b>Utilities</b>                |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |             |
| Fuel Oil                        | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                |             |
| Electric                        | \$60,476           | \$62,291           | \$64,159           | \$66,084           | \$68,067           | \$70,109           | \$72,212           | \$74,378           | \$76,609           | \$78,908           |             |
| Gas                             | \$67,196           | \$69,212           | \$71,288           | \$73,427           | \$75,629           | \$77,898           | \$80,235           | \$82,642           | \$85,122           | \$87,675           |             |
| Water / Sewer                   | \$56,444           | \$58,138           | \$59,882           | \$61,678           | \$63,529           | \$65,435           | \$67,398           | \$69,420           | \$71,502           | \$73,647           |             |
| Other                           | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                | \$0                |             |
| <b>Total Utilities</b>          | <b>\$184,117</b>   | <b>\$189,640</b>   | <b>\$195,329</b>   | <b>\$201,189</b>   | <b>\$207,225</b>   | <b>\$213,442</b>   | <b>\$219,845</b>   | <b>\$226,440</b>   | <b>\$233,233</b>   | <b>\$240,230</b>   |             |

| Maintenance                    | Year 11   | Year 12   | Year 13   | Year 14   | Year 15   | Year 16   | Year 17   | Year 18   | Year 19   | Year 20   |
|--------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Janitorial                     | \$24,190  | \$24,916  | \$25,664  | \$26,434  | \$27,227  | \$28,043  | \$28,885  | \$29,751  | \$30,644  | \$31,563  |
| Exterminating                  | \$7,392   | \$7,613   | \$7,842   | \$8,077   | \$8,319   | \$8,569   | \$8,826   | \$9,091   | \$9,363   | \$9,644   |
| Trash Removal                  | \$53,757  | \$55,369  | \$57,030  | \$58,741  | \$60,504  | \$62,319  | \$64,188  | \$66,114  | \$68,097  | \$70,140  |
| Security                       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Grounds                        | \$47,037  | \$48,448  | \$49,902  | \$51,399  | \$52,941  | \$54,529  | \$56,165  | \$57,850  | \$59,585  | \$61,373  |
| Maintenance                    | \$56,444  | \$58,138  | \$59,882  | \$61,678  | \$63,529  | \$65,435  | \$67,398  | \$69,420  | \$71,502  | \$73,647  |
| Elevator, HVAC, pool contracts | \$60,476  | \$62,291  | \$64,159  | \$66,084  | \$68,067  | \$70,109  | \$72,212  | \$74,378  | \$76,609  | \$78,908  |
| Other                          | \$672     | \$692     | \$713     | \$734     | \$756     | \$779     | \$802     | \$826     | \$851     | \$877     |
| Total Maintenance              | \$249,968 | \$257,467 | \$265,192 | \$273,147 | \$281,342 | \$289,782 | \$298,475 | \$307,430 | \$316,653 | \$326,152 |

| Taxes & Insurance  |           |           |           |           |           |           |           |           |           |           |
|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Real Estate Taxes or PILOT                                 | \$261,862 | \$269,718 | \$277,810 | \$286,144 | \$294,728 | \$303,570 | \$312,677 | \$322,057 | \$331,719 | \$341,671 |
| Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins. | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Insurance (property, liability)                            | \$33,598  | \$34,606  | \$35,644  | \$36,713  | \$37,815  | \$38,949  | \$40,118  | \$41,321  | \$42,561  | \$43,838  |
| Other  | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Total Taxes & Insurance                                    | \$295,460 | \$304,324 | \$313,454 | \$322,857 | \$332,543 | \$342,519 | \$352,795 | \$363,379 | \$374,280 | \$385,508 |

|                      |          |          |          |          |          |          |          |          |          |          |
|----------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Replacement Reserves | \$67,129 | \$69,142 | \$71,217 | \$73,353 | \$75,554 | \$77,820 | \$80,155 | \$82,560 | \$85,037 | \$87,588 |
| Operating Reserves   | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |

|                       |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |
|-----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Total Expenses</b> | <b>\$1,153,161</b> | <b>\$1,187,756</b> | <b>\$1,223,388</b> | <b>\$1,260,090</b> | <b>\$1,297,893</b> | <b>\$1,336,830</b> | <b>\$1,376,934</b> | <b>\$1,418,242</b> | <b>\$1,460,790</b> | <b>\$1,504,613</b> |
|-----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|

|                             |                    |                    |                    |                    |                    |                    |                    |                    |                    |                    |
|-----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Net Operating Income</b> | <b>\$1,294,139</b> | <b>\$1,308,491</b> | <b>\$1,322,783</b> | <b>\$1,337,005</b> | <b>\$1,351,144</b> | <b>\$1,365,188</b> | <b>\$1,379,123</b> | <b>\$1,392,936</b> | <b>\$1,406,613</b> | <b>\$1,420,137</b> |
|-----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|

| Debt Service                  |           |           |           |           |           |           |           |           |           |           |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| First Lien                    | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 | \$772,498 |
| Second Lien                   | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 | \$219,023 |
| Other                         | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       | \$0       |
| Total Debt Service (Must Pay) | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 | \$991,521 |

|                                 |           |           |           |           |           |           |           |           |           |           |
|---------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Cash Flow (after Must Pay Debt) | \$302,618 | \$316,970 | \$331,262 | \$345,484 | \$359,623 | \$373,667 | \$387,602 | \$401,415 | \$415,092 | \$428,616 |
| Debt Service Coverage Ratio     | 1.31      | 1.32      | 1.33      | 1.35      | 1.36      | 1.38      | 1.39      | 1.40      | 1.42      | 1.43      |

|                                      |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
|--------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Cash Flow Debt Payments</b>       | \$1,051,199     | \$1,003,653     | \$953,964       | \$781,222.32    | \$601,410.95    | \$414,577.59    | \$220,776.51    | \$20,068.87     | (\$187,476.92)  | #####           |
| DHCD                                 | 15.0%           | \$45,393        | \$47,545        | \$49,689        | \$51,823        | \$53,943        | \$56,050        | \$58,140        | \$60,212        | \$62,264        |
| Developer Fee Loan                   | 75.0%           | \$226,964       | \$237,727       | \$248,446       | \$259,113       | \$269,717       | \$280,250       | \$290,702       | \$301,061       | \$311,319       |
| <b>Cash Flow Retained by Project</b> | <b>\$30,262</b> | <b>\$31,697</b> | <b>\$33,126</b> | <b>\$34,548</b> | <b>\$35,962</b> | <b>\$37,367</b> | <b>\$38,760</b> | <b>\$40,142</b> | <b>\$41,509</b> | <b>\$42,862</b> |

Retained Cash Flow % 2%

Order 28-18/19  
Tab 40 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER PLACING CHARTER AMENDMENT  
ON NOVEMBER 6, 2018, MUNICIPAL BALLOT  
RE: 42-DAY FINANCE REPORTS REQUIRED FOR MUNICIPAL CANDIDATES**

**ORDERED**, that the following question is hereby placed on the  
November 6, 2018, Regular Municipal Election ballot:

[Language to be added is underlined.]

**Shall the City approve the Charter Amendment to Article IV, §11,  
printed 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.

**BE IT FURTHER ORDERED**, that, if approved, said amendment shall take effect on December 6, 2018.

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

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

**FROM:** Councilor Belinda Ray

**DATE:** June 30, 2018

**SUBJECT:** Adding a 42-day Pre-Election Campaign Finance Report to Reporting Requirements for Municipal Candidates

**SPONSOR:** Councilor Belinda Ray

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** July 16, 2018      **Final Action** August 13, 2018

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

This change requires an amendment to the Charter. Any proposed amendment to the Charter must be approved by voters. In order to meet the requirements and deadlines for public noticing, a public hearing, a Council vote, and the printing of ballots for the November 2018 election, the Council must take action during its August 13, 2018 meeting. Should the Council agree to send this proposed amendment to voters, adhering to this timeline would allow voters to consider the amendment at the November 2018 regular election rather than having to call a special election.

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

**I. ONE SENTENCE SUMMARY**

This amendment to the charter 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.

**II. AGENDA DESCRIPTION**

Currently, municipal candidates for public office are required to file just two campaign finance reports in the ten months prior to a November election: one in mid July, and one eleven days before the election. At the state level, candidates for public office are required to file these two reports as well as a 42-day pre-election campaign finance report.

While state law exempts municipal candidates from the 42-day pre-election campaign finance reporting requirement, municipalities are free to enact additional requirements beyond what is mandated in state law. In the interest of ensuring transparency and

openness in government at all levels, it makes sense for candidates for municipal office to meet the same reporting requirements as candidates for state office.

To add this reporting requirement for Portland municipal candidates, an amendment to the City Charter is required. The proposed amendment would add the following language (underlined below) to the City Charter:

**Article IV**  
**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 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. (Referenda 11/4/08)

Because this amendment does not make a change to the City's governance structure as outlined in the City Charter, it can be made at the Council level subject to voter approval. This amendment does not require the formation of a Charter Commission or the opening of the Charter.

This amendment does not contain any provisions that are prohibited by the federal or state constitution or the general laws of the State of Maine (see 30-A M.R.S. section 2103(5)(D) and 2104(5)(B)).

If approved by the Council, this amendment will be put to voters for approval at the November 2018 election.

Five votes are required for passage.

### **III. BACKGROUND**

See Agenda Description

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

The intended result is to ensure greater transparency with regard to the funding of municipal campaigns for elected office.

**V. FINANCIAL IMPACT**

The financial impact of this amendment would be minimal. The City Clerk would need to update the informational packets for candidates for public office with the additional financial reporting requirements, but that packet is available online and current candidates for public office can be notified via email, so there would be no new printing costs.

There may be extra costs involved in terms of the staff time required to notify 2018 candidates of the new requirement. There may also be additional staff time required to collect and post an additional finance report during municipal elections. Neither of these additional duties should require the hiring of additional staff.

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

**VII. RECOMMENDATION**

Corporation Counsel approves the amendment as to form and confirms that based on the information presented it does not contain any provisions that are prohibited by the United States or Maine constitutions.

**VIII. LIST ATTACHMENTS**

**In this document:**

- a. MRS Title 21-A, §1017, the state statute that governs our municipal elections as stated in the City Charter, also here: <http://www.mainelegislature.org/legis/statutes/21-A/title21-Ach0sec0.html>
- b. Proposed charter amendment

**Separately:**

Order Setting a Public Hearing on Proposed Amendment to Portland City Charter, Article IV Elections Re: 42-Day Finance Reports Required For Municipal Candidates

Order Placing Charter Amendment on November 6, 2018, Municipal Ballot Re: 42-Day Finance Reports Required for Municipal Candidates

Prepared by: Belinda S. Ray

Date: June 30, 2018

## ATTACHMENT A

### Maine Revised Statutes

#### Title 21-A: ELECTIONS

#### Chapter 13: CAMPAIGN REPORTS AND FINANCES

#### Subchapter 2: REPORTS ON CAMPAIGNS FOR OFFICE

### §1017. Reports by candidates

...

**3-A. Other candidates.** A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [2007, c. 443, Pt. A, §16 (AMD).]

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election. [2007, c. 443, Pt. A, §16 (AMD).]

C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §11 (AMD).]

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [2007, c. 443, Pt. A, §16 (AMD).]

D-1. Reports must be filed 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, except that this report is not required for candidates for municipal office. [2009, c. 190, Pt. A, §5 (AMD).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [2007, c. 443, Pt. A, §16 (AMD).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (AMD); 1991, c. 839, §34 (AFF).]

[ 2013, c. 334, §11 (AMD) .]

## ATTACHMENT B: PROPOSED AMENDMENT

The proposed amendment would add the underlined language to the City Charter in Article IV, Section 11.

### **Article IV**

#### **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 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. (Referenda 11/4/08)

Order 39-18/18  
Tab 41 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER PLACING CHARTER AMENDMENT  
ON NOVEMBER 6, 2018, MUNICIPAL BALLOT  
RE: IMMIGRANT VOTING**

**ORDERED**, that the following question is hereby placed on the  
November 6, 2018, Regular Municipal Election ballot:

[Language to be added is underlined.]

**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.

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

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

**FROM:** Councilor Pious Ali and Mayor Ethan Strimling

**DATE:** July 5, 2018

**SUBJECT:** Expanding voting rights to legal immigrants who are residents of Portland

**SPONSOR:** Councilor Pious Ali and Mayor Ethan Strimling

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading July 16, 2018 Final Action August 13, 2018

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

This change requires an amendment to the Charter. Any proposed amendment to the Charter must be approved by voters. In order to meet the requirements and deadlines for public noticing, a public hearing, a Council vote, and the printing of ballots for the November 2018 election, the Council must take action during its August 13, 2018 meeting. Should the Council agree to send this proposed amendment to voters, adhering to this timeline would allow voters to consider the amendment at the November 2018 regular election rather than having to call a special election.

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

**I. ONE SENTENCE SUMMARY**

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

**II. AGENDA DESCRIPTION**

Currently, legal immigrants, refugees and asylees in Portland, who are also legal residents of the city, are not allowed to vote in municipal elections. This, despite the fact that many have children in our schools, almost all pay income, sales and/or property taxes, and many have lived in our city for years as they await the federal bureaucracy to grant citizenship.

In the interest of enhancing residential participation in municipal affairs and ultimately making Portland a more welcoming city to our newest immigrants, refugees, and asylees, it makes sense to expand voting rights to all legal residents.

To add this allowance an amendment to the City Charter is required. The proposed amendment would add the following language (underlined below) to the City Charter:

#### **Article IV**

##### **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.**

Because this amendment does not make a change to the City's governance structure as outlined in the City Charter, it can be made at the Council level subject to voter approval. This amendment does not require the formation of a Charter Commission or the opening of the Charter (see attached legal opinion from Corporation Counsel, Gary Wood, August 18, 2010).

If approved by the Council, this amendment will be put to voters for approval at the November 2018 election.

This amendment does not contain any provisions that are prohibited by the federal or state constitution (see attached legal opinion from Corporation Counsel, Gary Wood, August 18, 2010).

Five votes are required for passage to send this to the voters.

### **III. BACKGROUND**

During the 19th century, immigrants had been allowed to vote in 40 states. At the turn of the century, anti-immigrant sentiment swept the country and many of these voting rights were taken away.

Currently there are a number of jurisdictions in the United States that allow legal residents that are not yet citizens to vote including ten cities and townships in Maryland: Hyattsville; Mount Ranier; Takoma Park; Riverdale Park; Barnesville; Garrett Park; Glen Echo; Martin's Additions; Chevy Chase (section 3); Somerset; and College Park. Additionally, San Francisco allows those

who are not yet citizens to vote in local school council elections, as does Chicago (if the voter has a child in the school).

In 2010 the residents of Portland gathered the signatures necessary to put this amendment to the voters. The question lost in a very close vote, 48%-52% (approximately 1,200 votes out of approximately 20,000 cast).

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

The intended result is to allow legal immigrants, refugees and asylees who are residents of Portland to more fully participate in municipal government.

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

Unknown at this time.

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

#### **VII. RECOMMENDATION**

Corporation Counsel approves the amendment as to form and confirms that based on the information presented it does not contain any provisions that are prohibited by the United States or Maine constitutions. (attached memo from Gary Wood, August 18, 2010)

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

**In this document:**

- a. Memos from Corporation Council

**Separately:**

Order Setting a Public Hearing on Proposed Amendment to Portland City Charter, Article IV Elections Re: Allowing legal immigrants who are legal residents of Portland to vote in municipal elections

Order Placing Charter Amendment on November 6, 2018, Municipal Ballot  
Re: Allowing legal immigrants who are legal residents of Portland to vote in municipal elections

Prepared by: Pious Ali and Ethan Strimling

Date: July 6, 2018

MEMORANDUM  
CITY OF PORTLAND

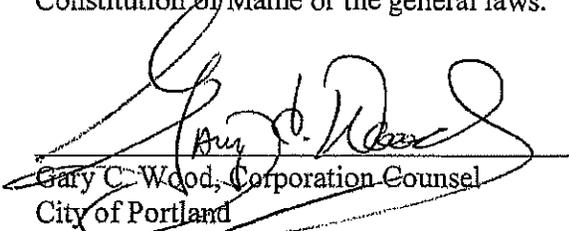
**To:** Mayor Mavodones and Members of the City Council

**From:** Gary C. Wood, Corporation Counsel

**Date:** August 18, 2010

**Re:** Opinion of Attorney re: Legality of Proposed Citizen Initiated Amendment to the Portland Charter regarding Non-U.S. Citizen Voting in Municipal Elections

Pursuant to 30-A M.R.S.A. § 2104(5)(B), this is to certify that I have reviewed the proposed Citizen Initiated Amendment to the Portland City Charter regarding non-U.S. citizen voting in municipal elections. Based on that review, I have concluded that the proposed charter amendment does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.



Gary C. Wood, Corporation Counsel  
City of Portland  
Maine Bar No.: 1121

MEMORANDUM  
CITY OF PORTLAND

**To:** Mayor Mavodones and Members of the City Council

**From:** Gary C. Wood, Corporation Counsel

**Date:** August 18, 2010

**RE:** **Citizen Initiated Amendment to the Portland Charter Re: Non U.S. Citizen Voting in Municipal Elections/Effective Date if Approved by the Voters**

At the Council meeting on August 16<sup>th</sup> a question was raised as to why the proposed citizen initiated charter amendment that would allow residents of Portland who are non-U.S. citizens to vote in municipal elections was classified as an amendment rather than a revision, the latter classification requiring a Charter Commission in order to review and put the issue to the voters.

This issue was carefully considered by myself, Elizabeth Boynton and attorneys from Maine Municipal Association before advising the petitioners that in fact this proposal constitutes an amendment not a revision. The basic criteria for determining whether a proposed change to a municipal charter is an amendment or a revision is whether it alters the fundamental structure of municipal government established by the existing charter or whether it alters the power conveyed by the Charter to the elected municipal officials, in this case the Mayor and Councilors.

Under those well established criteria this proposal is an amendment and not a revision to the City Charter. Changing the qualifications of the electorate in a municipal election has no effect on the basic structure of city government established by the Charter or the power conveyed by it to the Mayor and the Councilors nor does it alter the power structure among the Mayor and Councilors.

In relation to the effective date of the proposed amendment, if it is approved by the voters, 30-A M.R.S.A. § 2105(4)(B) states as follows:

Charter amendments adopted by the voters take effect on the date determined by the municipal officers, but not later than the first day of the next municipal year.

By definition, the City's municipal year is its fiscal (July 1 – June 30<sup>th</sup>) which means that the latest date upon which the amendment could be put into effect by Council order would be July 1, 2011. If the amendment is approved by the voters, the Council may choose to put it into effect before July 1, 2011 as the City will have to conduct a municipal election next May or June on the school budget.

GCW:tlb

**B. Extending Municipal Voting Rights To Legal Residents of Portland Who Are Non-Citizens of the United States**

When the Charter Commission convened in the summer of 2009, Commissioners, at the public's urging, agreed to explore the issue of extending voting rights in municipal elections to legal residents of Portland who are not yet citizens of the United States. During meetings in February and March 2010, the Commission heard testimony from national and local experts and public comment from Portland residents, before engaging in a thoughtful discussion centered around two issues: whether the Commission was allowed by Maine law to extend the right to vote beyond the populations enfranchised by state and federal law; and whether the extension of suffrage strengthened Portland's democratic governance by including legal residents who live, work and raise their families in Portland but have not become United States citizens. On March 11, 2010, the Commission voted on a motion "that non-citizen, legal residents of Portland be allowed to vote in municipal elections." This motion failed by a narrow margin of 7 to 5.

Expert testimony provided to the Commission addressed the historical relationship between voting rights and citizenship, recent efforts in other communities to extend voting rights, the process of becoming a citizen, the number of legal residents of Portland who would be enfranchised by an extension of voting rights, and the technical issues involved in extending voting rights to this population of Portland residents.

Dr. Ron Hayduk, Ph.D., author of *Democracy for All: Restoring Voting Rights in the United States*, testified that voting is not inextricably tied to citizenship, noting that from 1776 to 1926, non-citizens voted in 40 states and territories of the United States. Requiring citizenship in order to vote was introduced in reaction to the growth of immigrant populations viewed as "different" and "not real Americans" in order to exclude them from the political decision making process and limit their political power. He stated that historically and today, the issues of race, class and power have been central to voting rights struggles and noted that in the past the right to vote was reserved exclusively for white, male property owners and excluded women and African Americans. Hayduk cited Chicago and municipalities in Maryland and Michigan where municipal voting rights have successfully been extended.

Beth Stickney, Esq., Executive Director of the Immigrant Legal Advocacy Project, described the numerous types of immigrant statuses and the expensive and lengthy process of becoming a naturalized citizen. Hayduk noted that the average time to become a citizen is eight to ten years and Stickney stated that some legal immigrants may never have a way to become a citizen because of their immigration status.

Corporation Counsel Gary Wood concluded that under Maine's Home Rule provision a city charter could allow residents who are non-citizens to vote on municipal issues.<sup>2</sup> While allowing that a degree of "legal uncertainty" surrounded this issue, he advised the Commission

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<sup>2</sup> Gary Wood, "City of Portland Memorandum, Re: Legality of Allowing Non-Citizens to Vote in Municipal Elections and on Municipal Referendum Questions," [http://portlandmaine.gov/charter/backgroundinfo.asp#Non-citizen\\_voting](http://portlandmaine.gov/charter/backgroundinfo.asp#Non-citizen_voting), (07/29/2009).

to discuss and decide the issue on its merits without trying to guess if or how any legal uncertainties might be resolved in the future.

City Clerk Linda Cohen described the practical implications of providing for noncitizen voting, noting that maintaining a separate voter list for non-citizens and distributing the appropriate ballots would not require translators, be simple to implement, and not incur significant additional costs.

Portland is home to a significant and growing constituency of non-citizen, legal residents. According U.S. Census data in 2000<sup>3</sup> foreign-born residents represented 7.6 % of the overall population of Portland, and Stickney cited an estimated 21 % growth in immigration to Maine from 2000 to 2007, and believes this percentage is underestimated.<sup>4</sup> Immigration to Portland has a long history and today's immigrant residents join the descendants of earlier immigrants from Ireland, Poland, Armenia, and Italy (among many other nations) to create a vibrant, multicultural Portland reflected in a school system where 23 % of the children come from immigrant families and speak over fifty different languages.

In the Commission's deliberations, Commissioners voting with the minority argued that it was the Commission's responsibility to recommend this extension of voting rights in the belief that it would strengthen Portland's democratic governance, not to attempt to predict the outcome of a possible future legal challenge. Commissioner James Gooch, a lawyer, stated that legal arguments could be made on both sides of this issue and "there is enough ambiguity in the statutes to warrant making a case for this change" and leaving to the court to resolve any legal uncertainties.<sup>5</sup>

Commissioners voting with the minority argued that effective democratic governance in Portland was best served by separating municipal voting rights from the process of U. S. citizenship in order to build a representative, inclusive and engaged electorate able to fully participate in Portland's governance. We assert that Portland has the power of home rule to determine to whom Portland will grant the right to vote in municipal elections.

This issue resulted in significant public attendance at Commission meetings and comments by residents who currently able to vote and by residents who would have benefited from the extension of voting rights. During the final vote of the Commission, the Council Chambers were filled with members of the public who cared deeply about this issue.

The undersigned commissioners believe extending voting rights in municipal elections would foster a more comprehensive and inclusive democracy within the City of Portland and among its residents, strengthen the civic fabric of our city, and confer upon the City the benefits of wider public engagement. The ability to vote and participate fully in the democratic

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<sup>3</sup> Stephen Spring, "Taxation With Representation: Voting Rights for Immigrants," *The Muskie School of Public Service, Public Policy Implications of Hate Crimes and Immigration* (May 20, 2004) 3.

<sup>4</sup> Beth Stickney, quoted in *Portland Charter Commission Minutes of February 11, 2010* (Council Chambers, City Hall, Portland, ME, 02/11/2010), 9.

<sup>5</sup> James Gooch, "Memorandum Regarding: Legal issues surrounding non-citizen, legal resident voting and strawman proposal," *submitted to the Commission*, (02/25/2010).

governance of our community represents an opportunity to include all legal residents on an equal footing, without regard to whether they have immigrated from another country, moved here from another state or were simply fortunate enough to be born here. The Portland City Charter is the principle document by which our shared government is structured and therefore we believe it is the appropriate document to define voter eligibility to participate in city governance.

Benjamin Chipman  
Laurie Davis  
James Gooch  
Robert O'Brien  
Anna Trevorrow

**CITY OF PORTLAND  
M E M O R A N D U M**

**TO:** Charter Commission

**FROM:** Gary C. Wood, Corporation Counsel

**DATE:** March 2, 2010

**RE:** **Legality of Voting By Legal Immigrants in Municipal Elections**

The Charter Commission is divided over the issue of whether it should put to the voters of the City a charter change that would authorize voting in municipal elections by legal immigrants who reside in the City.

I have been asked to do a risk assessment on whether I think that issue would survive a legal challenge if it were put to the voters and the voters approved it.

In part this question has been put to me because in stating to the Committee both in writing and verbally that I would endorse the legality of that proposal for the purpose of submitting it to the voters, I used the term "coin toss" in describing its legality.

I used the phrase "coin toss" not to suggest that in my opinion the chances are 50/50 that it would survive a legal challenge. I used the phrase as a way of saying that the result is uncertain in my mind as to how a court would come out. My own personal risk assessment is that the chances are 60/40 against that right surviving a legal challenge. In other words, I think the stronger legal arguments favor a court decision that would declare the right illegal in light of existing state law.

That being said, however, as I have also stated, until this issue is actually briefed and decided by a Maine court there is absolutely no way to be certain about the legal outcome.

GCW:tlb

**CITY OF PORTLAND  
MEMORANDUM**

**TO:** Members of the Portland Charter Commission  
**FROM:** Gary Wood, Corporation Counsel   
**DATE:** July 29, 2009  
**RE:** **Legality of Allowing Non-Citizens to Vote in Municipal Elections and on Municipal Referendum Questions.**

This issue has been identified by several members of the Commission as an important one for the Commission to consider. Commissioner Treverrow asked MMA for an opinion about the legality of providing such authority in a City Charter.

Bill Livengood, the Director of MMA's Legal Department, issued an informal opinion by e-mail on Wednesday, July 28<sup>th</sup>. A copy of that opinion is attached. His conclusion is that the legality of a Charter provision allowing non-citizens to vote on municipal issues and for municipal officers (Councilors and School Committee members) is questionable at best.

I have known and worked extensively with Bill on municipal legal issues since 1981. He is in my opinion the most well-versed attorney in the State on municipal law and in particular on home rule, having been MMA's lead person at the State Legislature in 1987 during the recodification of Title 30-A the principle state law addressing municipal legal authority.

On December 24, 2008 I issued a brief memorandum to the members of the City's Legislative Committee (attached) in which I concluded that under Maine's Home Rule provision a city could by charter allow residents who are non-citizens to vote on municipal issues, notably the election of councilors and school committee members and on municipal referenda questions. A copy of this memorandum is attached.

Bill's opinion rests on his analysis of 30-A M.R.S.A. § 2501 (attached) which states in pertinent part:

**2. Qualifications for voting.**

The qualifications for voting in a municipal election conducted under this Title are governed solely by Title 21-A section 111<sup>1</sup>.  
(emphasis added)

In addition to this specific language the first paragraph of §2501 explicitly provides Charter authority that supercedes state law on the issues of the method of voting and conduct of a municipal election but doesn't extend that authority to the qualifications for voting in par. 2.

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<sup>1</sup> Title 21-A §111 requires a person to be a citizen as one of the eligibility requirements for voting.

In issuing my opinion on December 24<sup>th</sup> I did not consider the impact of 30-A M.R.S.A. 2501(2) on a municipality's home rule charter powers. Those powers flow from Article VIII part second, Section 1 of the Maine Constitution which states as follows:

**Section 1. Power of municipalities to amend their charters.** The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, (emphasis added) which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

The current legal question upon which Bill and I agree and to which there is no easy answer, is what do the words "conducted under this Title" mean in 30-A M.R.S.A. § 2501(2) cited above.

The inclusion of those words suggest that there are elections held at the local level that are not conducted under Title 30-A and the answer to that question may be that those elections conducted under a home rule charter are not conducted under Title 30-A, and for that reason the qualifications for voting on municipal issues and positions can be determined by the charter as opposed to state law.

A countervailing argument that adds to the confusion is that Title 30-A in Chapter 121 Subpart III still has laws (see 30-A M.R.S.A. § 2551-2556) which preceded the home rule amendment to the Maine Constitution in 1969. Many of these laws contain conflicting messages when it comes to statutory interpretation regarding the legal ability of a City charter to create different or contradictory requirements. For example, §2551 that requires a City election to be called by a warrant, references a section (§2523) that is applicable to town meetings and is in itself a law that has existed since at least 1954. It is totally silent on the authority of a charter to provide a different way to call an election. On the other hand, §2553, Nomination to City Office by Petition, creates legal authority for a person to be nominated to any City office by following a state statutory procedure in Title 21-A Chapter 5, Subchapter 2 that is inconsistent with the procedure that has been long-standing and practiced under the current City charter. Furthermore, that same section goes on to recognize the power of a city charter by stating that a person seeking nomination under the section may use a political designation only if permitted by a city charter.

One another issue of importance to some members of the Commission, runoff voting, 30-A M.R.S.A. §2555 clearly recognizes the authority of a municipal charter to provide by election by other than a plurality, stating: "In a city election, unless otherwise provided by municipal charter, (emphasis added) the person who receives a plurality of the votes cast for election to any office is elected to that office."

The Immigrant Voting Project, an effort organized to support voting by immigrants concludes that Maine State law would have to be changed to allow non-citizens to vote on municipal issues. (See attached)

At this point my recommendation to the Commission, because of the legal uncertainty surrounding this issue, is that the Commission should take up the issue on its merits and decide if a majority of the Commission wish to submit it to the voters. If a majority of the Commission decides to submit the question and the necessary Charter language to the voters for approval, it should be submitted as a stand-alone question so that, if approved by the voters, a legal decision from a court in the form of declaratory judgment can be obtained to resolve the issue clearly and finally, as it is not one that can be resolved by an opinion of legal counsel. In such circumstances, it would be imperative to seek and obtain a legal decision on the issue before any election was held at which non-citizens were allowed to vote.

The legal Rubicon that has to be crossed on this issue is imposed by 30-A M.R.S.A. §2103(5)(D) which requires the final report of the Charter Commission to include a written opinion by an attorney admitted to the bar of this state that the proposed charter or charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.

Based on the Home Rule argument articulated above that the words "under this Title" are designed to recognize the ability of a charter to create different qualifications for voting on municipal issues and for municipal positions, I will certify that such a provision is not prohibited by state law and go to court to get a definitive answer if the provision is submitted to and approved by the voters.

Cc: Elizabeth Boynton, Esq.  
Linda Cohen, City Clerk

GCW:mep

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MEMORANDUM  
CITY OF PORTLAND

**To:** Mayor Mavodones and Members of the City Council

**From:** Gary C. Wood, Corporation Counsel

**Date:** August 18, 2010

**RE:** **Citizen Initiated Amendment to the Portland Charter Re: Non U.S. Citizen Voting in Municipal Elections/Effective Date if Approved by the Voters**

At the Council meeting on August 16<sup>th</sup> a question was raised as to why the proposed citizen initiated charter amendment that would allow residents of Portland who are non-U.S. citizens to vote in municipal elections was classified as an amendment rather than a revision, the latter classification requiring a Charter Commission in order to review and put the issue to the voters.

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GCW:tlb

Order 30-18/19  
Tab 4a 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**AMENDMENT TO ZONING MAP  
RE: 1000, 1002/1004 AND 1020 CONGRESS STREET**

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning property at 1000, 1002/1004 and 1020 Congress Street from Low Impact Industrial Zone (Ilb) to Neighborhood Community Zone (B-2), as shown below.



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

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

**FROM:** Stuart O'Brien, Director, Planning Division

**DATE:** June 28, 2018

**SUBJECT:** Zoning Map Amendment for 1000, 1002/1004, and 1020 Congress Street

**SPONSOR:** Sean Dundon, Chair, Portland Planning Board

Public Hearing, June 26, 2018. Board unanimously (5-0, Whited, Eaton absent) to recommend to City Council the zoning map amendment.

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
1<sup>st</sup> reading: **July 16, 2018** Final Action: **August 13, 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**

The Planning Board recommends the zoning map amendment from Industrial-Low Impact IL zone to Business Community B-2 zone for the parcels at 1000, 1002/1004, 1006; and 1020 Congress Street.

**II. AGENDA DESCRIPTION**

The applicant, 1006 Congress LLC, requested a zoning map amendment for a 19,800 sq. ft. property at 1006 Congress Street, which is located at the corner of Congress and Westfield Streets. The parcel is in the Industrial- Low Impact IL zone. The requested map amendment is to change the zoning from IL to Business Community B-2. The site is surrounded by I-L to the south, Residential R-6 to the west and north and B-2 on the eastern side. The majority of the buildings within the R-6 areas are multifamily buildings.

At the workshop on May 17, 2018, the Planning Board considered the request and recommended advertising an expanded area of B-2 along Congress Street for consideration at the public hearing. The expanded area included the surrounding properties at 1000, 1002/1004, and 1020 Congress Street (see map below), which would connect to the larger B-2 area in Libbytown. The rezoning to the B-2 zone would allow a wide range of commercial uses not allowed in the IL zone, such as retail, restaurants, neighborhood center and general businesses and professional offices.

On June 26, 2018, the Board held a public hearing and voted unanimously (5-0, Eaton and Whited absent) to recommend to City Council the zoning map amendment from Industrial-Low Impact IL zone to Business Community B-2 zone for the parcels at 1000, 1002/1004, 1006, and 1020 Congress Street.

**III. BACKGROUND**

1006 Congress LLC requested a zoning map amendment for the property at 1006 Congress Street. The building has been used as a place of assembly (church) for many years and it was built in the 1800's as a Captain's House and barn. The applicant noted that the building is not conducive to

reuse for industrial uses and is more suited to the business uses allowed in the B-2 zone. The B-2 zone is located nearby for the commercial areas along Congress and St. John Streets. The Planning Board directed the staff to advertise a larger area to encompass the other non-residential parcels along Congress Street. These properties include the requested parcel and surrounding properties at 1000, 1002/1004, and 1020 Congress Street.

In addition, staff reached out to the owners of the properties to be included. The owner of Atlantic Hardware and the property at 1004 Congress Street, Jack McNerny, responded and stated concerns about being included within the B-2 zone. Mr. McNerny stated in his letter that he does not want to lose the current use of the lumberyard. According to the City's records, the use of this property is wood distribution center, which is allowed in the B-2 zone as a conditional use. The Board made a recommendation with the following motion, "*subject to the determination of the permitted uses of Atlantic Hardwoods, 1002/1004 Congress Street*".

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

The Planning Board concurred with the applicant's assessment that the proposed zoning amendment is in conformance with Portland 2030- Comprehensive Plan. In addition to the applicant's assessment, staff have identified below a number of the specific Comprehensive Plan goals and policies that focus on target areas for job growth and supporting zoning amendments for priority growth areas. The Libbytown area is a priority node for transformation.

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, authentic and secure. The vision conveys the need to balance the City's goals for job growth and transforming Portland through orderly growth and development to be balanced with needs for connectivity of the street grid, sustainability of infrastructure and security in the sense of public safety.



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

The proposed map amendment will allow current uses in this area to operate as permitted uses and allows property owners to renovate and reinvest in uses appropriately located along a major arterial.

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

The property is located in Libbytown, which is to the west of Congress Street's downtown district. The area is comprised of residential properties combined with smaller commercial properties.

The applicant has set out the arguments in support of the B-2 zone in the attached narrative (Attachment A of the Planning Board report). The site and the surrounding parcels from Congress Street to Fore River Parkway are in the IL zone. The I-L zone is designed to act as a buffer between neighboring residential zones and I-M or I-H zones allowing for uses that are low intensity in nature and therefore compatible with neighboring residences.

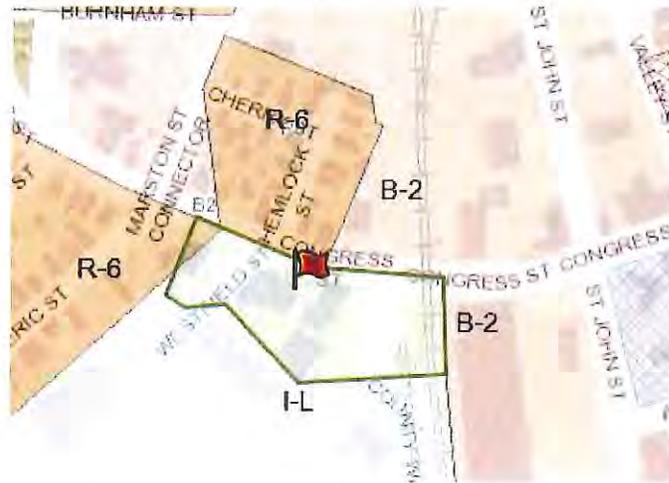
The parcel abuts developed industrial uses on two sides, which are part of this industrial area. The existing IL zone emphasizes, in addition to employment-creating industrial uses, a wide range of uses that are generally smaller in scale with some exceptions. The IL provides sites for breweries and other artisan uses that are allowed in the I-L zone, but not in the B-2 zone. Planning staff recommended retaining the industrial area off of Westfield Street, as there are general industrial uses and there is a potential for industrial reuse of those structures.

The proposed B-2 zoning designation allows a range of residential uses on upper floors. It also allows bed and breakfast and hostels on upper floors. The zone permits restaurants, day care facilities, neighborhood centers and a wide range of commercial and institutional uses, including retail establishments, offices, personal services, business services, places of assembly, clinics, municipal uses,

and schools. Both zones allow day care facilities, neighborhood centers, and studios for artists, photographers and craftspeople

### VII. PLANNING BOARD RECOMMENDATION

At the public hearing on June 26, 2018, the Planning Board unanimously (5-0, Whited, Eaton absent) found that rezoning to the Business Community B-2 zone for the property located at 1000, 1002/1004, 1006, and 1020 Congress Street, as shown on the map below is consistent with the Comprehensive Plan for the City of Portland, subject to the determination of the permitted uses of Atlantic Hardwoods, 1002/1004 Congress Street.



### VIII. LIST ATTACHMENTS

#### PLANNING BOARD MEMO ATTACHMENTS

1. Economic Development (Greg Mitchell)
2. Public Comment
  - PC1 Brett Gabor 3-27-18
  - PC2 Nikki Anderson 4-12-18
  - PC3 Jack McInerny 06-06-2018
  - PC4 John Fitzgerald 06-06-2018

#### APPLICANT'S SUBMITTALS

- A. Zoning Application
- B. Cover Letter - 1006 Congress Street Zoning Amendment Application
- C. 1006 Congress Quitclaim Deed
- D. Response to Staff Cover Letter
- E. Neighborhood Meeting Certificate and Minutes

#### PLANS

- |        |                                   |
|--------|-----------------------------------|
| Plan 1 | 1006 Congress Site Plan           |
| Plan 2 | Proposed Zoning Map               |
| Plan 3 | Vicinity map 1006 Congress Street |

Prepared by: Shukria Wiar, Planner

Date: June 28, 2018



Economic Development Department  
Gregory A. Mitchell, Director

## MEMORANDUM

To: Tuck O'Brien, Planning Division Director  
From: Greg Mitchell, Economic Development Director  
Date: April 13, 2018  
**RE: Importance of Retaining Portland's Industrial-Zoned Real Estate**

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### OVERVIEW

The purpose of this memo is to discuss the importance of retaining industrial-zoned property in the City of Portland. This resource is finite as the majority of developable real estate in the City has been built out, and it will be very difficult to rezone property to expand Portland's industrial base.

Over time, Portland has seen its industrial property reduced. Pressure from market forces and societal needs have driven the decrease and rezoning of industrial space primarily to business zones in order to accommodate mixed use neighborhoods. Admittedly, these neighborhoods are filling a vital need, providing increased housing as well as businesses that serve the City's residents and its burgeoning tourism market.

However, in this current environment, retaining Portland's remaining industrial-zoned real estate for industrial uses is crucial to continue to grow and strengthen the City's economy. The vacancy rate of industrial space throughout the Greater Portland area has plummeted from 8% in 2011 to 1.25% in 2017. In Portland it's only 1.1%. Property in industrial zones supports a variety of businesses, many of which are manufacturers that are a vital source of quality jobs that pay livable wages. Their employee base often represents a range of educational levels, providing jobs for those with limited education and/or skills to those with advanced degrees.

### LIMITED INDUSTRIAL SPACE IMPACTS

Over the past few years, the City's Economic Development Department has been receiving increasing requests from companies seeking vacant industrial space or undeveloped industrial acreage for new construction. Some of these requests simply cannot be accommodated given the City's finite industrial property and its extremely low vacancy rate. When the expansion needs of existing Portland-based industrial companies cannot be accommodated locally and/or new industrial opportunities cannot be accommodated, this represents a loss to Portland's tax base and associated employment.

### **TRENDS IN INDUSTRIAL SPACE DEMAND**

Portland's industrial-zoned areas include Riverside Street, Riverside Industrial Parkway, Warren Avenue, Presumpscot Street, Bishop Street, Pine Tree Industrial Parkway, Canco Road, Outer Congress, sections of East Bayside and a few others. It is important to maintain as much acreage as possible in these zones.

Eimskip has established its U.S. port presence in the City of Portland at the International Marine Terminal on Commercial Street. The access to international markets that this is generating is expected to attract cold storage and other investment opportunities.

Portland's food and drink production sector has been in a growth mode, with a range of craft/artisanal companies sprouting up. This trend has the potential to expand food and drink manufacturing in the City and, therefore, contribute further to the demand for industrial space.

### **RECOMMENDATIONS**

To summarize, Portland's industrial space is very limited and should be preserved to the maximum extent possible.

Regarding the request from the owners of 1006 Congress Street to rezone their property from IL to B-2, this seems to represent a unique set of circumstances that will not be displacing industrial uses. However, allowing for this use should be addressed in a site specific fashion.

In conclusion, I would not recommend amendments to permitted uses throughout the City's industrial zones that would reduce the opportunity for industrial business attraction and growth on Portland's remaining industrial real estate.



Shukria Wiar <shukriaw@portlandmaine.gov>

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## 1006 Congress Street- Rezone from IL to B2

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Greg Mitchell <gmitchell@portlandmaine.gov>  
To: Shukria Wiar <shukriaw@portlandmaine.gov>  
Cc: Nelle Hanig <nrh@portlandmaine.gov>

Thu, Jun 7, 2018 at 12:45 PM

Shukria,

Please forgive the delayed response. Nelle is on vacation this week.

The Economic Development Department is supportive of the proposed expanded zone change, in this location, from IL to B-2 for all properties which front Congress Street.

Let me know if you have any questions or require additional input.

Greg A. Mitchell, Director  
**Economic Development Department**  
City of Portland  
389 Congress Street  
Portland, Maine 04101  
Tel. 207.874.8945  
Fax 207.756.8217  
Portland, Maine | Yes. Life's good here.  
[Quoted text hidden]



Economic Development Department  
Gregory A. Mitchell, Director

## MEMORANDUM

To: Tuck O'Brien, Planning Division Director  
From: Greg Mitchell, Economic Development Director  
Date: April 13, 2018  
RE: **Importance of Retaining Portland's Industrial-Zoned Real Estate**

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### OVERVIEW

The purpose of this memo is to discuss the importance of retaining industrial-zoned property in the City of Portland. This resource is finite as the majority of developable real estate in the City has been built out, and it will be very difficult to rezone property to expand Portland's industrial base.

Over time, Portland has seen its industrial property reduced. Pressure from market forces and societal needs have driven the decrease and rezoning of industrial space primarily to business zones in order to accommodate mixed use neighborhoods. Admittedly, these neighborhoods are filling a vital need, providing increased housing as well as businesses that serve the City's residents and its burgeoning tourism market.

However, in this current environment, retaining Portland's remaining industrial-zoned real estate for industrial uses is crucial to continue to grow and strengthen the City's economy. The vacancy rate of industrial space throughout the Greater Portland area has plummeted from 8% in 2011 to 1.25% in 2017. In Portland it's only 1.1%. Property in industrial zones supports a variety of businesses, many of which are manufacturers that are a vital source of quality jobs that pay livable wages. Their employee base often represents a range of educational levels, providing jobs for those with limited education and/or skills to those with advanced degrees.

### LIMITED INDUSTRIAL SPACE IMPACTS

Over the past few years, the City's Economic Development Department has been receiving increasing requests from companies seeking vacant industrial space or undeveloped industrial acreage for new construction. Some of these requests simply cannot be accommodated given the City's finite industrial property and its extremely low vacancy rate. When the expansion needs of existing Portland-based industrial companies cannot be accommodated locally and/or new industrial opportunities cannot be accommodated, this represents a loss to Portland's tax base and associated employment.

### **TRENDS IN INDUSTRIAL SPACE DEMAND**

Portland's industrial-zoned areas include Riverside Street, Riverside Industrial Parkway, Warren Avenue, Presumpscot Street, Bishop Street, Pine Tree Industrial Parkway, Canco Road, Outer Congress, sections of East Bayside and a few others. It is important to maintain as much acreage as possible in these zones.

Eimskip has established its U.S. port presence in the City of Portland at the International Marine Terminal on Commercial Street. The access to international markets that this is generating is expected to attract cold storage and other investment opportunities.

Portland's food and drink production sector has been in a growth mode, with a range of craft/artisanal companies sprouting up. This trend has the potential to expand food and drink manufacturing in the City and, therefore, contribute further to the demand for industrial space.

### **RECOMMENDATIONS**

To summarize, Portland's industrial space is very limited and should be preserved to the maximum extent possible.

Regarding the request from the owners of 1006 Congress Street to rezone their property from IL to B-2, this seems to represent a unique set of circumstances that will not be displacing industrial uses. However, allowing for this use should be addressed in a site specific fashion.

In conclusion, I would not recommend amendments to permitted uses throughout the City's industrial zones that would reduce the opportunity for industrial business attraction and growth on Portland's remaining industrial real estate.

Zoning Memo

RE: Site Plan 2017-277 – Zoning Map Amendment Congress Street

July 5, 2018

1004 Congress Street, CBL 076-A-023, is one of the properties that will be impacted by the proposed map amendment for the properties within the vicinity of 1006-1008 Congress Street. The current use of the property by Atlantic Hardwoods was established in 1999 under permit 99-0958. The proposed use was for a “Wood Distribution Ctr”. The zoning review considered the use as building contractor with retail as an ancillary use. This was a permitted use in the I-L zone. The website for Atlantic Hardwood states that they provide or install “Custom Hardwood Flooring, Atlantic Plank Flooring, Carpets, Moldings, Staircases, Counter Tops and all types of Millwork”. Since these products are either provided for direct sale to customers or installed by the company in the customer’s home or business, the use would be considered retail which is a permitted use in the B-2 Zone under section 14-182.

Ann Machado

Zoning Administrator

---

**Re: Public Comment for 1006 Congress Rezoning**

1 message

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Barbara Barhydt <bab@portlandmaine.gov>

Tue, Mar 27, 2018 at 10:42 AM

To: Brett Gabor <brett.gabor@gmail.com>

Cc: Shukria Wiar <shukriaw@portlandmaine.gov>, "Munson, Jennifer" <jmy@portlandmaine.gov>

Thank you for your comments. The applicant asked to postpone this item, so the Planning Board will not discuss it this afternoon. We will include your comments when this comes forward. We don't have a meeting date for this item yet.

Thank you.

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](mailto:bab@portlandmaine.gov)

On Tue, Mar 27, 2018 at 9:45 AM, Brett Gabor <[brett.gabor@gmail.com](mailto:brett.gabor@gmail.com)> wrote:

To the Planning Board:

I wish to comment on the rezoning of 1006 Congress. I am in favor of rezoning this lot, which borders Congress but does not border any residential lots, to a more appropriate commercial zone. The current industrial zone is less compatible with a lively streetscape along Congress than a business zone, which could contain a workplace, cafe, restaurant, or other amenity. The developers have been accessible to neighbors and have made good-faith attempts to listen to their concerns and I believe they will continue to be good neighbors.

Best,

Brett Gabor  
40 Frederic Street

## Google Groups

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### 1006 Congress

---

**Nikki Anderson** <n.annetteanderson@gmail.com>

Apr 12, 2018 12:15 PM

Posted in group: **Planning Board**

Good afternoon Council, City Manager and Planning Board,

Please find our attached letter in support of the zoning change for 1006 Congress St,

Best Regards,  
Nikki Anderson  
Libbytown Neighborhood Association



**March 20, 2018**

Planning Board  
389 Congress St  
4th Floor  
Portland, ME 04101

Dear Members of the Planning Board,

The Libbytown Neighborhood Association writes in favor of the application to rezone 1006 Congress Street. This particular property presents an opportunity to bring desired amenities to an area that is currently growing beyond its former industrial nature.

Currently, the lot is zoned light industrial. This disallows many uses that would be highly regarded by neighbors, such as a restaurant, cafe, market, office space, or similar businesses that would be valued by those living in the vicinity.

The persons seeking the zoning change own more lots along Westfield Street, but have reasonably requested that only the lot that abuts Congress Street (and does not abut residential uses) be rezoned. Over the last year representatives of the owners have shown a willingness to engage with neighbors and listen to concerns that are brought forward about businesses currently located upon their property. They have expressed a desire for uses of the land that are in accordance with those expressed by many neighborhood residences.

We hope that the Planning Board will consider this particular zoning application as a means to expand the allowed uses beyond merely industrial, which will help provide a lively neighborhood atmosphere where people live, play, and work.

Warm regards,

The Libbytown Neighborhood Association

Google Groups

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**1006 Congress**

---

**Nikki Anderson** <n.annetteanderson@gmail.com>

Apr 12, 2018 12:15 PM

Posted in group: **Planning Board**

Good afternoon Council, City Manager and Planning Board,

Please find our attached letter in support of the zoning change for 1006 Congress St,

Best Regards,  
Nikki Anderson  
Libbytown Neighborhood Association



**March 20, 2018**

Planning Board  
389 Congress St  
4th Floor  
Portland, ME 04101

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We hope that the Planning Board will consider this particular zoning application as a means to expand the allowed uses beyond merely industrial, which will help provide a lively neighborhood atmosphere where people live, play, and work.

Warm regards,

The Libbytown Neighborhood Association

June 6, 2018

Shukria Wiar  
Planner  
City of Portland, Maine

Dear Shukria,

I am reaching out to let the planning board know our input with regards to the recommended proposed zoning change for 1000, 1004, 1006 & 1020 Congress Street.

The planning board needs to recognize Atlantic Hardwoods as what it actually is. The map amendment has the use as retail/warehouse, but it is actually a Lumber yard. Atlantic Hardwoods has outdoor storage of lumber, as well as an outside dust collection system and an exterior sawdust container. This has been in place for 20 years and there is no intention of changing business operations.

My concerns are as follows:

- A zone change from IL to B-2 would specifically not allow lumber yards.
- A “grandfather” or variance would reduce the future value of the business to a potential buyer.
- A zone change from IL to B-2 would also make the existing businesses at 1000 Congress Street and 1020 Congress Street non-conforming.
- Portland has very limited industrial areas left, only 12 percent of Portland is zoned industrial. Libby Town and East Bayside are primarily Low Impact Industrial.
- Concerns about minimizing our industrial space was well put by the Economic Development Department about loss to Portland’s tax base and associated employment.  
*“To summarize, Portland’s industrial space is very limited and should be preserved to the maximum extent possible. Regarding the request from the owners of 1006 Congress Street to rezone their property from IL to B-2, this seems to represent a unique set of circumstances that will not be displacing industrial uses. However, allowing for this use should be addressed in a site-specific fashion.”*

I would not oppose a zone change for 1006 Congress Street as our abutter has proposed, but I would have the following concerns:

- Our exterior dust containment system is noisy and starts at 5:00 AM
- There could be significant odor issues during operating hours
- Abutters to a potential Residential Complex may need to comply with new noise level.
- Abutters may also need to deal with new setbacks for any addition that the business may require.

I agree with the City’s Economic Development Department that the need for industrial space remains and is vital to the City of Portland. The proposed development of the former Rufus

Deering parcel on Commercial Street has removed a key supplier of building materials from the peninsula. Atlantic Hardwoods has helped fill this void and plays an integral role in Portland's growth.

Several of our employees, including myself live and work in Portland and it is concerning to see the "Red Brick" character of our warehouses turning into modern condominiums. As tax payers we hate to see the loss of businesses and addition of residences. This change only adds to the Cities' burden of educational costs, utilities, police and fire while reducing the tax base from job creating businesses.

I am unable to attend the public hearing on June 12 or the Neighborhood Meeting at the Portland Eagles on June 19, but please forward my remarks so they are part of the record.

Sincerely,

Jack McInerney  
Atlantic Hardwoods, Inc  
1004 Congress Street  
Portland, Maine 04102  
207-773-9663

***Portland, Maine. Yes!  
Wood's good here.***

6/22/2018

City of Portland Mail - Rezoning 1006 Congress Street and vicinity



Shukria Wiar <shukriaw@portlandmaine.gov>

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## Rezoning 1006 Congress Street and vicinity

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**JOHN FITZGERALD** <johnfitzgerald@fitzgeraldtile.com>

Wed, Jun 6, 2018 at 2:06 PM

To: Shukria Wiar <shukriaw@portlandmaine.gov>

Dear Ms. Wiar, I am the owner of Fitzgerald Tile, 13 Westfield Street, Portland, immediately adjacent to 1006 Congress Street. I support amending the zoning map and would like my property added to the proposal the Planning Board will consider on Tuesday June 12. May I come by and talk to you about the proposal and the possibility of adding my property to it? John Fitzgerald

**QUITCLAIM DEED**  
(with Covenant)

7/26/17 1:04 PM  
COPY  
Book 34/88 / Page 103

KNOW ALL PERSONS BY THESE PRESENTS, that, **DELTA REALTY LLC**, a Maine limited liability company with a principal place of business and mailing address of 380 Warren Avenue, Portland, Maine 04103, for consideration paid, grants to **1006 CONGRESS STREET, LLC**, a Maine limited liability company, with a principal place of business and mailing address of 1550 Sunset Ridge Drive, Laguna Beach, California 92651, with **QUITCLAIM COVENANT**, the land and improvements in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

A certain lot or parcel of land, with the buildings thereon, situated in Portland, County of Cumberland and State of Maine, on the southerly side of Congress Street, being part of the homestead lot formerly owned and occupied by Frederick W. Clark, late of said Portland, deceased, bounded and described as follows:

Commencing at a point on the westerly side of said, homestead on a right-of-way called Westfield Street, formerly Cumberland Place, one hundred eighty-four and five tenths (184.5) feet northerly from the rear line of said lot; thence by the westerly side of said lot bounding on the said right-of-way one hundred thirty-one and five tenths (131.5) feet to Congress Street; thence southeasterly by said Congress Street one hundred fourteen and two tenths (114.2) feet to an angle; thence continuing southeasterly by said Congress Street two and eight tenths (2.8) feet to a stake; thence South forty-five degrees twenty-four minutes (45° 24') West by land now or formerly of Mary E. McKenney one hundred eighty-seven and sixty-five one hundredths (187.65) feet to a stake at a point distant one hundred eighty-four and five tenths (184.5) feet northerly in a perpendicular line from said rear line of said homestead lot; thence on a line parallel with the rear line of said Homestead lot North thirty degrees twenty-five minutes (30° 25') West one hundred and fifty-two and five tenths (152.5) feet, to the point of beginning.

Also, a right-of-way in common with others over so much of the thirty (30) foot strip of land as adjoins the premises hereby conveyed on the rear, said way extending to Westfield Street, together with a right-of-way in common with others in Westfield Street.

Being the same premises conveyed to Delta Realty LLC by Quitclaim Deed from the Deliverance Center, dated November 9, 2015 and recorded in the Cumberland County Registry of Deeds in Book 32723, Page 215.

IN WITNESS WHEREOF, Delta Realty LLC has caused this instrument to be signed and sealed in its company name by Andrea E. Girard, its Manager, thereunto duly authorized this 26th day of July, 2017.

Delta Realty LLC

  
Witness

By: Andrea E. Girard  
Andrea E. Girard  
Title: Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

July 26, 2017

Then personally appeared before me the above named Andrea E. Girard, Manager of Delta Realty LLC, and acknowledged the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of Delta Realty LLC.

  
Notary Public/Attorney at Law  
Andre Duchette, Bar No. 9873



April 11, 2018

**Ms. Shukria Wiar, Planner**  
Development Review Coordinator  
City of Portland – Planning Authority  
389 Congress Street  
Portland, ME 04101

**Subject: Application for Rezoning – 1006 Congress Street**  
**Applicant: 1006 Congress LLC**

Dear Shukria:

Stantec is assisting the applicant in their request for rezoning of the property at 1006 Congress Street. We have received your email transmission of April 6, 2018 and offer the following information related to the relayed questions.

***Comment #1 How is the circulation and parking handled for the site?***

**Response:** The intent is that the site's primary access will be off Westfield Street, as it currently exists today. Basically, there is a poorly defined curb opening along Westfield that allows vehicles to enter the rear of the property for parking etc. This appears to be the primary historic site access. There is also an existing curb opening along Congress Street that appears to offer very limited use to the property. That curb opening also appears to allow for limited access to the neighboring property, used by Atlantic Hardwoods for access to their sawdust collection equipment. Moving forward the primary site plan objective is to maintain the Westfield Access for two-way vehicle movements. The site plan also contemplates a one-way directional movement from the rear of the site onto Congress Street. Congress Street is one-way inbound at this location, so vehicle exiting movements will be right turning only. The site plan contemplates traditional 90-degree parking at the rear of the building and some parallel spaces along the drive exiting onto Congress Street.

***Comment #2 Is that a shared access way to the rear or a street of some type?***

**Response:** The survey plan by Owen Haskell Inc identifies a 30' wide R.O.W. labeled as Cumberland Place. To the best of our understanding this ROW is not a publicly accepted way nor has it in the past been constructed as a City Street etc. According to the deeds for both the applicant's property at #1006 Congress and the Fitzgerald property (TM 76-A-26), each property has access rights to the 30' wide ROW and thus over time each owner has made use of this space for access from Westfield Street. Copies of the property deeds accompany this letter.

***Comment #3 What is the status of Cumberland Place and does the owner have rights in it?***



Ms. Shukria Wiar  
April 11, 2018  
Page 2

Response: See previous response and accompanying deeds which show evidence of the owner's rights to use the ROW for access from Westfield. We have purposely shown on the concept plan an access driveway only and not any parking, given the shared rights between the property owners. The proposed zoning request to B-2 is likely to provide increased opportunity for business services to be offered on the property, and the Westfield Street access seems like an ideal condition, thereby affording only limited exiting vehicle movements onto Congress Street.

***Comment #4: We also need to analyze the surrounding uses and zones and how is the rezone meeting the Comprehensive plan?***

Response:

The following is a brief summary of the existing zoning patterns in the vicinity of the site as identified by the zoning map information contained in the original application:

1. The site is currently located in the Industrial Low Impact Zone (IL), which is defined by Congress Street to the north, Westfield Street back to the Fore River Parkway to the west and south and the Maine Central Rail corridor to the east. Land uses include the Cumberland County Correctional Facility, A Cross Fit Training facility, Atlantic Hardwoods, and Bunker Brewing at the end of Westfield Street. Paulins Tire and Auto Care is also located on the west side of Westfield Street, and Fitzgerald Tile is located south of the subject site on Westfield Street, within the IL zone.
2. Within the site vicinity there are two R6 zones principally defined by single family homes or apartments. These are located within the area bounded by Park Avenue and Congress Street or by Frederic Street westerly to the Highway.
3. Other land north of Congress Street over to Park Street and easterly to the St. John Street/Valley Street neighborhood is zoned as B-2 and is characterized by various Businesses, including medical offices, motels, shops, retail, restaurants and related business uses.
4. Contract Zone 31 is located at the end of Frederic Street and is associated with a housing development.

The original application cover letter from Archetype PA, dated January 2, 2018 provides a brief analysis of the requested zoning change to B-2 and findings regarding compliance with the Comprehensive plan. Given the breadth of B-2 zoning area to the north and east of the site as well as the character of the existing building within the subject property, it is our opinion that the requested zoning change will result in a wider opportunity of land use for the site. This then is consistent with the comprehensive plan goals of complete neighborhoods. As defined, the B-2 Zone is to provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in a major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and



Ms. Shukria Wiar  
April 11, 2018  
Page 3

circulation patterns. We believe that the site's location off Congress Street and the existing proximity of B-2 zoning areas near to the subject site, make for a reasonable and rational approach for this re-zoning request.

If you have any questions with regards to the information submitted, please contact our office.

Sincerely,

**STANTEC CONSULTING SERVICES INC.**

Stephen Bushey, PE  
Associate  
Phone: 207-887-3478  
Fax: 207-883-3376  
Stephen.Bushey@stantec.com

c: Jennifer Lauren Packard, 1006 Congress LLC  
Bill Hopkins, Archetype PA

V:\1953\resource\fst\Admin Resources\PROPOSALS\Stantec Proposals\1008 Congress Street Portland\Zoning application\ltr#1\_Wiar\_rezone-app\_20180410.docx

**QUITCLAIM DEED**  
(with Covenant)

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Also, a right-of-way in common with others over so much of the thirty (30) foot strip of land as adjoins the premises hereby conveyed on the rear, said way extending to Westfield Street, together with a right-of-way in common with others in Westfield Street.

Being the same premises conveyed to Delta Realty LLC by Quitclaim Deed from the Deliverance Center, dated November 9, 2015 and recorded in the Cumberland County Registry of Deeds in Book 32723, Page 215.

IN WITNESS WHEREOF, Delta Realty LLC has caused this instrument to be signed and sealed in its company name by Andrea E. Girard, its Manager, thereunto duly authorized this 26th day of July, 2017.

MAINE REAL ESTATE TAX PAID

Delta Realty LLC



Witness

By: Andrea E. Girard  
Andrea E. Girard  
Title: Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

July 26, 2017

Then personally appeared before me the above named Andrea E. Girard, Manager of Delta Realty LLC, and acknowledged the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of Delta Realty LLC.



Notary Public/Attorney at Law  
Andre Duchette, Bar No. 9872

Received  
Recorded Register of Deeds  
Jul 26 2017 01:04:24P  
Cumberland County  
Nancy A. Lane

## Know All Men by these Presents,

That Riverside Realty Corporation

company

a corporation organized and existing under the laws of the State  
of Maine and located at Portland  
in the County of Cumberland and State of Maine  
in consideration of One Dollar and other valuable considerations,

paid by Mary E. Fitzgerald of Somerville, and John J. Mulkerin of  
Arlington, County of Middlesex, Commonwealth of Massachusetts,  
Trustees under Declaration of Trust dated the *17th* day of  
*October*, 1967, said Trust Agreement to be recorded herewith,

the receipt whereof it does hereby acknowledge, does hereby give,

grant, bargain, sell and convey, unto the said

Mary E. Fitzgerald and John J. Mulkerin, Trustees as aforesaid,

their successors  
heirs and assigns forever,

a certain lot or parcel of land with the buildings thereon,  
situated in Portland, County of Cumberland and State of Maine,  
being a part of the Homestead lot of F. W. Clark, bounded and  
described as follows: Commencing at the southwesterly corner of  
said Homestead lot on a right-of-way called Cumberford Place, at  
the easterly corner of land sold by the said F. W. Clark to  
Franklin J. Rollins, and running northerly by the westerly line  
of said Homestead lot and by said right-of-way, one hundred fifty-  
four and five tenths (154.5) feet; thence easterly on a line  
parallel with the rear line of said Homestead lot, to the easterly  
line of said Homestead lot, at a right-of-way called Ogdensburg  
Street; thence southerly by the easterly line of said Homestead  
lot and on said right-of-way to the rear line of said lot; thence  
by the rear line of said lot, by said land sold to said Rollins,  
to the point of beginning.

Also, a right-of-way in common to a passageway thirty (30) feet  
wide adjoining the above-described lot on the north, running from  
the westerly side of said lot to the easterly side of said lot.  
Also, a right-of-way in common as reserved by said Frederick W.  
Clark on the easterly and westerly side of said Homestead lot,  
running from Congress Street to the rear of said Homestead.

This conveyance is made subject to a mortgage from the grantor  
herein to the Union Mutual Life Insurance Company dated October  
15, 1971 and being recorded in Volume 3195, Page 805, Cumberland  
County Registry of Deeds on which there is owed the principal sum  
of \$46,005.25, which said mortgage and the debt thereby secured  
the grantees herein assume and agree to pay and assume and agree  
to abide thereby all according to the terms thereof as a part of  
the consideration of this deed.

This conveyance is further made subject to a lease to the A. B.  
Dick Company of New England, Inc., which said lease and the  
interest in the grantor therein have been assigned to the grantees  
herein by Assignment of even date herewith.

Real estate taxes assessed against the aforescribed premises by the City of Portland in contemplation of law as of April 1, 1973 shall be pro-rated between the grantor and grantees herein as of the date of delivery of this deed.

Being the same premises conveyed to the grantor herein by deed of Millard F. Coffin dated July 23, 1969 and recorded in Cumberland County Registry of Deeds in Book 3096, Page 193.

**To have and to hold** the aforegranted and bargained premises with all the privileges and appurtenances thereof to the said Mary E. Fitzgerald and John J. Mulkerin, Trustees as aforesaid,

their heirs <sup>successors</sup> and assigns, to them and their use and behoof forever.

**And** the said Grantor Corporation does hereby COVENANT with the said Grantees, their heirs <sup>successors</sup> and assigns, that it is lawfully seized in fee of the premises, that they are free of all incumbrances; except as aforesaid;

that it has good right to sell and convey the same to the said Grantee<sup>s</sup> to hold as aforesaid; and that it and its successors, shall and will WARRANT AND DEFEND the same to the said Grantees, their <sup>successors</sup> heirs and assigns forever, against the lawful claims and demands of all persons, except as aforesaid.

In Witness Whereof, the said Riverside Realty Corporation Company has caused this instrument to be sealed with its corporate seal and signed in its corporate name by Edward S. Boulos, Jr., its President

thereunto duly authorized, this 31st day of December in the year one thousand nine hundred and seventy three

Signed, Sealed and Delivered in presence of

RIVERSIDE REALTY CORPORATION

By

[Signature]

Its President



State of Maine.

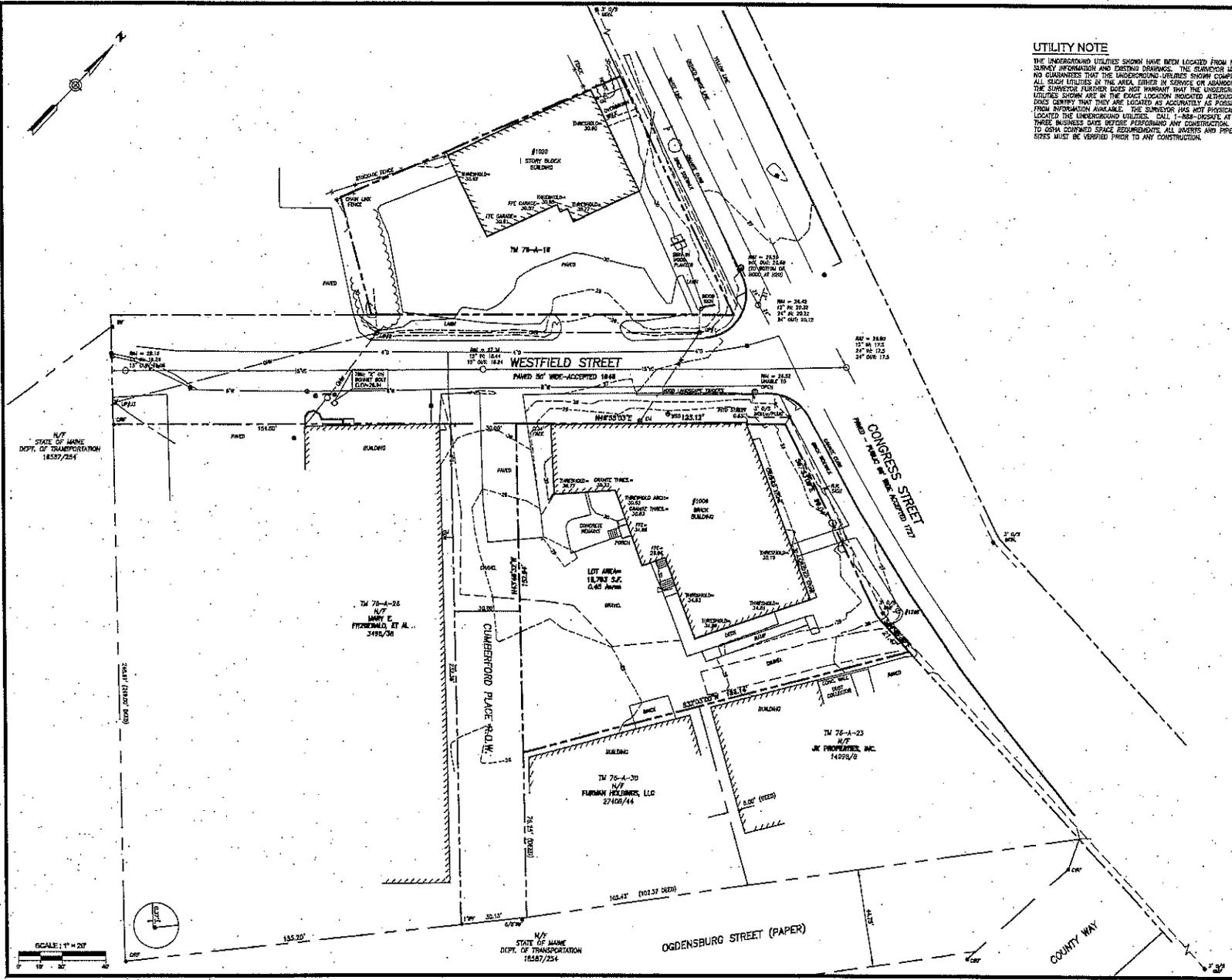
County of Cumberland ss. December 31 1973 Then personally appeared the above named Edward S. Boulos, Jr. President of said Grantor

Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

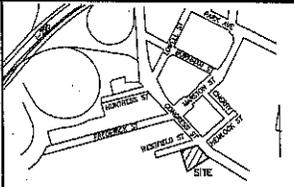
[Signature] Justice of the Peace.

JAN 3 1974 REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE Received at 2 P 36 PM, and recorded in BOOK 3498 PAGE 38 register



**UTILITY NOTE**

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPOSE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR MAKES NO WARRANTY THAT THE UNDERGROUND UTILITIES SHOWN ARE AT THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL A NEARBY UTILITY AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO HIGH COMPACTED SPACE REQUIREMENTS ALL UNITS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.



LOCATION MAP

**LEGEND**

|   |                          |   |               |
|---|--------------------------|---|---------------|
| ● | IRON PIPE OR ROD FOUND   | — | CURB          |
| ■ | MANHOLE FOUND            | — | OVERHEAD WIRE |
| ○ | UTILITY POLE             | — | WATER LINE    |
| ○ | MANHOLE                  | — | GAS LINE      |
| ○ | SEWER ELECTRIC/GAS METER | — | SEWER         |
| ○ | SEWER                    | — | SEWER         |
| ○ | CATCH BASIN              | — | SEWER         |
| ○ | WATER VALVE OR SHUTOFF   | — | SEWER         |
| ○ |                          | — | SEWER         |

**PLAN REFERENCES**

1. "BOUNDARY SURVEY ON 12-24 WESTFIELD STREET, PORTLAND, MAINE MADE FOR FITZGERALD TITLE" DATED 12/23/2015 BY OWEN HASKELL, INC.
2. "1/4, 1/2 ACRES LAND TITLE SURVEY 17 WESTFIELD STREET, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR WESTFIELD STREET REALTY LLC JANUARY 8, 2014 BY OWEN HASKELL, INC.
3. "PLAN OF PROPERTY IN PORTLAND MADE FOR GENERAL BUILDING COMPANY BY E.C. JOHNSON DATED MARCH 1948 FILED WITH THE CITY ENGINEERS OFFICE PLAN #52/25.
4. "PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR ROBERT R. JAMES CONSTRUCTION CO. BY J.L. & E.C. JOHNSON DATED 12-27-83 REVISED JUL. 11, 1984.

**GENERAL NOTES**

1. OWNER OF RECORD: 1006 CONGRESS STREET LLC  
1006 SUNSET RIDGE DRIVE  
LAGUNA BEACH, CA 92651  
TAX MAP 76 BE205-A LOT 22  
C.D.R.D. BOOK 34188 PAGE 103
2. BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM MAINE WEST HAZEL CITY ADJUSTMENTS AT "D" STREET AND "A" STREET PROVIDED BY THE CITY OF PORTLAND ENGINEERING DEPARTMENT.
3. ELEVATIONS ARE BASED ON MVD 1928. CITY BENCHMARK 3' 0" ABOVE AT ST. JOHN STREET AND "C" STREET ELEVATION 37.56.
4. BOUNDARY LINES SHOWN FOR TM 76-A-18 MATCH FROM PLAN REFERENCE 4, NOT VERIFIED BY OWEN HASKELL, INC.

**CERTIFICATE**

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON AND THE RESULT OF AN AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSEE FOR PROFESSIONAL LAND SURVEYING CURRENT STANDARDS OF PRACTICE.

JOHN W. SHAW, PLS NO. 1038

DATE

REV. 1 (81-24-18) TAX MAP LOT 78-A-18 & TOPOGRAPHY ADDED

**Boundary Survey**  
At  
1006 & 1020 Congress St., Portland, Maine  
Made for  
PK Realty Management Investments  
380 Riverside Street, Portland, Maine

**OWEN HASKELL, INC.**  
PROFESSIONAL LAND SURVEYORS  
380 U.S. ROUTE ONE, UNIT 30, FALMOUTH, MAINE 04103  
DRAWN BY: RJS/BJW DATE: NOV. 19, 2017 JOB NO.: 2017-018 P  
CHECKED BY: EBO/JANB SCALE: 1" = 20' DWG. NO.: 1





April 11, 2018

**Ms. Shukria Wiar, Planner**  
Development Review Coordinator  
City of Portland – Planning Authority  
389 Congress Street  
Portland, ME 04101

**Subject: Application for Rezoning – 1006 Congress Street**  
**Applicant: 1006 Congress LLC**

Dear Shukria:

Stantec is assisting the applicant in their request for rezoning of the property at 1006 Congress Street. We have received your email transmission of April 6, 2018 and offer the following information related to the relayed questions.

***Comment #1 How is the circulation and parking handled for the site?***

**Response:** The intent is that the site's primary access will be off Westfield Street, as it currently exists today. Basically, there is a poorly defined curb opening along Westfield that allows vehicles to enter the rear of the property for parking etc. This appears to be the primary historic site access. There is also an existing curb opening along Congress Street that appears to offer very limited use to the property. That curb opening also appears to allow for limited access to the neighboring property, used by Atlantic Hardwoods for access to their sawdust collection equipment. Moving forward the primary site plan objective is to maintain the Westfield Access for two-way vehicle movements. The site plan also contemplates a one-way directional movement from the rear of the site onto Congress Street. Congress Street is one-way inbound at this location, so vehicle exiting movements will be right turning only. The site plan contemplates traditional 90-degree parking at the rear of the building and some parallel spaces along the drive exiting onto Congress Street.

***Comment #2 Is that a shared access way to the rear or a street of some type?***

**Response:** The survey plan by Owen Haskell Inc identifies a 30' wide R.O.W. labeled as Cumberland Place. To the best of our understanding this ROW is not a publicly accepted way nor has it in the past been constructed as a City Street etc. According to the deeds for both the applicant's property at #1006 Congress and the Fitzgerald property (TM 76-A-26), each property has access rights to the 30' wide ROW and thus over time each owner has made use of this space for access from Westfield Street. Copies of the property deeds accompany this letter.

***Comment #3 What is the status of Cumberland Place and does the owner have rights in it?***



Ms. Shukria Wiar  
April 11, 2018  
Page 2

Response: See previous response and accompanying deeds which show evidence of the owner's rights to use the ROW for access from Westfield. We have purposely shown on the concept plan an access driveway only and not any parking, given the shared rights between the property owners. The proposed zoning request to B-2 is likely to provide increased opportunity for business services to be offered on the property, and the Westfield Street access seems like an ideal condition, thereby affording only limited exiting vehicle movements onto Congress Street.

***Comment #4: We also need to analyze the surrounding uses and zones and how is the rezone meeting the Comprehensive plan?***

Response:

The following is a brief summary of the existing zoning patterns in the vicinity of the site as identified by the zoning map information contained in the original application:

1. The site is currently located in the Industrial Low Impact Zone (IL), which is defined by Congress Street to the north, Westfield Street back to the Fore River Parkway to the west and south and the Maine Central Rail corridor to the east. Land uses include the Cumberland County Correctional Facility, A Cross Fit Training facility, Atlantic Hardwoods, and Bunker Brewing at the end of Westfield Street. Paulins Tire and Auto Care is also located on the west side of Westfield Street, and Fitzgerald Tile is located south of the subject site on Westfield Street, within the IL zone.
2. Within the site vicinity there are two R6 zones principally defined by single family homes or apartments. These are located within the area bounded by Park Avenue and Congress Street or by Frederic Street westerly to the Highway.
3. Other land north of Congress Street over to Park Street and easterly to the St. John Street/Valley Street neighborhood is zoned as B-2 and is characterized by various Businesses, including medical offices, motels, shops, retail, restaurants and related business uses.
4. Contract Zone 31 is located at the end of Frederic Street and is associated with a housing development.

The original application cover letter from Archetype PA, dated January 2, 2018 provides a brief analysis of the requested zoning change to B-2 and findings regarding compliance with the Comprehensive plan. Given the breadth of B-2 zoning area to the north and east of the site as well as the character of the existing building within the subject property, it is our opinion that the requested zoning change will result in a wider opportunity of land use for the site. This then is consistent with the comprehensive plan goals of complete neighborhoods. As defined, the B-2 Zone is to provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in a major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and



Ms. Shukria Wiar  
April 11, 2018  
Page 3

circulation patterns. We believe that the site's location off Congress Street and the existing proximity of B-2 zoning areas near to the subject site, make for a reasonable and rational approach for this re-zoning request.

If you have any questions with regards to the information submitted, please contact our office.

Sincerely,

**STANTEC CONSULTING SERVICES INC.**

Stephen Bushey, PE  
Associate  
Phone: 207-887-3478  
Fax: 207-883-3376  
Stephen.Bushey@stantec.com

c: Jennifer Lauren Packard, 1006 Congress LLC  
Bill Hopkins, Archetype PA

V:\1953\resource\fst\Admin Resources\PROPOSALS\Stantec Proposals\1008 Congress Street Portland\Zoning application\ltr#1\_Wiar\_rezone-app\_20180410.docx

**QUITCLAIM DEED**  
(with Covenant)

KNOW ALL PERSONS BY THESE PRESENTS, that, **DELTA REALTY LLC**, a Maine limited liability company with a principal place of business and mailing address of 380 Warren Avenue, Portland, Maine 04103, for consideration paid, grants to **1006 CONGRESS STREET, LLC**, a Maine limited liability company, with a principal place of business and mailing address of 1550 Sunset Ridge Drive, Laguna Beach, California 92651, with **QUITCLAIM COVENANT**, the land and improvements in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

A certain lot or parcel of land, with the buildings thereon, situated in Portland, County of Cumberland and State of Maine, on the southerly side of Congress Street, being part of the homestead lot formerly owned and occupied by Frederick W. Clark, late of said Portland, deceased, bounded and described as follows:

Commencing at a point on the westerly side of said, homestead on a right-of-way called Westfield Street, formerly Cumberland Place, one hundred eighty-four and five tenths (184.5) feet northerly from the rear line of said lot; thence by the westerly side of said lot bounding on the said right-of-way one hundred thirty-one and five tenths (131.5) feet to Congress Street; thence southeasterly by said Congress Street one hundred fourteen and two tenths (114.2) feet to an angle; thence continuing southeasterly by said Congress Street two and eight tenths (2.8) feet to a stake; thence South forty-five degrees twenty-four minutes (45° 24') West by land now or formerly of Mary E. McKenney one hundred eighty-seven and sixty-five one hundredths (187.65) feet to a stake at a point distant one hundred eighty-four and five tenths (184.5) feet northerly in a perpendicular line from said rear line of said homestead lot; thence on a line parallel with the rear line of said Homestead lot North thirty degrees twenty-five minutes (30° 25') West one hundred and fifty-two and five tenths (152.5) feet, to the point of beginning.

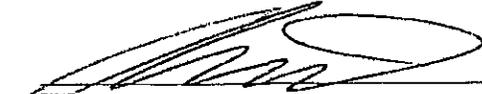
Also, a right-of-way in common with others over so much of the thirty (30) foot strip of land as adjoins the premises hereby conveyed on the rear, said way extending to Westfield Street, together with a right-of-way in common with others in Westfield Street.

Being the same premises conveyed to Delta Realty LLC by Quitclaim Deed from the Deliverance Center, dated November 9, 2015 and recorded in the Cumberland County Registry of Deeds in Book 32723, Page 215.

IN WITNESS WHEREOF, Delta Realty LLC has caused this instrument to be signed and sealed in its company name by Andrea E. Girard, its Manager, thereunto duly authorized this 26th day of July, 2017.

MAINE REAL ESTATE TAX PAID

Delta Realty LLC

  
Witness

By: Andrea E. Girard  
Andrea E. Girard  
Title: Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

July 26, 2017

Then personally appeared before me the above named Andrea E. Girard, Manager of Delta Realty LLC, and acknowledged the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of Delta Realty LLC.

  
Notary Public/Attorney at Law  
Andre Duchette, Bar No. 9872

Received  
Recorded Register of Deeds  
Jul 26, 2017 01:04:24P  
Cumberland County  
Nancy A. Lane

## Know All Men by these Presents,

**That** Riverside Realty Corporation

~~company~~

a corporation organized and existing under the laws of the State  
of Maine and located at Portland  
in the County of Cumberland and State of Maine  
in consideration of One Dollar and other valuable considerations,

paid by Mary E. Fitzgerald of Somerville, and John J. Mulkerin of  
Arlington, County of Middlesex, Commonwealth of Massachusetts,  
Trustees under Declaration of Trust dated the *1<sup>st</sup>* day of  
*October*, 1967, said Trust Agreement to be recorded herewith,

the receipt whereof it does hereby acknowledge, does hereby give,  
grant, bargain, sell and convey, unto the said  
Mary E. Fitzgerald and John J. Mulkerin, Trustees as aforesaid,  
their successors  
their heirs and assigns forever,

a certain lot or parcel of land with the buildings thereon,  
situated in Portland, County of Cumberland and State of Maine,  
being a part of the Homestead lot of F. W. Clark, bounded and  
described as follows: Commencing at the southwesterly corner of  
said Homestead lot on a right-of-way called Cumberford Place, at  
the easterly corner of land sold by the said F. W. Clark to  
Franklin J. Rollins, and running northerly by the westerly line  
of said Homestead lot and by said right-of-way, one hundred fifty-  
four and five tenths (154.5) feet; thence easterly on a line  
parallel with the rear line of said Homestead lot, to the easterly  
line of said Homestead lot, at a right-of-way called Ogdensburg  
Street; thence southerly by the easterly line of said Homestead  
lot and on said right-of-way to the rear line of said lot; thence  
by the rear line of said lot, by said land sold to said Rollins,  
to the point of beginning.

Also, a right-of-way in common to a passageway thirty (30) feet  
wide adjoining the above-described lot on the north, running from  
the westerly side of said lot to the easterly side of said lot.  
Also, a right-of-way in common as reserved by said Frederick W.  
Clark on the easterly and westerly side of said Homestead lot,  
running from Congress Street to the rear of said Homestead.

This conveyance is made subject to a mortgage from the grantor  
herein to the Union Mutual Life Insurance Company dated October  
15, 1971 and being recorded in Volume 3195, Page 805, Cumberland  
County Registry of Deeds on which there is owed the principal sum  
of \$46,005.25, which said mortgage and the debt thereby secured  
the grantees herein assume and agree to pay and assume and agree  
to abide thereby all according to the terms thereof as a part of  
the consideration of this deed.

This conveyance is further made subject to a lease to the A. B.  
Dick Company of New England, Inc., which said lease and the  
interest in the grantor therein have been assigned to the grantees  
herein by Assignment of even date herewith.

Real estate taxes assessed against the aforescribed premises by the City of Portland in contemplation of law as of April 1, 1973 shall be pro-rated between the grantor and grantees herein as of the date of delivery of this deed.

Being the same premises conveyed to the grantor herein by deed of Millard F. Coffin dated July 23, 1969 and recorded in Cumberland County Registry of Deeds in Book 3096, Page 193.

**To have and in hold** the aforegranted and bargained premises with all the privileges and appurtenances thereof to the said Mary E. Fitzgerald and John J. Mulkerin, Trustees as aforesaid, <sup>successors</sup> their heirs and assigns, to them and their use and behoof forever.

**And** the said Grantor Corporation does hereby COVENANT with the said Grantees, their heirs and assigns, that it is lawfully seized in fee of the premises, that they are free of all incumbrances; except as aforesaid;

that it has good right to sell and convey the same to the said Grantee<sup>s</sup> to hold as aforesaid; and that it and its successors, shall and will WARRANT AND DEFEND the same to the said Grantees, their <sup>successors</sup> heirs and assigns forever, against the lawful claims and demands of all persons, except as aforesaid.

In Witness Whereof, the said Riverside Realty Corporation Company has caused this instrument to be sealed with its corporate seal and signed in its corporate name by Edward S. Boulos, Jr., its President, ~~its President~~, thereunto duly authorized, this 3/27 day of December in the year one thousand nine hundred and seventy-three signed, sealed and delivered in presence of

RIVERSIDE REALTY CORPORATION

~~CUMBERLAND~~

By

Its President



State of Maine.

County of Cumberland ss. December 31 1973  
 Then personally appeared the above named Edward S. Boulos, Jr. President ~~President~~ of said Grantor

Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

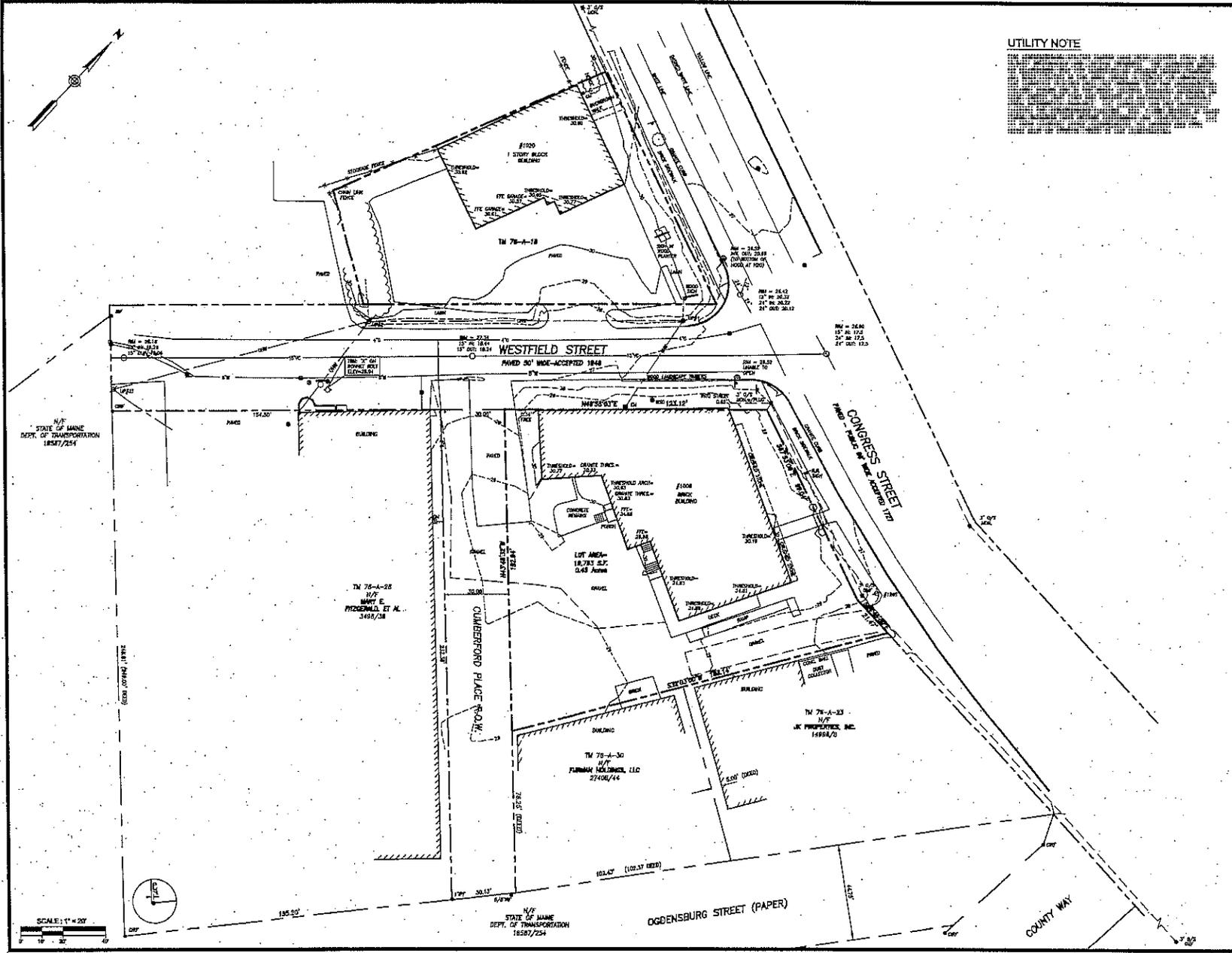
Before me,

Justice of the Peace.

JAN 3 1974

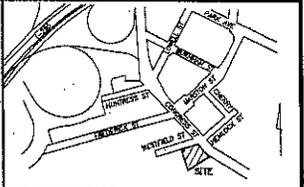
REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE

Received at 2 B 36 v. u. and recorded in  
 BOOK 3498 PAGE 38 *White House* register



**UTILITY NOTE**

ALL UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY. THE LOCATION AND DEPTH OF UTILITIES ARE NOT GUARANTEED. THE USER SHALL VERIFY THE LOCATION AND DEPTH OF UTILITIES PRIOR TO ANY CONSTRUCTION. THE USER SHALL BE RESPONSIBLE FOR ANY DAMAGE TO UTILITIES CAUSED BY CONSTRUCTION. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORD PLANS FROM THE CITY ENGINEERING DEPARTMENT. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORD PLANS FROM THE CITY ENGINEERING DEPARTMENT. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORD PLANS FROM THE CITY ENGINEERING DEPARTMENT.



LOCATION MAP N.T.S.

**LEGEND**

|   |                           |   |               |                        |
|---|---------------------------|---|---------------|------------------------|
| ● | IRON PIPE OR ROD FOUND    | — | CONC          |                        |
| ■ | MONUMENT FOUND            | — | OVERHEAD WIRE |                        |
| ▲ | UTILITY POLE              | — | W             | WATER LINE             |
| ○ | MANHOLE                   | — | C             | GAS LINE               |
| □ | DAY/IN ELECTRIC/GAS METER | — | SS            | SEWERY BOWER           |
| ○ | SEW                       | — | RP/RW         | IRON PIPE OR ROD FOUND |
| ○ | CATCH BASIN               | — | CONC          | CONCRETE               |
| ○ | WATER VALVE OR SHUTOFF    | — | DMF           | GRANITE MONUMENT FOUND |
|   |                           | — | NIP           | IRON OR TINNED IRON    |
|   |                           | — | MB/DOO        | WOOD BARK / PALE       |

- PLAN REFERENCES**
1. "BOUNDARY SURVEY ON 12-24 WESTFIELD STREET, PORTLAND, MAINE MADE FOR FITZGERALD TITLED DATED 12/24/2015 BY OWEN HASKELL, INC.
  2. "MULTI-PURPOSE LAND TITLE SURVEY, 17 WESTFIELD STREET, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR WESTFIELD STREET REALTY, LLC JANUARY 8, 2014 BY OWEN HASKELL, INC.
  3. "PLAN OF PROPERTY IN PORTLAND MADE FOR GENERAL BANKING COMPANY" BY E.G. JORDAN DATED MARCH 1840 FILED WITH THE CITY ENGINEERS OFFICE PLAN 432/23.
  4. "PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR ROBERT B. JAMES CONSTRUCTION CO. BY H.A. & E.G. JORDAN DATED 12-27-63 REVISED JAN. 11, 1964.

- GENERAL NOTES**
1. OWNER OF RECORD: 1006 CONGRESS STREET LLC  
1500 SUNSET RIDGE DRIVE  
LAKELAND, MAINE, ME 04251  
241 MAP 12 BLOCK A LOT 22  
C.C.A.D. BOOK 34188 PAGE 103
  2. BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM MAINE WEST HAZEL CITY ADJUSTMENTS AT 10" STREET AND 14" STREET PROVIDED BY THE CITY OF PORTLAND ENGINEERING DEPARTMENT.
  3. DIMENSIONS ARE BASED ON MVD 1928 CITY BENCHMARK 3' 4/32" ADJUSTMENT AT ST. JOHN STREET AND 10" STREET ELEVATION 32.56.
  4. REMAINDER LINES SHOWN FOR TM 76-A-18 OBTAIN FROM PLAN REFERENCE 4, NOT VERIFIED BY OWEN HASKELL, INC.

**CERTIFICATE**

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

JOHN W. SWAN, PLS NO. 1038  
DATE

REV: 1 | 01-24-18 | TAX MAP LOT 76-A-18 & TOPOGRAPHY ADDED

**Boundary Survey**  
At  
1006 & 1020 Congress St., Portland, Maine  
Made for  
PK Realty Management Investments  
390 Riverside Street, Portland, Maine

**OWEN HASKELL, INC.**  
PROFESSIONAL LAND SURVEYORS  
390 U.S. ROUTE ONE, UNIT 10, FALMOUTH, MAINE 04103

DRAWN BY: RB/JJM DATE: NOV. 18, 2017 JOB NO.: 2017-016-P  
CHECKED BY: WBC/JMB SCALE: 1"=20' DRWG. NO.: 1

SCALE: 1" = 20'

N/T STATE OF MAINE  
DEPT. OF TRANSPORTATION  
16587/254



**Stantec Consulting Services Inc.**  
482 Payne Road Scarborough Court, Scarborough ME 04074-8929

I, Stephen Bushey of Stantec, hereby certify that a Neighborhood Meeting was held on June 19, 2018 at the Eagles Club, 184 St. John Street, Portland, Maine at 5:30 PM.

I also certify that on June 5, 2018 (which is at least ten (10) days prior to the Neighborhood Meeting) invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 500 feet of the proposed development or within 1,000 feet of a proposed industrial subdivision or industrial zone change.
2. Residents on the "interested parties" list.
3. A digital copy of the notice was also provided to the Planning Division ([jmy@portlandmaine.gov](mailto:jmy@portlandmaine.gov) and [ldobson@portlandmaine.gov](mailto:ldobson@portlandmaine.gov)) and the assigned planner to be forwarded to those on the interested citizen list who receive e-mail notices.

Signed,

  
\_\_\_\_\_  
Stephen Bushey, P.E.

\_\_\_\_\_  
June 20, 2018  
Date

Attached to this certification are:

1. Meeting invitation
2. Sign-in sheet
3. Meeting minutes

V:\1953\resource\fst\Admin Resources\PROPOSALS\Stantec Proposals\1006 Congress Street Portland\Neighborhood Meeting\meeting certification\_20180620.docx

**Neighborhood meeting**

1006 Congress St Rezone request /

---

Date/Time: June 19, 2018 / 5:30 pm  
Place: Eagles Club St John Street  
Next Meeting:  
Attendees: See attendance list  
Absentees:  
Distribution: City planning- Shukria Wiar

---

**Item:****Action:**

Stephen Bushey introduced landowners, Jennifer Packard and David Packard to those attending and briefly provided an overview of the purpose of the meeting and the proposal for a rezone request at the 1006 Congress St property. SB explained the request to change the zone from IL to B2 and the basis of the request. It was further explained that the Planning Board considered the request at a workshop meeting about a month ago and that the item will be on the June 26<sup>th</sup> PB Public hearing agenda at which time the PB will make a recommendation to the City Council regarding the rezone request. It is expected that the City Council will have two readings of the rezone article over the course of July and perhaps into August. SB explained that the Planning Authority is interested in extending the B2 zone to additional properties and that the Department is in the process of speaking to additional landowners in the area regarding this prospective zoning change.

Attendees asked questions regarding the original IL zoning and anticipated uses for the property at 1006 Congress. Jennifer Packard provided a brief history and background to the building at 1006 Congress and explained their interest in prospective tenants, such as a restaurant, café, small retail or similar uses. The group discussed various other ancillary topics including surrounding land uses, history of development in the area and expectations for the future. Generally, the group seemed supportive of the proposed zoning change.

The meeting adjourned at 6:30 pm

The foregoing is considered to be a true and accurate record of all items discussed. If any discrepancies or inconsistencies are noted, please contact the writer immediately.

Stantec Consulting Services Inc.

Design with community in mind

bs v:\1953\resource\fst\admin resources\proposals\stantec proposals\1006 congress street portland\neighborhood meeting\2018.06.19 meeting notes.docx



June 19, 2018

Neighborhood meeting

Page 2 of 2

**Stephen Bushey**

Associate, Senior Project Manager

Phone: (207) 887-3478

Fax: 207-883-3376

Stephen.Bushey@stantec.com

Attachment:

c. attendees list



Stantec Consulting Services Inc.  
482 Payne Road Scarborough Court, Scarborough ME 04074-8929

June 5, 2018

Dear Neighbor:

Please join us for a Neighborhood Meeting to discuss our request for rezoning of the existing Captain's House Building and property at 1006 Congress Street (Tax map 076, lot A022) in Portland, Maine from the I-L Zone to the B-2 Zone. The rezone request will be considered during a Public Hearing by the Portland Planning Board on June 26, 2018 at which time the Board will make a recommendation to the City Council. The City Council is expected to take action in July or August, 2018.

**Meeting Location:** Portland Eagles  
184 St. John Street  
Portland, Maine  
(park in the large lot and enter through that door)

**Meeting Date:** Tuesday, June 19, 2018

**Meeting Time:** 5:30 PM

The City Code requires that property owners within 500 feet (except notices must be sent to property owners within 1,000 feet for industrial zoning map amendments and industrial subdivisions) of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board. The meeting will last no more than 30-45 minutes.

If you have any questions, please feel free to contact Steve Bushey, P.E. at 207-883-3355.

Sincerely,

**STANTEC CONSULTING SERVICES, INC.**

Stephen R. Bushey, P.E.  
Associate

V:\1953\resource\fst\Admin Resources\PROPOSALS\Stantec Proposals\1006 Congress Street Portland\Neighborhood Meeting\1006-congress\_notice\_neighborhood-meeting.docx

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*Note: Under Section 14-32(C) and 14-525 of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within three weeks of submitting a preliminary application or two weeks of submitting a final site plan application, if a preliminary plan was not submitted. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to the Planning and Urban Development Department, Planning Division 4th Floor, 389 Congress Street, Portland, ME 04101 or by email to: [bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)*

# Sign In - Neighbor hood meeting

| <u>Name</u>      | <u>Address</u>  | <u>Contact info</u>     |
|------------------|-----------------|-------------------------|
| Steve Bushy      | StAntec         | 207-756-9359            |
| John Marchileon  | 349 Park Ave    | 413 <del>205-8515</del> |
| David Peckard    | 1006 Congress   | 426 3946                |
| Jennifer Peckard |                 | 207 939 3130            |
| Deborah Heald    | 213 St John St. | 207-831-7690            |
| Zack Barowitz    | 22 Huntress St  | 838-6120                |
| John Fitzgerald  | 12 Westfield St | 781-740-3559            |
| Caroline Losneck | 22 Huntress St. | 440 279-3192            |
| George Rheault   | 28 Hanover St.  | 207-808-8223            |



## Zoning Map, Text Amendment, Contract or Conditional Rezoning Application Portland, Maine

Planning and Urban Development Department  
Planning Division

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

Portland's development review process and requirements are outlined in the [Land Use Code \(Chapter 14\)](#), [Design Manual](#) and [Technical Manual](#).

**Planning Division**

Fourth Floor, City Hall

389 Congress Street

(207) 874-8719

[planning@portlandmaine.gov](mailto:planning@portlandmaine.gov)

**Office Hours**

Monday thru Friday

8:00 a.m. – 4:30 p.m.

**I. Project Information (Please enter n/a on those fields that are not applicable)**

|   |   |
|---|---|
| Project Name:   | 1006 Congress   |
| Proposed Development Address:   | 1006 Congress Street  |
| Project Description:  | Repairs and restoration of existing building to use for multiple tenant spaces. |
| Chart/Block/Lot:  | 76-A-22   |
| Right, Title or Interest <i>(Please identify the status of the applicant's right, title, or interest in the subject property – for example a deed, option or contract to purchase or lease the subject property)</i>  | Owner, deed attached.   |
| Existing Use <i>(Describe the existing use of the subject property)</i>   | Vacant  |
| Current Zoning Designation:   | IL  |
| Proposed Use of the Property <i>(Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property)</i>   | Business Offices with possible cafe on first floor.                             |
| Vicinity Map <i>(Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use)</i>  |   |
| Site Plan <i>(On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan – to scale – by the applicant. (Scale to suit, range from 1' = 10' to 1' = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood)</i> |   |

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

**APPLICANT**

|                |                                  |
|----------------|----------------------------------|
| Name:          | Richard Packard/Jennifer Packard |
| Business Name: | 1006 Congress LLC                |
| Address:       | 33 Mc Alister Farm Road          |
| City/State:    | Portland, ME                     |
| Zip Code:      | 04103                            |
| Work #:        | 949-338-8123                     |
| Home #:        | 949-338-8123                     |
| Cell #:        | 949-338-8123                     |
| Fax #:         | 949-338-8123                     |
| E-mail:        | packard.jen@gmail.com            |

**OWNER**

|             |                   |
|-------------|-------------------|
| Name:       | Same as applicant |
| Address:    |                   |
| City/State: |                   |
| Zip Code:   |                   |
| Work #:     |                   |
| Home #:     |                   |
| Cell #:     |                   |
| Fax #:      |                   |
| E-mail:     |                   |

**AGENT/REPRESENTATIVE**

|             |   |
|-------------|---|
| Name:       | Archetype Architects                        |
| Address:    | 48 Union Wharf                              |
| City/State: | Portland, ME                                |
| Zip Code:   | 04105                                       |
| Work #:     | (207) 772-6022                              |
| Home #:     |   |
| Cell #:     |   |
| Fax #:      |   |
| E-mail:     | detmer@archetypepa.com sue @archetypepa.com |

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

|             |                         |
|-------------|-------------------------|
| Name:       | Same as Applicant/Owner |
| Address:    |                         |
| City/State: |                         |
| Zip Code:   |                         |
| Work #:     |                         |
| Home #:     |                         |
| Cell #:     |                         |
| Fax #:      |                         |
| E-mail:     |                         |

**ENGINEER**

|             |  |
|-------------|--|
| Name:       | Matthew Miller, P.E. M2 Structural Engineering, P.C. |
| Address:    | 23 Thornbury Way                                     |
| City/State: | Windham, ME  |
| Zip Code:   | 04062  |
| Work #:     | 201-892-0983   |
| Home #:     |  |
| Cell #:     |  |
| Fax #:      |  |
| E-mail:     | matt@m2se.com  |

**SURVEYOR**

|             |                         |
|-------------|-------------------------|
| Name:       | Owen Haskei, Inc.       |
| Address:    | 390 US 1                |
| City/State: | Falmouth, Me            |
| Zip Code:   | 04105                   |
| Work #:     | 207-774-0424            |
| Home #:     |                         |
| Cell #:     |                         |
| Fax #:      | 207-774-0511            |
| E-mail:     | ebrewer@owenhaskell.com |

**ARCHITECT**

|             |                        |
|-------------|------------------------|
| Name:       | Archetype Architects   |
| Address:    | 48 Union Wharf         |
| City/State: | Portland, ME           |
| Zip Code:   | 04101                  |
| Work #:     | 207-772-6022           |
| Home #:     |                        |
| Cell #:     |                        |
| Fax #:      |                        |
| E-mail:     | detmer@archetypepa.com |

**ATTORNEY**

|             |                            |
|-------------|----------------------------|
| Name:       | Andre Duchatte             |
| Address:    | 30 Milk Street, 5th floor  |
| City/State: | Portland, ME               |
| Zip Code:   | 04101                      |
| Work #:     | 207-828-2005               |
| Home #:     |                            |
| Cell #:     |                            |
| Fax #:      |                            |
| E-mail:     | aduchette@tmfattorneys.com |

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

|         |                        |
|---------|------------------------|
| Name:   | Susan Geffers          |
| E-mail: | sue@archetypepa.com    |
| Name:   | Katherine Detmer       |
| E-mail: | detmer@archetypepa.com |
| Name:   |                        |
| E-mail: |                        |

### III. APPLICATION FEES (check applicable review)

|                                     |  |            |
|-------------------------------------|--|------------|
| <input checked="" type="checkbox"/> | <b>Zoning Map Amendment</b><br>from ( IL ) zone to ( B2 ) zone   | \$3,000.00 |
| <input type="checkbox"/>            | <b>Zoning Text Amendment</b><br>to Section 14- ( )<br>(For a zoning text amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example).)   | \$3,000.00 |
| <input type="checkbox"/>            | <b>Combination Zoning Text Amendment and Zoning Map Amendment</b>  | \$4,000.00 |
| <input type="checkbox"/>            | <b>Conditional or Contract Zone</b><br><i>(A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurance related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Section 14-60-62.)</i> | \$5,000.00 |

### IV. FEES ASSESSED AND INVOICED SEPARATELY

- Notices to abutters (receipt of application, workshop and public hearing meetings) (\$.75 each)
- Legal Ad in the Newspaper (% of total ad)
- Planning Review (\$52.00 hour)
- Legal Review (\$75.00 hour)
- Third Party Review (all outside reviews or analysis, eg. Traffic/Peer Engineer, are the responsibility of the applicant and will be assessed and billed separately)

## VI. APPLICANT SIGNATURE

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

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

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

|                         |   |
|-------------------------|---|
| Signature of Applicant: | William Hopkins<br>Digitally signed by William Hopkins<br>Date: 2017.11.13 12:40:10 -05'00' |
| Date:                   | 11/10/2017  |



## Zoning Map, Text Amendment, Contract or Conditional Rezoning Application Portland, Maine

Planning and Urban Development Department  
Planning Division

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

Portland's development review process and requirements are outlined in the [Land Use Code \(Chapter 14\)](#), [Design Manual](#) and [Technical Manual](#).

**Planning Division**

Fourth Floor, City Hall

389 Congress Street

(207) 874-8719

[planning@portlandmaine.gov](mailto:planning@portlandmaine.gov)

**Office Hours**

Monday thru Friday

8:00 a.m. – 4:30 p.m.

**I. Project Information (Please enter n/a on those fields that are not applicable)**

|   |   |
|---|---|
| Project Name:   | 1006 Congress   |
| Proposed Development Address:   | 1006 Congress Street  |
| Project Description:  | Repairs and restoration of existing building to use for multiple tenant spaces. |
| Chart/Block/Lot:  | 76-A-22   |
| Right, Title or Interest ( <i>Please identify the status of the applicant's right, title, or interest in the subject property – for example a deed, option or contract to purchase or lease the subject property</i> )  | Owner, deed attached.   |
| Existing Use ( <i>Describe the existing use of the subject property</i> )   | Vacant  |
| Current Zoning Designation:   | IL  |
| Proposed Use of the Property ( <i>Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property</i> )   | Business Offices with possible cafe on first floor.                             |
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| Name:   | Katherine Detmer       |
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| Name:   |                        |
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I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

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|--------------------------------|--|
| <b>Signature of Applicant:</b> | <b>William Hopkins</b><br>Digitally signed by William Hopkins<br>Date: 2017.11.13 12:40:10 -05'00' |
| <b>Date:</b>                   | 11/10/2017   |

# A R C H I T E C T Y P E

January 2, 2018

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101

Dear Ms. Barhydt,

We are proposing that the property located at 1006/1008 Congress Street be re-zoned from I-L to B-2.

The current zone, I-L is one that is designated to act as a buffer between neighboring residential zones and I-M or I-H zones allowing for uses that are low intensity in nature and therefore compatible with neighboring residences.

B-2 is a zone designated for mixed uses, including commercial, housing and services that serve the adjoining neighborhoods. This zone provides a large range of uses, with an ideal location including along arterials that are accessible by cars, pedestrians and bicycles.

By both the nature of the existing building and Portland's Comprehensive Plan, the B-2 zone seems a much better fit for the address in discussion.

The existing building is a beautiful Captain's House and barn built in the late 1800s with an addition that was added around the 1970s. Being able to keep the existing structure would be the sustainable approach. The interior spaces are smaller and want to remain so due to the nature of the masonry structure therefore being ill-suited to any industrial use.

The site sits along Congress Street where the street acts as a major connector between isolated R-6 zones and a large B-2 zone. The street is already heavily used by vehicles. By adding mixed-use at the site, which has accessible sidewalks in place, pedestrian use would be encouraged. Westfield Street is also important in the discussion because it has been designated as part of the Portland Trail system. Currently the area does not read as an inviting trail system, but by adding the proposed ability for mixed-use, the building could better serve and enhance the trail.

While the I-L zone is designed to be compatible, it seems better fitting with the Comprehensive Plan and more important that a site be zoned as B-2. It is located at an intersection joining residences, business, vehicular and pedestrian traffic. As B-2 1006 Congress Street could serve its surroundings and help to encourage a healthy and diverse neighborhood while also providing the opportunity for new and relocated businesses bringing with them jobs.

Sincerely,



William K. Hopkins  
Registered Architect

# A R C H I T E C T Y P E

January 2, 2018

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101

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Sincerely,



William K. Hopkins  
Registered Architect



Stantec  
 483 Payne Road Scarborough Court  
 Scarborough, Maine 04074-8927  
 Tel. 207.883.3355  
 www.stantec.com

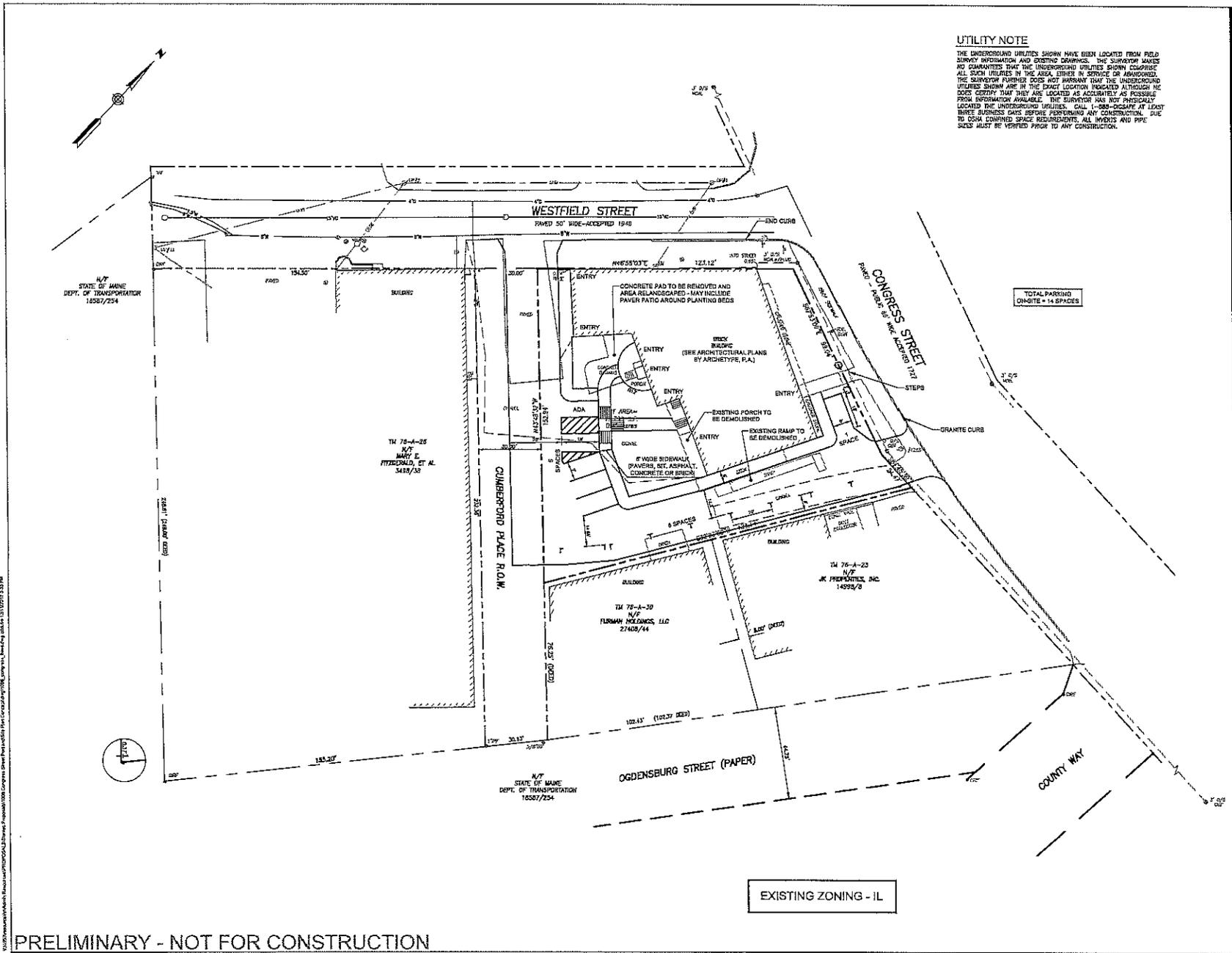
Copyright Reserved  
 The Contractor shall verify and be responsible for all dimensions, DO NOT build on easements or other areas that are not shown on the plan unless otherwise noted.  
 The Contractor shall be responsible for all utility relocation, storage, and protection of all existing and proposed utilities. All utility relocation shall be verified prior to any construction.

Consultants

Notes

**UTILITY NOTE**

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COINCIDE ALL SUCH UTILITIES IN THE AREA. EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-800-852-8471 AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO TIGHT CONFINED SPACE REQUIREMENTS, ALL HOLES AND PIPE SLEEVES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.



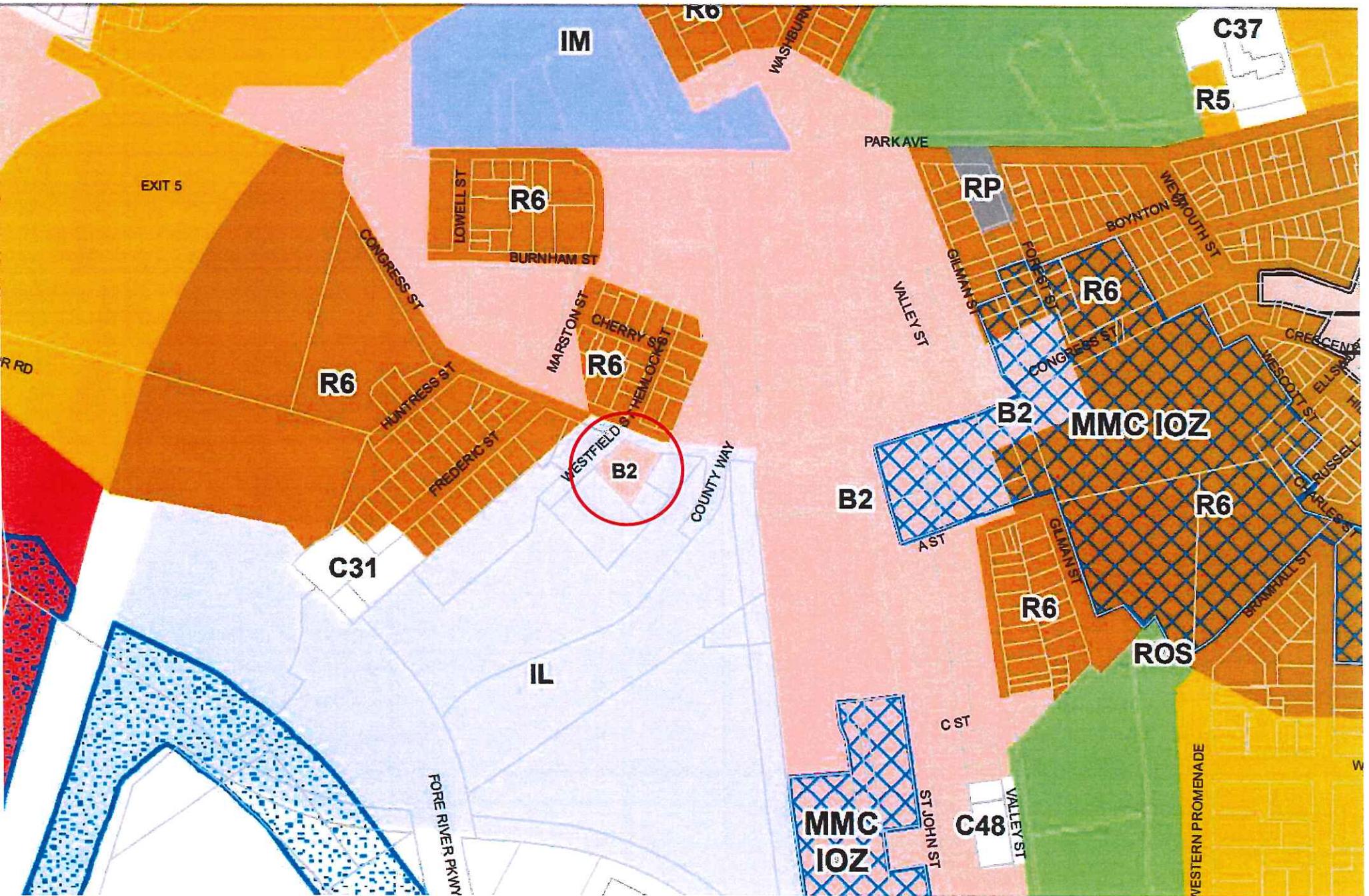
PRELIMINARY - NOT FOR CONSTRUCTION

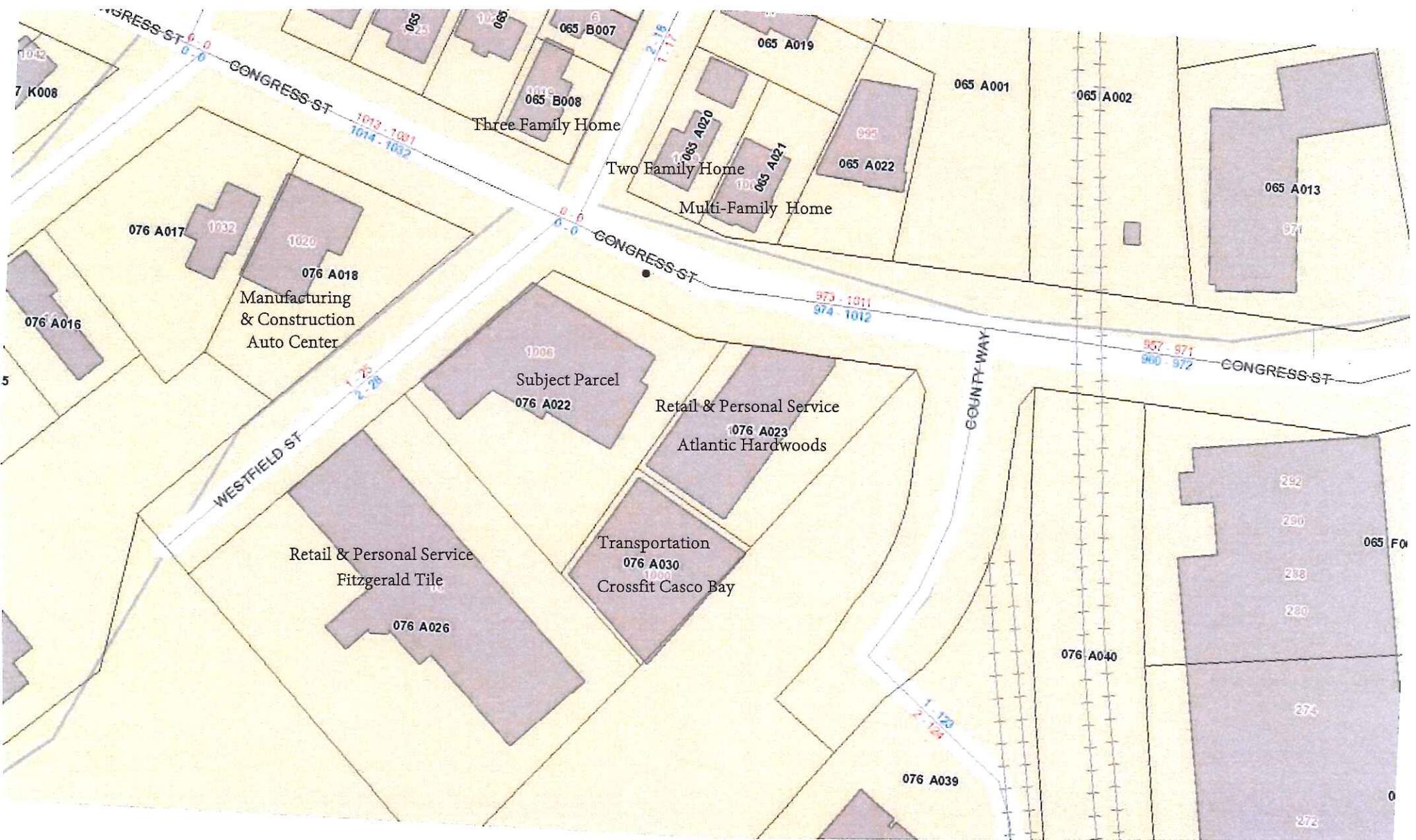
| Revision | Date | By | Check |
|----------|------|----|-------|
|          |      |    |       |

Client/Project  
 PK Realty Management Investments  
 380 Riverside Street, Portland, Maine  
 1006 Congress Street  
 PORTLAND, MAINE

Title  
 PRELIMINARY SITE PLAN

Project No. 195389000  
 Scale 1" = 20'  
 Sheet C-1





1043  
7 K008

076 A016

076 A017

1032

1020

076 A018

Manufacturing  
& Construction  
Auto Center

065 B007  
065 B008  
Three Family Home

065 A019  
065 A020  
Two Family Home

065 A021  
Multi-Family Home

065  
065 A022

065 A001

065 A002

065 A013

971

1008  
Subject Parcel  
076 A022

Retail & Personal Service

076 A023  
Atlantic Hardwoods

Retail & Personal Service  
Fitzgerald Tile

076 A026

Transportation  
076 A030  
Crossfit Casco Bay

COUNTY WAY

076 A040

292

290

288

280

065 F0

278

272

076 A039

Order 31-18/18  
Tab 43 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 24 SEWERS  
RE: INDUSTRIAL PRETREATMENT PROGRAM  
TRANSFER TO PORTLAND WATER DISTRICT**

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

- 1. That Chapter 24, Sections 24-50, 24-52, 24-55 and 24-57 of the Portland City Code are hereby amended to read as follows:*

**Sec. 2450. Discharge permit.**

(a) All categorical users and other dischargers of industrial wastes shall obtain a discharge permit from the ~~Department of Public Works Portland Water District, as required by rule. as required by rule.~~ New users shall obtain permits prior to any discharge. Applications and permits shall be in a form prescribed by the ~~Department of Public Works Portland Water District~~ and shall be subject to an application fee ~~of three hundred dollars (\$300.00) per permitas set by the Portland Water District.~~ Additionally, ~~each permit shall be subject to an issuance fee which shall equal the direct and indirect costs of any previous advertisement of noncompliance and any other outside services which in the discretion of the Department of Public Works are required in order to review and evaluate the application or to implement a pretreatment program for such permitted user.~~

...

**Sec. 2452. Right of entry.**

The Department of Public Works, or the Portland Water District as its agent, bearing proper credentials and identification, shall be permitted to enter upon all properties with sewer or stormwater drainage systems connected to the

public sewer and producing industrial or process wastes, at reasonable times and upon reasonable notice for the purpose of inspection, observation, measurement, sampling and testing or to otherwise enforce the rules, including copying of reports and records relating to the industrial pretreatment program in accordance with the provisions of this article.

...

**Sec. 2455. Written notice required.**

Fortyfive (45) days' written notice shall be given to the Department of Public Works and the Portland Water District by any person proposing to:

- (a) Substantially change the volume or character of pollutants over that being discharged into the treatment system at time of enactment of this article;
- (b) Create a new discharge into the treatment system of pollutants from any source which would be a new source as defined in section 306 of the act if such a source were discharging pollutants elsewhere;
- (c) Create a new discharge into the treatment system of pollutants from any source which would be subject to section 301 of the act if it were discharging such pollutants elsewhere.

...

**Sec. 2457. Appeals.**

(a) Whenever the person receiving written notice shall deem himself or herself aggrieved by an order made by the Department of Public Works, the 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 his or her designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.   

(b) In cases of applicability or interpretation of this article, the city manager may revoke such order made by the Department of Public Works.

(c) In cases where compliance with such order made by the Department of Public Works would cause undue hardship, the city

manager may extend the time limit of such order or they may permit exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article, subject always to the rule that the city manager shall give due consideration to the purposes of this article in eliminating existing pollution, preventing further pollution and promoting the public health, safety and welfare.

(d) This Section shall not apply to notices of violation or other determinations issued by the Portland Water District. Any notices issued by the Portland Water District under this Article shall be subject to review by the superior court under Rule 80B of the Maine Rules of Procedure within thirty (30) days of the decision.

**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 28<sup>th</sup>, 2018

**SUBJECT:** Ordinance Change - Chapter 24: Sewers

**SPONSOR:** Corporation Counsel

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

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

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

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

None

**I. ONE SENTENCE SUMMARY**

Staff are proposing amendments to Chapter 24 of the City Code to effectuate a transfer of responsibility for the administration and management of the Industrial Pretreatment Program from the City to the Portland Water District.

**II. AGENDA DESCRIPTION**

In early April, the City Manager and the Portland Water District (PWD) executed a memorandum of understanding (MOU) documenting a plan to transfer responsibility for the administration and management of the Industrial Pretreatment Program (IPP) from the City to PWD. This transfer of responsibility is in line with the arrangement that PWD has with Westbrook and Gorham. The MOU contemplated changes to the City's Code of Ordinances to effectuate the shift of responsibility to PWD. Those proposed revisions to Chapter 24 are now being presented to the Council for its consideration. If these amendments to Chapter 24 are approved, the shift contemplated by the MOU will take effect.

**III. BACKGROUND**

The purpose of Chapter 24: Sewers is to eliminate existing pollution, and to prevent further pollution caused by inadequate wastewater disposal, and to accomplish the necessary local legislation to meet the pollution abatement schedule for the Portland Regional Wastewater Plan

established by the state and the federal government. All this is in furtherance of the health, welfare, comfort and convenience of the inhabitants of the city. As part of this mission and regulations from the Environmental Protection Agency, an Industrial Pretreatment Program (IPP) is required to provide discharge permits to industrial users of a sewer system to ensure that they do not have a negative on the collection system and wastewater treatment facility. Three sections of the ordinance are being revised in tandem with the Rules and Regulations for Use of the Sewer System to allow the Portland Water District (PWD) to administer the IPP. These changes will not impact the goals of the Ordinance.

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.

These changes, along with the changes to the Rules and Regulations for Use of the Sewer System which are also being communicated to the Council at its July meeting, 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.

Currently, City of Portland Water Resources Division Compliance Staff administer the program and send all of the collected and submitted information to the Portland Water District. The City also completes any necessary follow up that the PWD requests. The transfer will limit the amount of redundant effort required for the PWD to meet their permit requirements and allow City of Portland Water Resources Division Compliance Staff to focus on the regulatory requirements that the City is directly responsible for, including the Municipal Separated Storm Sewer System, 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 Industrial Pretreatment Program Owner's Manual has been updated to reflect the shift of responsibilities.

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

The intended result is to update the Code of Ordinances to effectuate the transfer of the administration, management, and regulatory authority of the Industrial Pretreatment Program from the City of Portland to the PWD. This will allow the PWD to meet the requirements of 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.

## **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 (PWD) as they assume the regulatory authority associated with the Industrial Pretreatment Program (IPP). The Portland Water District 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, along with the changes to the Rules and Regulations for Use of the Sewer System, 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.

These changes are being made in tandem with revisions to the Rules and Regulations for Use of the Sewer System.

## **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

Chapter 24: Sewers – Red Line Version

Memorandum of Understanding with Portland Water District

Industrial Pretreatment Owner's Manual

Prepared by: Benjamin Pearson

Date: June 28<sup>th</sup>, 2018

Bean/agendarequestmemo/rev 11/2015

# Portland Industrial Pretreatment Program



## Owner's Manual

Published July 2013

Revision February 2018

## Section 1: Program Administration

### 1.1 Annual Report

|                            |                                 |
|----------------------------|---------------------------------|
| <b>Program Requirement</b> | Annual Report to DEP            |
| <b>Frequency</b>           | once per year                   |
| <b>Due date</b>            | July 1                          |
| <b>Reason</b>              | Requirement of MePDES Permit    |
| <b>Attachment A</b>        | Example Annual Report Narrative |

Each year the District compiles a report summarizing statistics and accomplishments of the program for the previous year. The reporting year is May 1 to April 30 and the report must be submitted to the DEP by July 1. Because the District is responsible for the day-to-day activities of the program, much of the report is a summary of District actions over the previous year. So in the period leading up to the preparation of the report, the District reviews its files to ensure that they are complete. This can include dates of sampling, dates of inspection, etc. Most of the data and information that go into the report is from LabCal, IPT CMMS, and the District's electronic files. The report is a requirement of the federal IPT rules §403.12 (i) and is listed specifically in the MePDES permit for the East End WWTF Special Condition M (2) (e).

#### 1.1.1 Required Elements

| <b>NPDES PERMIT REQUIREMENT FOR IPT REPORT</b>   |
|--|
| 1. An updated list of all industrial users by category indicating compliance or non compliance |
| 2. A summary of compliance and enforcement activities  |
| 3. Inspection dates  |
| 4. Sample dates  |
| 5. Compliance schedules issued   |
| 6. Written notices of violation (NOV) issued   |
| 7. Administrative Orders issued  |

|   |
|---|
| 8. Criminal or Civil suits filed  |
| 9. Penalties obtained   |
| 10. Significant non compliance instances published in the local paper   |
| 11. Narrative description of program effectiveness  |
| 12. Present and proposed changes to the program   |
| 13. A summary of analytical results for influent, effluent, sludge and toxicity and bioassay data from the POTW                     |
| 14. A description of any pass through or interference that occurred or any investigations of potential interference or pass through |
| 15. A description of actions taken to reduce violations by SIUs4.   |
| 16. The date of last adoption of Local Limits   |
| 17. A description of actions being taken to reduce the incidence of violations by SIUs  |

## 1.2 Local Limits Development

| Program Requirement | Local Limits evaluation        |
|---------------------|--------------------------------|
| Frequency           | Once per MePDES Permit cycle   |
| Due date            | 120 days after permit issuance |
| Reason              | Requirement of MePDES Permit   |
| Attachment B1       | Local Limits SOP               |
| Attachment B2       | Local Limits Summary Table     |

Local Limits are technically-based site-specific discharge limits. They are established by the POTW based on flow, discharge, and industrial user information specific to the facility. Their purpose is to protect the treatment facilities, receiving water quality, worker health and safety, and to allow for beneficial use of sludge. As a condition of the MePDES permit for the East End WWTF, the District is required to evaluate, once per permit cycle, the need for revision of local limits.

The evaluation and, if needed, revision of the local limits requires flow and concentration data from the industries and for the influent

and effluent from the treatment plant, as well as biosolids quantity and concentration data. All of this is data collected and stored by the District.

### 1.3 Local Limits Promulgation

Once new local limits are determined and have been reviewed and confirmed by City and District staff, they have to be promulgated by approval first by DEP, and then next by the District Board of Trustees and the City Council. The DEP is required to hold a public hearing only in the event a limit is being raised. If limits are all staying the same or being lowered, no DEP hearing is required. The Trustees or Council may require a public hearing.

Finally, the new limits have to be incorporated into the District's Wastewater Rules and the City's ordinance. To enact revisions to the local limits found in the Rules and Regulations for Use of the Sewer System, the City of Portland requires a public process and a communication to City Council prior to the new limits being enacted. For changes to the City Code of Ordinance, two readings must be completed and passed by City Council. City staff will remain responsible for enacting and completing the process of any revisions to the Ordinance and/or Rules and Regulations.

### 1.4 Inter-organizational Communication

Since the District handles all of the day-to-day administration of the Portland IPT Program, there is less frequent communication between the District and the City of Portland. Typically, the City is copied on the annual report and notices of violation. The City is also involved in Industrial Waste Surveys, identifying new industries, ordinance changes, surcharge assessments, and requests for specific discharge permissions. Typically, this communication is done via informal emails to the City contact.

#### 1.4.1 District Weekly IPT QA Report

|                            |                          |
|----------------------------|--------------------------|
| <b>Program Requirement</b> | IPT QA Report            |
| <b>Frequency</b>           | Once per week            |
| <b>Due date</b>            | Monday                   |
| <b>Reason</b>              | Share lab data with City |
| <b>Attachment C</b>        | Example IPT QA report    |

Each week the District reviews the weekly IPT QA report which summarizes all data input to the lab database in the previous week. This includes results from both Portland and Westbrook-Gorham sampling events. After review, any mistakes are corrected and the data is approved.

**1.4.2 Semi-Annual IPT Update Report**

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | District IPT Activity Report                               |
| <b>Frequency</b>           | Twice per year   |
| <b>Due date</b>            | July and January   |
| <b>Reason</b>              | Keep City apprised of District documented industry actions |
| <b>Attachment D</b>        | Example IPT Update Report                                  |

Twice per year the District provides the City with a report summarizing the key actions taken over the past 6 months involving the IPT industries. Providing this summary allows the City to review the status of each industry as documented by the District and ensure District records are complete and accurate.

**1.4.3 City/PWD IPT Coordination Meeting**

|                            |                            |
|----------------------------|----------------------------|
| <b>Program Requirement</b> | IPT Coordination Meetings  |
| <b>Frequency</b>           | As necessary               |
| <b>Due date</b>            | Varies                     |
| <b>Reason</b>              | Coordinate activities      |
| <b>Attachment E</b>        | Example IPT Meeting Agenda |

As needed, the relevant members of District and City staffs meet to touch base on IPT issues of common concern. This can include interactions related to monitoring or other violations, program issues, ordinance changes, surcharge assessments, etc. Agendas and minutes are produced by the District.

## Section 2: Regulatory/Legal

### 2.1 IPT Permit Process (Portland Rules and Regulations for Use of the Sewer System §3)

|                       |                                       |
|-----------------------|---------------------------------------|
| <b>Program</b>        | Industry Discharge Permitting         |
| <b>Responsibility</b> | District                              |
| <b>Frequency</b>      | Once every three years                |
| <b>Due date</b>       | On expiration date of previous permit |
| <b>Reason</b>         | Finance requirement §3.1              |

Each industry in the IPT program has a discharge permit (or control mechanism) that describes the discharge limits and monitoring requirements specific to that industry. Permits are issued for no more than three years at a time. The District may issue a discharge permit for less than three years at its discretion. The sections that follow explain the permit application and permitting process. The permit process is as follows (see Portland's Rules and Regulations for Use of the Sewer System §3.6):

|   |
|---|
| The District sends blank permit application to industry at least 90 days before startup (for new permits) or at least 90 days before permit expiration (for renewed permits) with a deadline to return in 30 days.                            |
| The District receives permit application from industry at least 60 days before anticipated start up (for new permits) or at least 60 days prior to expiration date of previous permit (for renewed permits)                                   |
| The District has 45 days from receipt of permit application to evaluate the application and decide whether to issue a permit or not.  |
| The District must publish public notice of intent to issue a new permit at least 45 days prior to issuance. The notice will include a location where the draft permit can be reviewed and an address where written comments can be submitted. |
| Upon receipt of the permit, the industry may appeal the terms of the permit. The District reviews petition and makes final decision.  |
| Industry can request judicial review of final permit in Cumberland County Superior Court.   |

#### 2.1.1 New Permit Application and Permit Renewal Application (see Portland's Rules and Regulations for Use of the Sewer System §3.2, §3.10 and §3.11)

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | New Industry Permit Application and Permit Renewal Application |
| <b>Responsibility</b>      | District   |
| <b>Frequency</b>           | Once every three years   |

|                     |   |
|---------------------|---|
| <b>Due date</b>     | At least 60 days prior to anticipated start up or at least 60 days prior to expiration date of existing permit. |
| <b>Reason</b>       | Ordinance requirement §3.1 a-e  |
| <b>Attachment G</b> | Example permit application  |

Once it is determined that an industry will be permitted, the industry must complete a new permit application. The information required on the permit application is listed in Portland's Rules and Regulations for Use of the Sewer System §3.2 and or the District's Sewer User Rules §4.2.

|   |
|---|
| Name, address and location (if different from address), including name and address of owner/operator.   |
| Applicable SIC code(s).   |
| Wastewater constituents and characteristics including any pollutants in the discharge that are limited by local, state or federal standards.  |
| Time and duration of the discharge.   |
| Daily maximum, daily average and monthly average wastewater flow.   |
| Description of activities, facilities, and plant processes.   |
| Site plans, floor plans, mechanical plans and details to show all sewers, floor drains, and appurtenances.  |
| Each product produced by type, amount, process or processes and rate of production where production based National Categorical Standards apply.   |
| Type and amount of raw materials processed.   |
| Number and type of employees and hours of operation, and actual or proposed hours of operation of the pretreatment system.  |
| Whether additional O+M or pretreatment is required for the Industrial User to meet all Federal, State and Local standards. If additional pretreatment is necessary indicate the shortest time schedule required to accomplish installation and adoption of each additional treatment. |
| A list of any other environmental control permits held by the facility  |
| The location of monitoring for all waste stream(s)  |
| Any other information as deemed by the District to be necessary to evaluate the permit application.   |

According to the City of Portland's Ordinance "no Significant Industrial User may discharge to the sewer without first obtaining a Wastewater Discharge Permit from the City".

An existing permit holder will apply for permit reissuance by submitting a permit application at least 60 days prior to the expiration of the existing permit.

An expired permit will remain effective and enforceable until the permit is reissued as long as:

|   |
|---|
| The permit holder has submitted an existing permit application at least 60 days prior to the existing permit expiration date and                    |
| The failure to reissue the permit prior to the expiration of the previous permit is not due to any act or failure on the part of the permit holder. |

**2.1.2 Discharge Permit/Control Mechanism**

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | Discharge Permit (Control Mechanism)                               |
| <b>Responsibility</b>      | District   |
| <b>Frequency</b>           | Once every three years   |
| <b>Due date</b>            | Upon expiration of existing permit or upon startup of new industry |
| <b>Reason</b>              | Ordinance requirement §3.1 a-e                                     |
| <b>Attachment H</b>        | Example permit   |

The discharge permit must contain (Portland's Rules and Regulations for Use of the Sewer System §3.5) :

|   |
|---|
| A statement indicating the wastewater permit issuance date, expiration date and effective date.   |
| A statement that the permit is not transferrable without prior notification to the District.  |
| Effluent limits, including Best Management Practices, based on applicable pretreatment standards.   |
| Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practices) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law. |
| The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present.  |
| A statement of applicable civil and criminal penalties for violations of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not exceed the time for compliance beyond that required by applicable Federal, State or local law.                      |
| Requirements to control Slug Discharges, if necessary.  |
| Any grant of a monitoring waiver by the District must be included as a condition in the User's permit.  |

Discharge permits may contain but need not be limited to:

|   |
|---|
| Limits on average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.      |
| Requirements for installation of pretreatment technology, pollution control, or construction of appropriate containment devices, etc. |
| Requirements for the development and implementation of spill control plans or other special conditions.                               |
| Development and implementation of waste minimization plans to reduce the amount of pollutants discharged.                             |
| The unit charge or schedule of user charges and fees for the management of the wastewater discharged.                                 |

|   |
|---|
| Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measuring devices.  |
| 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 permit. |
| Other conditions deemed appropriate by the District to ensure compliance with this ordinance, and State and Federal laws, rules and regulations.  |

Discharge permits may be modified, transferred or terminated by following the instructions in Portland's Rules and Regulations for Use of the Sewer System §3.7 - 3.9.

## 2.2 Enforcement (Portland's Rules and Regulations for Use of the Sewer System §5)

|                            |   |
|----------------------------|---|
| <b>Program Requirement</b> | Enforcement   |
| <b>Responsibility</b>      | District  |
| <b>Frequency</b>           | As necessary in response to violations  |
| <b>Due date</b>            | Promptly following a violation  |
| <b>Reason</b>              | Ordinance requirement (Portland's Rules and Regulations for Use of the Sewer System §5) |
| <b>Attachment I1</b>       | Example Informal Notification   |
| <b>Attachment I2</b>       | Example NOV   |
| <b>Attachment I3</b>       | Example Letter of Significant Non-Compliance  |
| <b>Attachment I4</b>       | Enforcement Response Plan   |

Enforcement is initiated when a violation of permit or ordinance conditions occurs. Generally the enforcement response starts small (depending on the magnitude of the violation) and is ratcheted up if the industry continues to violate or is not responsive or cooperative. The sections below describe the various forms of enforcement in use, starting with the minimal response and moving up to fines and court cases.

### 2.2.1 Informal Notification

Informal notification is mainly achieved through a phone call or (preferably) an email\* alerting the industry of a one-time, minor offense. Examples include: missed reporting deadlines, missing signatures on reports, errors on reports, missing information, etc. Sometimes a phone call with a follow-up email is advisable. The informal notification should alert the industry of the document(s)/information that is missing and the deadline for it to be

submitted. The email should also warn that if the requested information is not submitted by the informal deadline a formal notice of violation will be issued.

\*Emails are preferred so that an electronic copy of the notification can be saved in IPT CMMS.

### 2.2.2 Notice of Violation (NOV)

The District may serve a Notice of Violation on a User if the User is found to have violated the City's rules and regulations, a permit condition, or an order. Within 5 days of the notice, the User must submit an explanation of the violation and a plan for satisfactory correction. A copy of all Notices of Violation issued by the District relating to the City's Sewer Ordinance will be sent to the City. If the District fails to act within a reasonable period of time to address a violation, the City may take action. In the event the City and/or the District determine that a land use enforcement action is necessary to enforce the provisions of the City's Sewer Ordinance, the City and the District will work cooperatively to prosecute violations.

The District shall serve a written Notice of Violation on a User if the User is found to have violated the discharge limitations as set forth in the User's permit. The User must submit corrective action within 5 days. A copy of all Notices of Violation of a User's permit will be sent to the City.

### 2.2.3 Letter of Significant Non-Compliance (SNC)

The SNC letter is sent when an industry is determined to be in significant non-compliance. Significant non-compliance is defined as follows (from Portland's Rules and Regulations for Use of the Sewer System §1.2):

|  |
|--|
| Chronic violations of wastewater rules: 66% or more of all measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement.   |
| Technical Review Criteria (TRC) violations: 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 multiplied by the applicable criteria (1.4 for BOD, TSS, fats oil and grease, and 1.2 for all other pollutants except pH.) |
| Any other violation of a pretreatment standard or requirement that the City or the District 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.  |
| Any discharge of a pollutant that has caused imminent damage to the public or the environment, or has resulted in the City or the District's exercise of its emergency authority to halt or prevent such a discharge.  |
| 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.                            |
| 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. |
| Failure to accurately report non-compliance.   |
| Any other violations which may include a violation of Best Management Practices, which the District determines will adversely affect the operation or implementation of the pretreatment program.  |

Often follow up sampling is required for significant non-compliance as a result of chronic or technical review criteria violations in order to bring the percentage of results below the acceptable levels. If repeat sampling continues to reveal violations an engineering order, administrative order and/or compliance schedule may be required for installation of pretreatment to correct the discharge problem.

#### **2.2.4 Engineering Order/Administrative Order/Compliance Schedule**

An engineering order or administrative order would be issued following no response or inadequate response from an industry following a SNC notice. City and District staff would work with legal counsel at the City and the Water District to develop the order. A compliance schedule may be included as part of the order. The compliance schedule lays out dates and compliance milestones for the industry to follow while installing pretreatment or taking other corrective action. With a compliance schedule, regular updates are required to be submitted to the City and the District documenting the process on the schedule, the reason for any delays, and updated dates for completion of the project.

#### **2.2.5 Legal Action/Lawsuit**

Legal action may be taken following no response or inadequate response to an engineering or administrative order or a compliance schedule that is not being followed. A lawsuit or other legal action could be the enforcement path for an uncooperative industry also. This would be initiated jointly by City and District's legal counsel in collaboration with pretreatment staff.

#### **2.2.6 Penalties**

Under Section 24-56 of the Portland Sewer Ordinance, Chapter 24, violations of the City's sewer ordinance are subject to a civil penalty of a minimum of \$1000 per day for each violation of industrial pretreatment standards and requirements. In addition, the violator may be liable for any expense, loss or damage suffered by the City or District by reason of such violations. Appeals of Notices of Violation of the City's Sewer Ordinance shall be pursuant to Section 24-57 thereof.

### 2.2.7 Enforcement Response Plan

The District has an Enforcement Response Plan (ERP). This plan details how the District will respond to instances of industrial user noncompliance. The District will provide the City with a copy of the ERP and notify it of any amendments thereto.

## 3.0 Implementation

### 3.1 Inspection

|                            |   |
|----------------------------|---|
| <b>Program Requirement</b> | Annual onsite evaluation  |
| <b>Frequency</b>           | Once per year   |
| <b>Due date</b>            | End of IPT year   |
| <b>Reason</b>              | Requirement of 40 CFR §403.8 (f)(1)(v) and Sewer Use Ordinance §4.5 |
| <b>Attachment J1</b>       | Example Inspection Report   |
| <b>Attachment J2</b>       | Example Fact Sheet  |

Every year the District conducts an onsite inspection of each industrial user as a way to independently verify compliance with applicable Pretreatment Standards. The inspection also serves as a tool to document changes in each industrial user's operations, facility, and or staff. The District also verifies the authorized signers from each industry while on the inspection. If staff has changed, a new signature authorization form is given to the industry to complete. A standard inspection form is used for all industrial user inspections. Once an inspection is completed, the file is saved electronically in the Portland Water District's records.

After an inspection report is completed for an industry, the information is used by the District to update the individual industry's fact sheet.

### 3.2 Sampling

#### 3.2.1 District Sampling

|                            |   |
|----------------------------|---|
| <b>Program Requirement</b> | Sampling of industrial discharge                                    |
| <b>Frequency</b>           | Once per year   |
| <b>Due date</b>            | End of IPT year   |
| <b>Reason</b>              | Requirement of 40 CFR §403.8 (f)(1)(v) and Sewer Use Ordinance §4.5 |
| <b>Attachment K</b>        | Example Chain of Custody  |

The District conducts sampling at each of the permitted industries at least once per IPT year. The purpose of this sampling is to independently verify the analytical results that the industry submits. The District samples from the same location as the industry and in the same manner, typically collecting a 24-hour composite and a grab sample. A blank District chain of custody is attached. The samples are then transported to the Portland Water District laboratory and, if necessary, sent to another subcontract laboratory for analysis.

#### 3.2.2 Self Monitoring Report (SMR) Sampling

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | Sampling of industrial discharge   |
| <b>Frequency</b>           | Industrial User Wastewater Discharge Permit specific (at least twice per year) |
| <b>Due date</b>            | Industrial User Wastewater Discharge Permit specific                           |
| <b>Reason</b>              | Requirement of 40 CFR §403.12 and Sewer Use Ordinance §4                       |
| <b>Attachment L</b>        | Example Lab Report   |

Each Industrial User performs routine industrial discharge sampling as required by the schedule included in their Wastewater Discharge Permit. The sampling, typically a 24-hour composite and a grab, is conducted in accordance with techniques prescribed in 40 CFR

part 136. The samples are then transported to a subcontract laboratory for analysis.

The subcontract laboratory will forward completed analytical results to the industrial user. Who reviews them and notifies the District of any violations. Finally, the industry submits the results to the District (electronically using pretreatment@pwd.org). When the results are submitted to the District they must be signed by an authorized representative of the industry and include the following certification statement as required by 40 CFR §403.6 (a) (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".

Upon receipt of the report, the District reviews the data. The data are then reviewed, entered, and filed in the electronic record keeping system. Any noted violations or other issues with the report are brought to the attention of the responsible Industrial User.

### 3.3 Analysis

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | Analysis of industrial discharge                         |
| <b>Frequency</b>           | Industrial User Wastewater Discharge Permit specific     |
| <b>Due date</b>            | Industrial User Wastewater Discharge Permit specific     |
| <b>Reason</b>              | Requirement of 40 CFR §403.12 and Sewer Use Ordinance §4 |
| <b>Attachment M1</b>       | Sample Order   |
| <b>Attachment M2</b>       | Example Discharge Monitoring Report                      |

Samples are analyzed at the Portland Water District and a variety of subcontracted laboratories for the analytes specified in the Wastewater Discharge Permit in accordance with methods prescribed in 40 CFR part 136. The results of the analyses are reported directly to

whoever collected the samples, the District or the Industrial User. When the Industrial User receives their analytical results they must report them according to the requirements of the Sewer Use Ordinance and by the dates specified in their Industrial User Wastewater Discharge Permit.

### 3.4 Day-to-day Issues

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | Communication between City of Portland and the Portland Water District |
| <b>Frequency</b>           | As necessary   |
| <b>Due date</b>            | Ongoing  |
| <b>Reason</b>              | Ordinance, surcharge, or high level enforcement issues                 |
| <b>Attachment N</b>        | Example IPT CMMS Log Screen Shot                                       |

If the District notices an incident, the industry and/or City will be contacted. In all cases there will be a back-and-forth flow of communication between the City and PWD to decide the best way to address whatever issue is at hand. IPT CMMS logs are used to document all communication on the issue until its resolution. See §4.0 of this guide for more information on record keeping.

### 3.5 Industry Outreach

|                            |  |
|----------------------------|--|
| <b>Program Requirement</b> | Additional industry contact to facilitate compliance |
| <b>Frequency</b>           | As necessary   |
| <b>Due date</b>            | Depends on Industrial User needs                     |
| <b>Reason</b>              | Varies   |
| <b>Documentation</b>       | District documents the details of the outreach       |

The District makes additional site visits as dictated by an individual Industrial Users discharge or processes. These additional visits are beyond the scope of an annual inspection and are more focused on industries that conduct seasonal work, those that have activities that are linked to disruption of the wastewater treatment process, industries causing collection system interference, or industries that are having pretreatment issues. These additional site

visits are performed at the discretion of the City and or the District. The District may request City support or first contact when necessary.

#### 4.0 Recordkeeping

The District's recordkeeping system for IPT is designed to facilitate the efficient administration of the IPT program and the smooth and timely report of Program activities to the DEP and other entities. There are three significant ways that IPT data are organized and stored by the District. Each is listed and described in this section.

#### 4.1 Monitoring Data Management (HACH/WIMS)

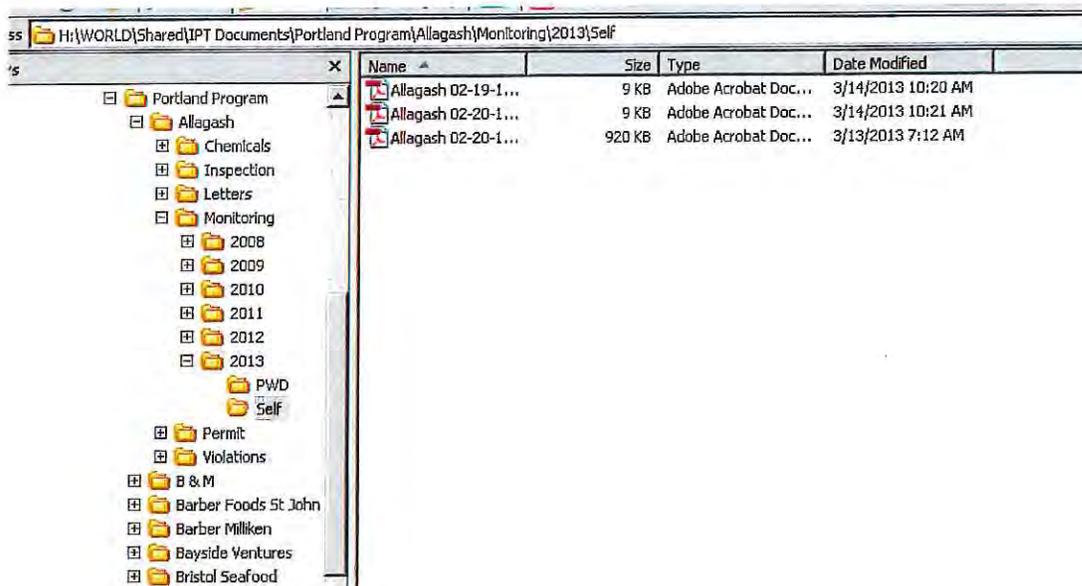
All monitoring data summarizing laboratory analysis either by the District's laboratory or outside commercial laboratories is stored in the District's laboratory information management system HACH/WIMS. The data are organized by industry, and further by the sampling agent (District or Industry self-monitoring), and further by type of sample (comp or grab), and further by parameter tested. A screen shot illustrating this organization of data is below.

The screenshot shows the 'Variable Browser' window with a tree view on the left and a data table on the right. The tree view is expanded to 'Allagash Brewing Company'. The data table lists various parameters such as Mercury, Nickel, Silver, Zinc, Chloride, Cyanide, TTO, Chlorine Residual, Flow, BOD, TSS, pH, Alk, Caustic Alk, COD, O & G Tot, and Arsenic, each with a corresponding Storet # and Location.

| Var # | Var Name                       | Storet # | Heading        | Location             |
|-------|--------------------------------|----------|----------------|----------------------|
| 25151 | Allagash PWD Mercury 245.1     | 71900    | Hg 245.1       | Allagash Brewing Com |
| 25161 | Allagash PWD Mercury Low Level | 71900    | Hg LL          | Allagash Brewing Com |
| 25171 | Allagash PWD Nickel            | 01067    | Ni             | Allagash Brewing Com |
| 25181 | Allagash PWD Silver            | 01077    | Ag             | Allagash Brewing Com |
| 25191 | Allagash PWD Zinc              | 01092    | Zn             | Allagash Brewing Com |
| 25201 | Allagash PWD Chloride          | 00940    | Chloride       | Allagash Brewing Com |
| 25211 | Allagash PWD Cyanide           | 00720    | CN             | Allagash Brewing Com |
| 25221 | Allagash PWD TTO               | TTO      | TTO            | Allagash Brewing Com |
| 25231 | Allagash PWD Chlorine Residual | 50060    | Cl2            | Allagash Brewing Com |
| 25301 | Allagash SMR Flow              | 50050    | Flow           | Allagash Brewing Com |
| 25311 | Allagash SMR BOD               | 00310    | BOD            | Allagash Brewing Com |
| 25321 | Allagash SMR TSS               | 00530    | TSS            | Allagash Brewing Com |
| 25331 | Allagash SMR pH                | 00400    | pH             | Allagash Brewing Com |
| 25332 | Allagash SMR pH COMP           | 00400    | pH             | Allagash Brewing Com |
| 25341 | Allagash SMR Total Alk         | 00410    | Alk            | Allagash Brewing Com |
| 25351 | Allagash SMR Caustic Alk       | 00420    | Caustic Alk    | Allagash Brewing Com |
| 25361 | Allagash SMR COD               | 00335    | COD            | Allagash Brewing Com |
| 25371 | Allagash SMR O & G Total       | 00552    | O & G Tot      | Allagash Brewing Com |
| 25381 | Allagash SMR O & G Nonpolar    | OGNP     | O & G NonPolar | Allagash Brewing Com |
| 25391 | Allagash SMR Arsenic           | 01002    | As             | Allagash Brewing Com |

## 4.2 Industry Records Management (electronic filing system)

All records maintained by the District are stored electronically. The District maintains no paper records of IPT information. The electronic files are organized by industry, and further by type of record (chemical data, letters, monitoring data, inspections, and permits). The monitoring data are further organized by year of sampling and further by type of monitoring (District or Industry self-monitoring). A screen shot illustrating the file structure is below.



The screenshot shows a Windows Explorer window with the address bar set to `H:\{WORLD}\Shared\IPT Documents\Portland Program\Allagash\Monitoring\2013\Self`. The left pane shows a tree view of folders, including 'Portland Program', 'Allagash', 'Inspection', 'Letters', 'Monitoring' (with subfolders for years 2008-2013, 'PWD', and 'Self'), 'Permit', 'Violations', 'B & M', 'Barber Foods St John', 'Barber Milliken', 'Bayside Ventures', and 'Bristol Seafood'. The right pane displays a table of files:

| Name                | Size   | Type                 | Date Modified      |
|---------------------|--------|----------------------|--------------------|
| Allagash D2-19-1... | 9 KB   | Adobe Acrobat Doc... | 3/14/2013 10:20 AM |
| Allagash D2-20-1... | 9 KB   | Adobe Acrobat Doc... | 3/14/2013 10:21 AM |
| Allagash D2-20-1... | 920 KB | Adobe Acrobat Doc... | 3/13/2013 7:12 AM  |

#### 4.2 IPT Asset Management (IPT-CMMS)

IPT data are stored in the District's asset information management system IPT CMMS. The system includes both spatial data (locations of sample manholes) and tabular data stored in the Hansen enterprise data management system. In the IPT CMMS are address and other industry attributes and work orders detailing schedules and logs for sampling events, inspections, general program activities, and permitting activities. A screen shot showing the work orders for one industry is below.

The screenshot displays a software window titled "Sewer Miscellaneous Inventory". At the top, there is a toolbar with various icons. Below the toolbar, the "Misc ID" field contains "PON-IPT00100" and the "Description" field contains "ALLAGASH BREWING COMPANY". The "Address" field contains "50 INDUSTRIAL WAY PORTLAND ME 04103-".

| Work Order # | Activity | Act Type | Act Group | Initiated  | Scheduled  | Completed | S |
|--------------|----------|----------|-----------|------------|------------|-----------|---|
| 739583       | IPT-PO   |          |           | 08/23/2012 |            |           |   |
| 766744       | LEGREG   |          |           | 04/23/2013 | 08/01/2013 |           |   |

Below the table, there is a large empty area with a scroll bar on the right. To the right of this area is a button labeled "Open". At the bottom of the window, there are two rows of navigation tabs: "Group Sched", "History", "Associated Parts", "Safety", "Warranty", "Failures", "Contacts" and "Location", "Structural", "Associated", "Name Plate/Perf", "Assets", "Comments", "Maint".

**MEMORANDUM OF UNDERSTANDING  
BETWEEN PORTLAND WATER DISTRICT AND  
THE CITY OF PORTLAND, MAINE**

This Memorandum of Understanding (MOU) is entered into between the **City of Portland** (hereafter "the City"), a body politic and corporate with offices at 389 Congress Street, Portland ME 04101, and the **Portland Water District**, a quasi-municipal corporation organized and existing under the laws of the State of Maine, with a place of business at 225 Douglass Street, Portland, Maine (hereinafter, the "District").

**WHEREAS**, the District is the holder of MePDES Permit Number ME0110275/Waste Discharge License Number W002671-H-R (hereinafter, "permit"), which was issued by the Department of Environmental Protection on August 17, 2011, for a five-year term; and

**WHEREAS**, the District is also the holder of a renewal of the permit dated March 21, 2017 (the "2017 renewal"); and

**WHEREAS**, the permit is routinely renewed following the five year terms; and

**WHEREAS**, in order to help facilitate the District's industrial pretreatment responsibilities under the permit, the City put in place a regulatory framework in Chapter 24 of its Code of Ordinances (the "Sewer Ordinance") and, in collaboration with the District, adopted Rules and Regulations for the Use of the Sewer System (the "Sewer System Rules") aimed at codifying the requirements of the permit and 2017 renewal as well as in subsequent renewals; and

**WHEREAS**, in addition to the City's Sewer Ordinance and its Sewer System Rules, the City and the District jointly promulgated Portland's Industrial Pretreatment Program Owner's Manual in February, 2018 (hereinafter "Manual"), which outlines the City's and the District's joint responsibility for ensuring compliance with the City's Industrial Pretreatment Program, the permit and the 2017 renewal; and

**WHEREAS**, the City and the District have a desire to shift responsibility for certain components of the Industrial Pretreatment Program (hereinafter, "IPT Program") from the City to the District as described in the Manual

**NOW THEREFORE**, the City and the District hereby agree as follows:

1. The Portland Industrial Pretreatment Program will be administered as outlined in the Manual," which is attached hereto as Exhibit A and incorporated herein by reference. The Manual may be amended from time to time by the District and the City as needed to implement the IPT Program.

2. In order to facilitate the administration of the Portland IPT Program the City will initially propose any amendments to the City's Sewer Ordinance and its Sewer System Rules required to implement this Memorandum of Understanding for consideration and approval by the Portland City Council. The District shall review and approve all such ordinance amendments prior to consideration and approval by the Portland City Council.

Following the assumption of responsibility for the IPT program by the District as described in the Manual, the District will assume responsibility for proposing amendments to the City's Sewer Ordinance and Sewer System Rules for consideration and approval of the Portland City Council.

3. Following the execution of this MOU, for a minimum period of one year but for no more than two years after the transition from the City to the District of responsibility for issuing permits and monitoring compliance with the IPT Program, City staff will work cooperatively with District staff to advise and assist the District in issuing permits and conducting sampling and inspections throughout the City so that the District can assume responsibility for those functions as seamlessly as possible.
4. The District shall assess to the City and the City shall pay to the District, through its annual assessment, as provided in the District's Charter, all undisputed costs and fees associated with the operation of the IPT Program.
5. No third persons or entities are intended to be or are third party beneficiaries of or under this MOU. Nothing in the Agreement shall be construed to create any liability on the part of the City or the District, or their respective directors, officers, shareholders, employees or agents, as the case may be, to any such third parties for any act or failure to act of any Party hereto.
6. Prior to the final approval and adoption by the Portland City Council of amendments to the City's Sewer Ordinance required to transfer administration of the IPT Program to the District, either party may terminate this MOU with or without cause and without liability to the other party by providing written notice of such termination to the other party. Such termination shall be effective upon receipt of such notice by the other party.

**City of Portland**

Witness: Jonna Bean

By: Jon P. Jennings  
Jon Jennings, City Manager

**Portland Water District**

Witness: Donna M. Kalsfus

By: Chelle Lewis

APPROVED AS TO FORM:  
JLK  
CORPORATION COUNSEL'S OFFICE

**CITY OF PORTLAND, MAINE  
DEPARTMENT OF PUBLIC WORKS  
WATER RESOURCES DIVISION  
COMMUNICATION**

**TO:** Honorable Mayor Ethan Strimling and City Councilors

**FROM:** Benjamin Pearson, P.E., Compliance Coordinator

**CC:** Christopher Branch, P.E., Director of Public Works  
Nancy Gallinaro, Water Resources Division Manager

**DATE:** June 28, 2018

**SUBJECT: Revision of Chapter 24 and the Rules and Regulations for Use of the Sewer System**

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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."

Communication to City Council  
Revision of Chapter 24 and the Rules and Regulations for Use of the Sewer System  
July 16, 2018

- 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 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:

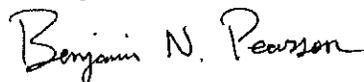
Seafood Processors = 0.22 mg/L  
All Others = 0.092 mg/L

This change is being made to allow for all other industrial users to have more flexibility for arsenic.

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](mailto:bnp@portlandmaine.gov).

Thank you,



Benjamin Pearson, PE  
Compliance Coordinator  
Water Resources, Public Works

## Chapter 24 SEWERS\*

\*Cross reference(s) Buildings and building regulations, Ch. 6; disposal of wastes by food service establishments, § 1126; land use, Ch. 14; streets, sidewalks and other public places, Ch. 25.

State law reference(s) Sewers and drains, 30 M.R.S.A. § 4351 et seq.

Art. I. In General, §§ 2412415

Art. II. Sewer Construction, §§ 24162430

Art. III. Sewer Use Regulations, §§ 24312470

Art. IV. Sanitary Sewer User and Industrial Pre-treatment Charges, §§ 24712477

Art. V. Stormwater Service and User Charges,

### ARTICLE I. IN GENERAL

#### Sec. 24-1. Purpose

The city is responsible for the health and safety of the public and maintaining over 300 miles of sewer line comprised of the sanitary sewer and storm sewer lines themselves, catch basins, manholes, detention ponds, underground waste water storage facilities, and sewer pump stations.

The city maintains a sewer system in order to convey domestic wastewater and stormwater runoff from private and public property for treatment at the Publicly Owned Treatment Works.

The city maintains a stormwater drainage system in order to convey stormwater runoff away from private and public property to minimize flooding, reduce pollution discharge to waters of the State of Maine, and to control erosion of streams and channels.

The city council finds that funding the comprehensive wastewater and stormwater programs to properly operate this infrastructure should be equitably paid for by properties making use of sewer and stormwater services provided by the city according to costs incurred to provide those services.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-2. Definitions.**

For the purposes of this chapter, all words shall have their normal meanings and such meanings as may be in common use in the field of wastewater treatment. Certain words are more particularly defined. For the purposes of this Chapter, the following terms shall have the following meanings.

*Act* shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, U.S.C. § 1251 et seq., and the regulations promulgated thereunder, as amended from time to time.

*Building drain* shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, which begins eight (8) feet outside the outer face of the building wall.

*Building sewer* shall mean the extension from the building drain to the public sewer or other place of disposal.

*Combined sewer* shall mean a sewer conveying both stormwater and wastewater.

*Department of Public Works* shall mean the public works authority.

*Discharge* shall mean any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants

*District* shall mean the Portland Water District, a quasi-municipal corporation existing pursuant to Chapter 84 of the Private and Special Laws of Maine of 1975, as amended, with a business address of 225 Douglas Street, Portland, Maine.

*Domestic wastewater* shall mean the liquid wastes and liquid borne wastes discharged from the sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, home laundry rooms, kitchens, and floor drains essentially free of industrial wastes or toxic materials.

*Industrial user* shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.

*Industrial waste* shall mean any liquid, gaseous, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

*Interceptor sewer* shall mean a large sewer used to intercept a number of main or trunk sewers and convey wastewater and stormwater runoff to treatment or other disposal facilities.

*National pollutant discharge elimination system or NPDES permit* shall mean a permit issued pursuant to § 402 of the act, 33 USC § 1342, and M.R.S.A. Title 38, § 414A.

*Natural outlet* shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

*POTW (publicly owned treatment works) ("facility")* shall mean the treatment works, as defined by § 212 of the act, operated by the Portland Water District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater 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 and may be owned by the city. For the purposes of this chapter, POTW shall also include any sewers that convey wastewater to the treatment works from persons who are, by permit, contract, or agreement with the city, users of the facility.

*POTW treatment plant* shall mean that portion of the facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal wastewater, industrial waste, septage and holding water and other trucked-in wastes as allowed under the provisions of this article.

*Private wastewater disposal system* shall mean a treatment tank with the effluent discharging into a subsurface absorption area, or such other facilities as may be permitted under the procedures set forth in rules and regulations adopted by the

state department of health and welfare pursuant to 22 M.R.S.A. § 42(3), and the city's plumbing code.

*Private sewer system* shall mean any sewer system within the city not owned by or constructed by a public authority.

*Private wastewater treatment works* shall mean all facilities other than private sewage disposal systems for treating and disposing of wastewater within the city not owned by a public authority. Private wastewater treatment works shall be distinct from private wastewater disposal systems as the effluent is discharged directly into surface water bodies. Private wastewater treatment works shall be licensed by the state department of environmental protection, in accordance with the provisions of 38 M.R.S.A. §§ 413, 414.

*Public sewer* shall mean a sewer directly owned, operated or controlled by the city or the Portland Water District.

*Sanitary sewer* shall mean a sewer, conveying either exclusively domestic wastewater and industrial waste or a sewer also conveying stormwater runoff together with ground and surface water that is not admitted intentionally.

*Sewer* shall mean a pipe or conduit for conveying liquid or liquid-carried waste.

*Storm sewer* shall mean a sewer for conveying stormwater runoff, groundwater, subsurface water, condensate, cooling water or other similar discharge but which excludes domestic wastewater and polluted industrial wastes.

*Stormwater* shall mean any stormwater runoff, snowmelt runoff, and surface runoff and drainage. "Storm water" shall have the same meaning as stormwater.

*Stormwater drainage system* shall mean any publicly owned or operated conveyance for stormwater, natural and human-made including, but not limited to, storm sewers, city and state roads including the Maine Turnpike and other physical works with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, culverts, human-made channels, swales, ditches, swamps, rivers, streams, creeks, brooks, reservoirs, ponds, drainage ways, inlets, pipes, head walls, lakes,

properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.

Stormwater services shall mean the program and maintenance activities as well as the pipe, conduits, or other conveyances or facilities provided by the city including but not limited to necessary programs, improvements, or maintenance required to meet national pollutant discharge elimination system (NPDES) permits the city may hold or other regulatory or court imposed obligations on the city, or general maintenance of pipes, conduits or other facilities improvements and other unforeseen improvements necessary to provide stormwater service to the city.

Wastewater shall mean a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions and industrial establishments, together with such ground, surface, and stormwater as may be present.

Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently on a natural basis.

Westbrook Inter-Municipal Sewer Service Area shall mean the Domestic and sanitary sewage and waste water from the Riverside Street/Warren Avenue/Forest Avenue vicinity of Portland as defined on the plan to the Rules and Regulations enacted by the Department of Public Works, and on file in the Department of Public Works, intercepted by the District and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

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**Cross reference(s)** Definitions and rules of construction generally, § 12.

**Reference** - Council Order 54-02/03 § An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook).

### **Sec. 24-3. Administration.**

(a) The director of public works shall establish rules and regulations governing the availability and use of city

wastewater collection and treatment facilities and stormwater drainage system. The rules and regulations shall be consistent with federal law and ordinances. Said wastewater rules shall be enacted in conjunction with the Portland Water District prior to enactment.

(b) The rules shall be enacted in the same manner as the rules for solid waste disposal are promulgated, prescribed in section 12105(b) and (b.1) of this Code, with the exception that the rules will go into effect twenty (20) days after enactment by the director unless stayed by action of the city council. Proposed rules shall be delivered to the council as a communication prior to enactment.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 24-4. Enforcement Agency.**

The Department of Public Works or the Portland Water District as agent for the city and at the request of the Department of Public Works, shall administer and enforce the provisions of this chapter.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

- Sec. 24-5. Reserved.**
- Sec. 24-6. Reserved.**
- Sec. 24-7. Reserved.**
- Sec. 24-8. Reserved.**
- Sec. 24-9. Reserved.**
- Sec. 24-10. Reserved.**
- Sec. 24-11. Reserved.**
- Sec. 24-12. Reserved.**
- Sec. 24-13. Reserved.**
- Sec. 24-14. Reserved.**
- Sec. 24-15. Reserved.**

## **ARTICLE II. SEWER CONSTRUCTION**

#### **Sec. 2416. Accepted streets.**

When any person owning property on an accepted street shall petition for the construction of a sewer in the street, such sewer may be constructed under one (1) of the following arrangements at the option of the petitioner, subject to the

approval of the Department of Public Works:

- (a) Upon authorization by the city council, a sewer shall be constructed by the city, the cost of a sewer to be recovered in part as hereinafter provided; or
- (b) The petitioner may cause a sewer to be built to the specifications of the Department of Public Works and under his or her supervision, with or without regard to competitive bids. Upon completion of a sewer, the city shall be reimbursed in full for its costs, including engineering and inspection, and a sewer shall be deeded to the city as a public sewer at no cost to the city.

(Code 1968, § 704.1; Ord. No. 10181, §§ 13, 92181; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2417. Dedicated streets.**

When any person owning property on a street, which prior to July 7, 1948, has been dedicated, constructed and used for public travel but has not been accepted by the city, shall petition for the construction of a sewer in the street, such sewer may be constructed under one (1) of the following arrangements at the option of the petitioner, subject to the approval of the Department of Public Works:

- (a) Upon authorization by the city council, a sewer shall be constructed by the city, the cost aa sewer to be recovered in part as hereinafter provided; or
- (b) The petitioner may cause a sewer to be built to the specifications of the Department of Public Works and under his or her supervision, with or without regard to competitive bids. Upon completion of a sewer, the city shall be reimbursed in full for its costs, including engineering and inspection, and at such time as the street is accepted by the city, a sewer shall be deeded to the city as a public sewer at no cost to the city.

(Code 1968, § 704.2; Ord. No. 10181, §§ 4, 5, 92181; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2418. Initiative of city council.**

The city council may, on its own initiative and without petition therefor, authorize construction by the city of a sewer in accepted and dedicated but unaccepted streets, the cost of a sewer to be recovered in part as hereinafter provided.  
(Ord. No. 10181, § 6, 92181; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2419. Costs.**

(a) A charge is hereby established for the connection heretofore or hereafter of any property to a sewer constructed by the city or the Portland Water District and completed on or after January 1, 1978. Such charge shall be due and payable upon application for a connection permit as provided in section 2439, and except for connections made before November 15, 1981, shall be in lieu of all other charges related thereto, including the fee for the connection permit and street and sidewalk opening charges as provided in section 25156, provided that connection is made in accordance with article III of this chapter. This section shall not apply to any property assessed for the cost of sewer construction according to law.

(b) For any such sewer completed heretofore, the charge shall be two hundred dollars (\$200.00) per each sanitary sewer connection made heretofore or hereafter but before November 15, 1981, and one thousand dollars (\$1,000.00) per each such connection made thereafter.

(c) For any such sewer completed hereafter, the charge shall be two thousand dollars (\$2,000.00) per each such connection, provided that the city council may, from time to time, by order readjust the charge according to the then prevailing cost of sewer construction and the anticipated number of such connections.  
(Ord. No. 10181, § 7, 92181; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Cross reference(s)** Uniform procedure for collecting assessments, § 116.

Sec. 24-20. Reserved.  
Sec. 24-21. Reserved.  
Sec. 24-22. Reserved.  
Sec. 24-23. Reserved.  
Sec. 24-24. Reserved.  
Sec. 24-25. Reserved.

- Sec. 24-26. Reserved.
- Sec. 24-27. Reserved.
- Sec. 24-28. Reserved.
- Sec. 24-29. Reserved.
- Sec. 24-30. Reserved.

**ARTICLE III. SEWER USE REGULATIONS\***

\*Editor's note Ord. No. 26396, passed May 20, 1996, amended this article in its entirety, in effect repealing the former provisions and enacting similar new provisions as herein set out. Formerly, such provisions pertained to sewer use regulations, consisted of substantive §§ 24312460, and derived from §§ 309.1309.29 of the 1968 Code, as amended by the following legislation:

| Ord. No. | Sec.           | Date   | Ord. No. | Sec. | Date  |
|----------|----------------|--------|----------|------|-------|
| 1376     |                | 10 676 | 22188    | 1    | 1 488 |
| 15479    |                | 31979  | 22888    | 1    | 2 188 |
| 35584    | 114, 16,<br>17 | 1 484  | 7791     |      | 8 791 |
| 31787    | 1              | 2 287  | 3793     |      | 7 793 |

**Sec. 2431. Scope.**

The provisions of this article shall apply to and govern all types of buildings requiring wastewater facilities; the excavation, construction, installation, usage, maintenance, extension, alteration, repair or removal of any building sewer, building storm drain, sanitary sewer system, or storm drainage

or sewer system; the connection of building sewers and building storm sewers to sanitary sewer systems and/or storm drainage systems or combined sewers; the types of wastes or wastewaters prohibited from public sewers and storm drainage systems; permitted and prohibited concentrations and strengths of wastewater; and situations in which use of a private sewage disposal system is permissible.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2432. Intent and purpose.**

(a) It shall be the intent and purpose of this article to eliminate existing pollution, and to prevent further pollution caused by inadequate wastewater disposal, and to accomplish the necessary local legislation to meet the pollution abatement schedule for the Portland Regional Wastewater Plan established by the state and the federal government. All this is in furtherance of the health, welfare, comfort and convenience of the inhabitants of the city.

(b) Whereas the Portland Water District has been designated by state legislative action and local public referendum as the regional agency responsible for interception and wastewater treatment, and is the owner and operator of the POTW treatment plant, none of the provisions of this article shall be construed to repeal or otherwise interfere with the rights, duties or powers granted to the Portland Water District pursuant to Chapter 433 of the private and special laws of the State of Maine of 1907, as amended.

(Ord. No. 26396, 52096)

**Editor's Note** - Section 24-32.1 Administration was deleted by Order 129-14/15, passed on 1-21-2015 and Effective 1-1-2016.

**Sec. 2433. Reserved**

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2434. Definitions.**

For the purposes of this article, all words not defined in section 24-2 shall have their normal meanings and such meanings as may be in common use in the field of sanitation and wastewater treatment. For the purposes of this article, the following terms have the following meanings.

*B.O.D.* (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in milligrams per liter.

*Categorical industrial user* shall mean an industrial user subject to national categorical pretreatment standards.

*Caustic alkalinity (hydroxide alkalinity)* shall mean a measure of the capacity of wastewater, which exhibits a pH of greater than or equal to 8.3, to neutralize acids.

*C.O.D.* (chemical oxygen demand) shall mean the measure of the oxygen required for oxidation of the organic matter in a sample that can be oxidized by a strong chemical oxidizing agent under standard laboratory procedure.

*F.O.G.* shall mean the measure of fats, wax, grease and oils (other than petroleum based materials).

*Garbage* shall mean 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.

*Incompatible pollutant* is defined as 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 POTW was not designed to treat and does not remove to a substantial degree or may be toxic to the POTW or receiving water.

*Industrial user* shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.

*Interference* means 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 which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a

violation), or of the prevention of wastewater sludge use or disposal by the facility in accordance with applicable federal, state, or local statutes and regulations or permits issued thereunder, as set forth in 40 CFR 403.3(i).

*mg/l* shall mean milligrams per liter.

*National categorical pretreatment standard* shall mean any regulations containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the act, which apply to a specific category of industrial users and which are found in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.

*pH* shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in a solution expressed as standards units.

*Properly shredded garbage* shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than onehalf inch (1.27 centimeters) in any dimension.

*Significant industrial user* shall mean any industrial user subject to categorical pretreatment standards, and any other industrial user that discharges an average of twentyfive thousand (25,000) gallons per day or more of process wastewater to the facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the facility's operation or for violating any pretreatment standard or requirement; provided, however, that upon a finding that an industrial user meeting the foregoing criteria has no reasonable potential for violating any pretreatment standard or requirement or for adversely affecting the facility's operation, the city may, at any time, upon its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant

industrial user.

*Slug* shall mean any discharge of nonroutine, episodic nature, including, but not limited to, an accidental spill, noncustomary batch discharge, or any discharge of wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twentyfourhour concentration or flow rate during normal operation or which may adversely affect the POTW.

*Total suspended solids (TSS)* shall mean 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.

(Ord. No. 26396, 52096; Ord. No. 97-03/04, 12-17-03; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2435. Sanitary facilities required.**

Every building intended for human habitation, occupancy, employment, recreation or other purposes, situated within the city shall be provided with suitable and sufficient sanitary facilities for the use of the occupants thereof, which facilities in character, number and method of installation shall comply with all health laws of the state, ordinances of the city, and rules and regulations of the state bureau of health so far as the same are compatible and not inconsistent.

(Ord. No. 26396, 52096)

**Sec. 2436. Connection to public sewer required.**

The owner of any building used for human habitation, occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or rightofway in which there is located a public sanitary, combined or interceptor sewer, is hereby required at his expense to connect the building sewer in the most direct manner possible with the proper public sewer in accordance with the provisions of this article, provided that the public sewer is within two hundred (200) feet of the building (the two hundred (200) feet to be measured in such manner so as not to pass over any property owned privately by anyone other than the owner of the premises

from which such measurement is being made). Any required compliance with this section shall be completed within one (1) year after the date of official notice to do so.  
(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2437. Exception for private wastewater system.**

Where the public sewer does not extend to within two hundred (200) feet distant from the nearest point of the building (measured as described in section 2436), the public sewer shall, at such time, be classified as inaccessible with regard to such premises. Where the public sewers are inaccessible to premises, any building required to be provided with sanitary facilities under section 2435 shall comply with the following:

- (a) The owner may at his own expense connect with the public sewer even though the building is over two hundred (200) feet distant from the public sewer; or
- (b) Where liquidcarried wastes or wastewater result, they shall discharge into a private wastewater disposal system; or
- (c) Where liquidcarried wastes or wastewater result, they shall discharge into a private wastewater treatment works.

(Ord. No. 26396, 52096)

**Sec. 2438. Private wastewater systems discontinued.**

(a) At such time as a public sewer becomes accessible, as defined in section 2436, to a property served by a private wastewater disposal system, direct connection shall be made to the public sewer by the owner of such property in compliance with this article within twelve (12) months of receipt of official notice to do so. At the time that direct connection to the public sewer is completed, use of the private wastewater disposal facilities shall have been discontinued. Such abandoned private wastewater disposal system shall be cleaned of sludge and waste materials and filled with clean bankrun gravel or dirt within thirty (30) days.

(b) The closing and filling of the private wastewater disposal system and the connection to the public sewer system shall be inspected by the Department of Public Works. The fee for such inspection shall be a minimum of ten dollars (\$10.00) per septic tank plus ten dollars (\$10.00) per hour for all inspection time exceeding one (1) hour. The permit for the connection to the public sewer is the same as those required under sections 2439 and 2442.

(c) No such work may be approved unless notice is given to the Department of Public Works sufficient to permit the inspector to be present at the filling of the private wastewater disposal system and the connection to the public sewer. No new sewer construction or sewer repair or reconstruction may be approved if backfilled and/or covered prior to inspection. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the city.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2439. Public sewer connection; permit; fee.**

No person shall uncover, make any connections with or openings into, alter or disturb either any public sewer or appurtenance thereof or any private sewer or appurtenance thereof without first obtaining a written permit from the Department of Public Works or the Portland Water District, if required. The fee for such permit shall be fifty dollars (\$50.00).

(Ord. No. 26396, 52096; Ord. No. 261-01/02, 5-20-02; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2440. Costs.**

All costs and expense incidental to the installation, connection and maintenance of the building sewer shall be borne by the owner.

(Ord. No. 26396, 52096)

**Sec. 2441. Separate connections required.**

A separate and independent building sewer shall be provided for every new building, and a separate connection shall be made for each building sewer. Old building sewers may be used in

connection with new buildings only when they are found, on examination and test by the Department of Public Works, to meet all requirements of this article.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2442. Defective building sewers to be repaired or replaced.**

(a) Whenever any building drain or building sewer connected to the public sewers, or to a private sewer system connected to the public sewers is found to be defective, deteriorating or substandard, the owner of the building served by such building drain or sewer shall be served by the Department of Public Works with written notice stating the nature of the defect and providing a fifteen (15) day period for the satisfactory repair or replacement of such building sewer and requiring the owner to make a new connection to the public sewer at the owner's expense.

(b) All work done pursuant to this section shall be inspected by the Department of Public Works. The fee for such inspection shall be twentyfive dollars (\$25.00).

(c) *Failure to comply.* When a person to whom an order is directed fails to fully comply within the fifteen (15) day period, it shall be lawful for the city to repair a building drain or building sewer which is located within the public rightofway, and all costs thereof shall be charged to the owner thereof.

(d) *Lien procedure.* The Department of Public Works shall keep an accurate account of the expense of the work under this article, and as soon as practicable after completion of such work, the city shall assess to the person(s) upon whom notice has been served pursuant to subsection (a) of this section their just cost thereof, and all assessments so made shall constitute a lien on the property to be enforced in the manner provided for the collection of sewer assessments within the city.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Cross reference(s)**Uniform procedure for collecting assessments, § 116.

**Sec. 2443. Methods of construction.**

On all work done within the scope of this article, the

size, slope, alignment and materials of construction of a building sewer, and the methods to be used in placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the Department of Public Works' building sewer construction specifications. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain shall be lifted by a means subject to the approval of the Department of Public Works and discharged to the building sewer.  
(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2444. Public sewer connection limitations.**

(a) No person shall make connection of sanitary facilities such as toilets, washrooms, urinals, sinks, showers, drinking fountains, kitchens or laundry rooms, nor discharge or cause to be discharged any waste or domestic wastewater to a building's stormwater system or building storm drain which in turn is connected directly or indirectly to the storm drainage system.

(b) No person shall make connection of roof downspouts, foundation drains, sump pump, areaway drains or other sources of surface runoff or groundwater, nor discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(c) Stormwater shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Department of Public Works. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Department of Public Works, to a storm sewer, combined sewer or a natural outlet.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2445. Connections to public sewer.**

The connection of the building sewer into the public sewer shall be constructed in the following manner:

- (a) The Department of Public Works shall be notified in advance of the time when the connection is to be made. Such notice must be sufficient to permit the Department of Public Works to inspect the building sewer during construction and to be present when the connection is made to the public sewer.
- (b) In the case of new construction, domestic wastewater systems and stormwater drainage systems shall be kept separated from their connections to the proper city sewers.
- (c) The building sewer shall be connected to the public sewer at the point designated by the Department of Public Works.
- (d) No building sewer connection constructed pursuant to this section can be approved if such sewer is backfilled and/or covered prior to inspection. No connection to the public sewer constructed pursuant to this section can be approved if such connection is made other than in the presence of an inspector from the Department of Public Works or the Portland Water District, as required. No such unapproved or unapprovable building sewer in the city may be used, and if the building served by such building sewer is occupied, the owner of such building will be held to be in violation of this section, with each day in which the violation continues deemed to be a separate violation.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2446. Sewer excavations.**

(a) All excavations under this article within the public way shall be in accordance with article VII of chapter 25 of this Code.

(b) All excavations for sewer installation shall be made and maintained in compliance with the provisions of the construction safety rules and regulations of the state, applicable to excavation work.

(Ord. No. 26396, 52096)

**Sec. 2447. Prohibited wastes.**

(a) No person shall discharge or cause to be discharged any waters or wastes prohibited by Department of Public Works rule; or:

1. Any noxious or malodorous gas or substance capable of creating a public nuisance.

(b) The Department of Public Works 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 600 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 thirtytwo (32) degrees and

one hundred fifty (150) degrees Fahrenheit (zero (0) and sixtyfive (65) degrees centigrade).

- b. In the Westbrook Intermunicipal Sewer Service Area, any waters or wastes containing animal or vegetable 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 temperature between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
- c. Any waters or wastes containing hydrocarbon (nonpolar) 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 thirtytwo (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixtyfive (65) degrees centigrade).

(Ord. No. 26396, 52096; Ord. No. 25097, 4997; Ord. No. 97-03/04, 12-17-03; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2448. Prohibited wastes permitted how; cost.**

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters or wastes contain any of the substances or possess the characteristics listed in section 2447, and which in the judgment of the Department of Public Works may have a deleterious effect upon the wastewater works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Department of Public Works may:

1. Reject the wastes;
2. Require pretreatment to an acceptable condition for discharge to the public sewer as required by rule;
3. Require control over the quantities and rates of discharge (flow equalization); and/or

4. Require payment to cover the added cost of handling and treating the wastes.

(b) If the Department of Public Works permits or requires pretreatment or waste flow equalization, the design and installation of the plants and equipment shall be subject to its review and approval subject to the provisions of the state plumbing code, and the provisions of this article

(c) Where preliminary treatment or flow equalizing facilities are provided for any water or wastes, the owner shall bear the cost and responsibility for installing and maintaining them in continuously satisfactory and effective operating condition, as determined by the Department of Public Works.  
(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 2449. Separate systems required.**

Any person discharging or causing to be discharged into any public sewer both domestic wastewater and industrial wastes from any building or premises shall install separate drainage systems for the domestic wastewater and industrial waste. The control manhole required by rule shall be installed in the industrial waste system; or where two (2) separate systems are required, the two (2) systems may be joined in the control manhole provided that samples of each system can be sampled separately.  
(Ord. No. 26396, 52096)

#### **Sec. 2450. Discharge permit.**

(a) All categorical users and other dischargers of industrial wastes shall obtain a discharge permit from the ~~Department of Public Works Portland Water District, as required by rule. as required by rule.~~ New users shall obtain permits prior to any discharge. Applications and permits shall be in a form prescribed by the ~~Department of Public Works Portland Water District~~ and shall be subject to an application fee ~~of three hundred dollars (\$300.00) per permit as set by the Portland Water District. Additionally, each permit shall be subject to an issuance fee which shall equal the direct and indirect costs of any previous advertisement of noncompliance and any other outside services which in the discretion of the Department of~~

~~Public Works are required in order to review and evaluate the application or to implement a pretreatment program for such permitted user.~~

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2451. Public wastewater works not to be damaged.**

No person shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the public sewer or stormwater drainage system.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2452. Right of entry.**

The Department of Public Works, or the Portland Water District as its agent, bearing proper credentials and identification, shall be permitted to enter upon all properties with sewer or stormwater drainage systems connected to the public sewer and producing industrial or process wastes, at reasonable times and upon reasonable notice for the purpose of inspection, observation, measurement, sampling and testing or to otherwise enforce the rules, including copying of reports and records relating to the industrial pretreatment program in accordance with the provisions of this article.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2453. Exclusion of industrial waste.**

(a) The Department of Public Works or the Portland Water District shall have authority to temporarily exclude any industrial waste, whether pretreated or not, from the public sewers whenever, in its or their opinion, such action is necessary for the purpose of determining the effects of such wastes upon the sewers, wastewater system or wastewater treatment facilities.

(b) The Department of Public Works or the Portland Water District shall notify the affected user prior to taking such actions and shall afford the user a reasonable time for response. The Department of Public Works or the Portland Water District shall have the authority to take actions necessary to halt the discharge of pollutants from any user to the treatment works which reasonably appears to present an imminent

endangerment to the health or welfare of persons or the POTW. Such actions shall be preceded by a notification, oral or written, to the user.

POTW(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2454. Demolition of buildings.**

(a) No building served by a building drain or sewer which is connected to the public sewers or to a private sewer system connected to the public sewers, may be demolished prior to the termination of the building sewer or drain at the public sewer under the inspection of the Department of Public Works. The building sewer shall be terminated at the main, at the point designated by the Department of Public Works.

(b) Notice of intent to demolish a building shall be given to the Department of Public Works, by means of a copy of the application for a demolition permit from the building authority or by direct notice to the Department of Public Works, in advance of the time when the building drain or sewer is to be terminated. No such demolition permit shall be issued until a drain termination permit has been issued by the Department of Public Works and a copy thereof has been given to the building authority.

(c) The fee to terminate the building and/or facility sewer and/or drain system will be paid to the city in advance of the termination. The fee of two hundred fifty dollars (\$250.00) per termination represents inspection fees and materials to terminate sewer service. Upon payment of this fee and approval by the Department of Public Works, the applicant shall be issued a sewer termination permit.

(d) Failure to give notice of intent to demolish a building to the Department of Public Works, or to terminate the building drain prior to demolition thereof, or to obtain a permit therefor, shall be deemed a violation of this section, with each day in which the violation continues deemed to be a separate violation.

(e) All excavation for sewer service termination shall be made and maintained in compliance with all provisions of the construction safety rules and regulations of chapter 25, article

VII of this Code.

(f) *Violations.* The property owner who fails to obtain a sewer termination permit and terminate the sewer or drain from the building to be demolished to the public sewer shall be guilty of an offense.

(g) *Failure to comply.* When a person to whom an order is directed fails to terminate a building sewer or drain within a ten-day period, it shall be lawful for the city to terminate the building sewer or drain. All city costs thereof shall be charged to the property owner.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2455. Written notice required.**

Fortyfive (45) days' written notice shall be given to the Department of Public Works and the Portland Water District by any person proposing to:

- (a) Substantially change the volume or character of pollutants over that being discharged into the treatment system at time of enactment of this article;
- (b) Create a new discharge into the treatment system of pollutants from any source which would be a new source as defined in section 306 of the act if such a source were discharging pollutants elsewhere;
- (c) Create a new discharge into the treatment system of pollutants from any source which would be subject to section 301 of the act if it were discharging such pollutants elsewhere.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2456. Violations.**

Any person failing to comply with or violating any provision of this article shall be served by the Department of Public Works 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 this article shall be liable to the Ceity and shall be assessed a civil penalty of a minimum of one thousand dollars (\$1,000.00) 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 Ceity by reason of such violation, including reasonable attorney's fees. The Ceity may seek injunctive relief for the purposes of enforcing this article.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 2457. Appeals.**

(a) Whenever the person receiving written notice shall deem himself aggrieved by an order made by the Department of Public Works, the 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 his designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.     

(b) In cases of applicability or interpretation of this article, the city manager may revoke such order made by the Department of Public Works.

(c) In cases where compliance with such order made by the Department of Public Works would cause undue hardship, the city manager may extend the time limit of such order or they may permit exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article, subject always to the rule that the city manager shall give due consideration to the purposes of this article in eliminating existing pollution, preventing further pollution and promoting the public health, safety and welfare.

(d) This Section shall not apply to notices of violation or other determinations issued by the Portland Water District. Any notices issued by the Portland Water District under this Article shall be subject to review by the superior court under Rule 80B

of the Maine Rules of Procedure within thirty (30) days of the decision.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-58. Reserved.  
Sec. 24-59. Reserved.  
Sec. 24-60. Reserved.  
Sec. 24-61. Reserved.  
Sec. 24-62. Reserved.  
Sec. 24-63. Reserved.  
Sec. 24-64. Reserved.  
Sec. 24-65. Reserved.  
Sec. 24-66. Reserved.  
Sec. 24-67. Reserved.  
Sec. 24-68. Reserved.  
Sec. 24-69. Reserved.  
Sec. 24-70. Reserved.

**ARTICLE IV. SANITARY SEWER USER AND  
INDUSTRIAL PRE-TREATMENT CHARGES\***

\*

\*Editor's note Ord. No. 26396, passed May 20, 1996, amended this article in its entirety, in effect repealing the former provisions and enacting similar new provisions as herein set out. Formerly, such provisions pertained to sewer use charges, consisted of substantive §§ 24712478, and derived from §§ 322.1322.3, 322.5322.8 of the 1968 Code, as amended by the following legislation:

| Ord. No. | Sec. | Date  | Ord. No. | Sec. | Date   |
|----------|------|-------|----------|------|--------|
| 32677    |      | 51677 | 12389    |      | 10 289 |
| 42077    |      | 71877 | 25990    |      | 22190  |
| 28478    |      | 51578 | 7991     |      | 8 791  |

|       |      |       |       |      |       |
|-------|------|-------|-------|------|-------|
| 10281 | 1, 3 | 92181 | 8892  | 1, 2 | 9 992 |
| 47682 | 13   | 4 682 | 18795 |      | 3 695 |
| 52383 | 13   | 6 883 | 15796 |      | 2 596 |
| 1788  |      | 62088 |       |      |       |

**Sec. 2471. Definitions.**

Unless the context specifically provides otherwise, the meanings of terms used in this article, and not defined elsewhere in this chapter, shall be as follows:

*Commercial unit* shall mean any structure or portion of a structure from which wastewater or industrial waste is discharged, excepting only dwelling units as defined hereinafter and shall include industrial users. Commercial units owned by different entities within the same structure and sharing the same water meter shall be treated as one (1) commercial unit.

*Dwelling unit* shall mean one (1) or more rooms occupied or designed to be occupied by one (1) or more natural persons as a single housekeeping unit with sanitary facilities, other than a place of public accommodation as defined hereinafter, discharging only domestic wastewater and shall include each unit of ownership in any condominium. If the occupant or occupants of rooms fit the definition of a dwelling unit except for the fact that the occupants share sanitary facilities with an occupant or occupants of other rooms located within the same structure, the number of units in the structure shall be deemed to be the total number of toilets or urinals located within such structure.

*Parcel of land* shall mean any area of land shown on the assessor's maps on the April first last preceding the operative date, located within the city, which is either connected in fact to a sewer within the city, or developed but unconnected to a

sewer within the city, which sewer is nevertheless accessible to the area within the meaning of section 2436.

*Place of public accommodation* shall mean any establishment having sanitary facilities located therein which gives or offers shelter or lodging to members of the general public, whether transient or long term and shall include but is not limited to hotels, motels, guest houses, hospitals, rest homes, nursing homes, inns, fraternity houses and dormitories.

*Treatment facilities* shall mean all wastewater treatment plants owned and operated by the Portland Water District or by the city.

*Total organic carbon or TOC* shall mean the determination of organic matter present by the measurement of carbon dioxide produced by pyrolysis measured in accordance with 40 CFR Part 136.

*Volume of water* shall mean the amount of water, estimated or measured, whichever is less, provided to the property by the Portland Water District during the previous period of the calendar year. This term shall include any amounts of water obtained from other sources whether or not water is also provided by the district.

(Ord. No. 26396, 52096; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Cross reference(s)** Definitions and rules of construction generally, § 12.

#### **Sec. 2472. Sanitary sewer user charges.**

(a) *Applicability.* There are levied upon all parcels of land charges for cost of treatment of wastewater and stormwater and for the operation and maintenance of the wastewater system.

(b) *Billing.* Bills for all charges under this article may be sent to the record owner, or to the person requesting water service. Bills shall be sent to each such owner or person every month, except that persons billed quarterly or seasonally by the Portland Water District for water service may be billed quarterly or seasonally for all charges under this article. All payments shall be credited against the oldest outstanding bill sent to such owner or person. Any payments made to the Portland

Water District or its agents, which do not indicate to which account they are to be applied, shall be applied as provided by contract between the city and the Portland Water District.

Bills shall contain an amount for sanitary sewer user charges, and if delinquent as provided in section 116 of this Code, shall include charges for interest to be computed in the same manner as provided for real estate taxes.

(c) *Computation.* The user charges shall be computed in accordance with the following schedule, as from time to time amended, which shall be sufficient to meet costs of the eligible purposes for which such charges may be used. Beginning July 1, 2017, user charges under this section for both dwelling units and commercial units shall be nine dollars and sixty-five cents (\$9.65) per hundred cubic feet of volume for connected parcels of land. The user charge for developed but unconnected parcels of land shall be one dollar and seventy-one cents (\$1.71) per hundred cubic feet of volume. Each metered billing unit shall have a minimum charge of at least one hundred (100) cubic feet per month.

(d) *Purposes for which charges may be used.* Charges and assessments made under this article shall be used consistently with 33 U.S.C.A. § 1281 et seq., and applicable federal regulations for the following purposes:

- (1) To defray the current expenses of operating and maintaining the wastewater system, including any assessment made by the Portland Water District;
- (2) To pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of sewers heretofore or hereafter constructed within the city;
- (3) To reimburse the city for the cost of computation, billing and enforcement of such charges.

(e) *Collection.* Charges assessed pursuant to this section shall be enforceable pursuant to section 116 of this Code.

(f) *Disconnection for nonpayment of charges.* The Portland

Water District shall disconnect sewer users with unpaid sanitary sewer user charges according to the same terms and procedures used to disconnect water users with unpaid water user charges. (Ord. No. 26396, 52096; Ord. No. 8897, 91597; Ord. No. 118-01/02, 12-3-01; Ord. No. 249-02/03, 5-19-03, Ord. No. 31-03/04, 7-21-03 (enacted as emergency); Ord. No. 218-03/04, 5-17-04; Ord. No. 249-04/05, 5-16-05, enacted as emergency; Ord. No. 244-07/08, 5-19-08; Ord. No. 265-08/09, 5-18-09; Ord. No. 225-09/10, 5-17-10; Ord. No. 227-10/11, 5-16-11; Ord. No. 222-12/13, 6-24-13; Ord. No. 239-13/14, 5/19/14; Ord. No. 250-14/15, 6-24-2015; Ord. No. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 245-16/17, 5-15-2017, Effective 7-1-2017)

**Sec. 2473. Industrial surcharges.**

(a) *Applicability.* Each industrial user except those included in the Westbrook Inter-Municipal Sewer Service Agreement Area, shall be subject to surcharges in addition to any other treatment charge if the wastewater discharged by such user is determined by the Department of Public Works, in accordance with 40 CFR Part 136, to exceed any of the following concentrations:

- (1) BOD of two hundred fifty (250) mg/l; or COD, where indicated for specific wastewater and a correlation between BOD and COD is established in such wastewater; or TOC, where indicated for specific wastewater and a correlation is established between TOC and BOD in such wastewater;
- (2) TSS content of three hundred (300) mg/l.

(b) *Computation of surcharge for BOD.* The surcharge for BOD shall reflect the cost of removing the excess BOD and shall be computed in accordance with the following formula:

$$\text{Surcharge for BOD} = \frac{(C_1 - 250 \text{ mg/l})}{S_1} \times Q \times 8.34 \times$$

Where  $C_1$  = The concentration of BOD in mg/l

$Q$  = The total volume of wastewater contributed during the billing period, in millions of gallons

8.34 = Conversion factor of gallons to pounds

$S_1$  = \$0.1633 for each pound of BOD in dollars

(c) *Computation of surcharge for TSS.* The surcharge for TSS shall reflect the cost of removing the excess TSS and shall be computed in accordance with the following formula:

$$\text{Surcharge for TSS} = \frac{(C_2 - 300 \text{ mg/l})}{S_2} \times Q \times 8.34 \times$$

Where  $C_2$  = The concentration of TSS in mg/l

$Q$  = Total volume of wastewater contributed during the billing period, in millions of gallons

8.34 = Conversion factor of gallons to pounds

$S_2$  = \$0.0817 for each pound of TSS in dollars

(d) Westbrook Inter-Municipal Sewer Service Agreement area may be surcharged for BOD and TSS, based on the cost of treatment at the Westbrook Gorham Regional Treatment Plant.

(e) *Industrial surcharge fee.* An industrial surcharge fee is hereby established for all permitted discharges from all permitted users at a rate of \$0.0857 per hundred cubic feet of volume, provided that the city council may, from time to time, by order, readjust the surcharge fee according to the then prevailing cost of administering the industrial pretreatment program and the anticipated number of permitted users and anticipated volume to be surcharged.

(f) *Appeals.* Any person aggrieved by a determination of the Department of Public Works made pursuant to this section may appeal such determination to the city manager, within thirty (30) days of notification of such determination. Such person may submit additional evidence and shall be heard orally by the manager or his deputy. The manager may modify the Department of Public Works' determination if satisfied that the determination was erroneous, inconsistent with this chapter, or with applicable rules, regulations or grant requirements made pursuant to 33 U.S.C.A. c. 26. All determinations of the manager

shall be rendered within a reasonable period of time, not to exceed ninety (90) days from the date of such hearing and shall be final.

(Ord. No. 26396, 52096; Ord. No.97-03/04, 11-17-03; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 2474. Reserved.**

**Sec. 2475. Volume measurements.**

(a) *Water volume measurements.* Whenever in this article there is reference to volume of water, and the charges of such person are computed in whole or in part upon such volume of water, the use of such standard shall give the Department of Public Works the right to require any person obtaining water from sources other than the Portland Water District to install and maintain at such person's own expense water meters of a type approved by the Department of Public Works for the purpose of determining the volume of water obtained from their other sources and to report the volume of such water recorded by such meter to the Department of Public Works. Following installation, such meter shall not be removed without the written permission of the Department of Public Works.

(b) *Wastewater volume.* Devices for measuring the volume of wastewater discharged by a commercial or industrial user may be required by the Department of Public Works if these volumes cannot be determined from the water volume records. Any person who is a commercial or industrial user may, at his option, install devices approved by the Department of Public Works for the metering of wastewater and may have the charges based upon the volume of wastewater rather than upon water volume. All metering devices for determining the volume of wastewater shall be installed, owned and maintained by the person to be charged. Following approval and installation, such meters may not be removed without the consent of the Department of Public Works and may be read by the Department of Public Works at all reasonable times.

(c) *Submetering of water volume.* Any person who feels that recorded water records are not a reliable index of his discharge volume may install an additional water meter of a type approved by the Department of Public Works to measure the volume of water

which can be shown not to enter the sewerage system. The person installing such a meter shall immediately notify the Department of Public Works of such installation and shall be responsible to the Department of Public Works for reporting meter readings once every month. Such person shall be credited with the volume charges for the volume shown by such meter, which meter shall be accessible for reading by the city or its agents at all reasonable times.

(d) *Review.* Any person subject to charges under this article may make a written request for review of such charges by the city manager as provided in section 116 of this Code. The city manager may review and modify such charges, to the extent that justice requires, upon affirmative proof by such person that:

- (1) The volume of metered water consumed exceeds the volume of wastewater generated by the unit;
- (2) The difference between the volume of water and of wastewater exceeds ten (10) percent of the metered water measurement;
- (3) The amount of the difference can be established to a substantial certainty by reliable tests or is documented by reliable sources prepared for purposes unconnected with wastewater disposal; and
- (4) Measurement by the measuring devices provided for in the preceding subsections is impossible or impractical.

(Ord. No. 26396, 52096; Ord. No. 37-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 2476. Assessments.**

(a) *Lien.* All assessments upon a parcel of land made under this article shall create a lien for the benefit of the city.

(b) *Reserved.*  
(Ord. No. 26396, 52096)

**Cross reference(s)** Uniform procedure for collecting assessments, § 116.

**Sec. 2477. Violations.**

Any person violating the provisions of this article, other than the requirement of payment of charges or assessments, shall be guilty of an offense.

(Ord. No. 26396, 52096)

**ARTICLE V. STORMWATER SERVICE CHARGES**

**Sec. 24-80. Purpose; Stormwater Service.**

Stormwater services assist the city in meeting the regulatory obligations imposed by national pollutant discharge elimination system (NPDES) permits or other court orders or regulations promulgated from the act by reducing pollution and improving water quality within the city.

Stormwater services assist the city in protecting the public health, safety and welfare and the environment and providing stormwater services and regulation of the use thereof renders and/or results in both service and benefit to individual properties, property owners, business, citizens, and residents of the city and to all properties, property owners, businesses, citizens, and residents of the city concurrently and for the environment.

The area of impervious surface on each property is the most important factor influencing the cost of providing stormwater services by the city or to be provided by the city in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater service charge.

The City of Portland presently owns and operates storm sewers, combined sewers, and the stormwater drainage system, which have been developed over many years. The future usefulness of those existing services owned and operated by the city, and of additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use, and enhance stormwater services in the city with the management of other water resources in the city. In order to do so, the city must have adequate and stable funding for its stormwater

service operating needs and capital program.

Stormwater services are needed throughout the city because many of those areas are developed. While specific service and facility demands may differ from area to area at any given point in time, a stormwater service area encompassing all lands and water bodies within the city is consistent with the present and future needs of the community.

The provision of stormwater services in the city promotes an essential regulatory purpose by influencing where stormwater runoff flows and how it is managed, thereby reducing flooding, erosion and water pollution caused by stormwater runoff.

By mitigating the impact of stormwater runoff from developed properties, stormwater services provided by the city help minimize damage that would subject a parcel owner to civil liability.

The city council is responsible for the protection and preservation of the public health, safety, and welfare of the community, and the environment and finds that it is in the best interest of the health, safety, and welfare of the citizens of the city and the community at large and the environment to provide stormwater services accounted for in the city budget as a separate enterprise fund dedicated solely to the provision of stormwater services and to institute funding methods associated therewith.

In order to fully recover the cost of providing stormwater services a stormwater service charge is the most fair and reasonable means of apportioning the cost among developed land throughout the city.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 2481. Definitions.**

Unless the context specifically provides otherwise, the meanings of terms used in this article shall be as follows:

*Credit* shall mean a conditional reduction in the amount of a stormwater service charge to developed land based on the provision and continuing presence of an effectively maintained

and operational approved on-site stormwater system or facility or other service or activity that reduces the cost of providing service.

*Developed land* shall mean property altered from its natural state by construction or installation of more than 400 square feet of impervious surfaces as defined in this chapter.

*Exemption* shall mean not applying to, or removing the application of the stormwater service charge from, a property. No permanent exemption shall be granted based on taxable or non-taxable status or economic status of the property owner.

*Impervious surfaces* are those areas that prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Impervious surfaces include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

*Undeveloped land* shall mean land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have less than or equal to 400 square feet of impervious surfaces as defined in this chapter consisting of limited pavement, asphalt, or compacted dirt or gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur naturally.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-82. Authority and Establishment of the Stormwater Fund.**

(a) Under the authority of the Maine Constitution, Article VIII, and Title 30-A M.R.S. § 3001, the city hereby establishes the stormwater service charge to fund stormwater services within the city. Such stormwater charges shall be maintained and

accounted for separately in accordance with generally accepted accounting principles as determined by the city's finance director.

(b) Charges made under this article shall be used for the following purposes:

To defray the current expenses of stormwater services and a portion of the current expenses of the combined sewer system attributable to providing stormwater service;

To pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of the storm drainage system and a portion of the combined sewer systems heretofore or hereafter constructed within the city similarly attributable to providing stormwater service;

To reimburse the city for the cost of computation, billing, and enforcement of such charges.

(c) The city manager will designate appropriate Department of Public Works management and other personnel, including support as needed of personnel from other city departments such as finance, to provide stormwater services and to collect and account for the stormwater service charge imposed hereunder.  
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-83. Exemptions.**

Exemptions from stormwater charges established under this article are not allowed, except as provided in this section. Exemptions shall be allowed for:

(a) All roads owned or maintained by the State of Maine, including the Maine Turnpike; and all accepted City roads and all roads maintained by the City; all private roads and ways serving more than two dwelling or structures, but not driveways; all public pedestrian walkways. However, parking lots, buildings, or other developed land within the right-of-ways shall not be exempt from storm water service charges;

(b) Undeveloped land;

(c) Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from storm water service charges;

(d) Airport runways, taxiways and aprons upon which public and private aircraft operate;

(e) With the exception of Peaks Island all islands are exempted from the fee due to the limited services provided to the islands.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-84. Stormwater Service Charge.**

(a) There is levied upon all developed land stormwater service charges for the cost of providing stormwater services. All developed land shall be charged \$6.00 per month per one thousand two hundred (1,200) square feet of impervious surface area, rounded to the nearest one thousand two hundred (1,200) square feet of impervious surface area.

(b) The basis for this charge is the measured amount of impervious surface area on the developed land as determined by the city. This measured area may be updated from time to time at the discretion of the Department of Public Works upon evidence of impervious surface area change or the availability of updated or more accurate information.

(c) Fees collected hereunder to fund stormwater services can also be supplemented by other revenues available to the city, including but not limited to state, federal, general and special city funds, and private grants and loans.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-85. Credits**

(a) Owners of developed land may apply for and receive a voluntary stormwater service charge credit for approved stormwater credit systems or facilities. The director of the Department of Public Works or his/her designee shall determine

such approved stormwater systems and facilities and stormwater service charge credit amounts based on the technical requirements, design and performance standards contained in the city's stormwater credits manual, to be adopted by the director of the Department of Public Works pursuant to this ordinance, as it may be updated or amended from time to time.

(b) It is the responsibility of the record owner to initiate and apply in writing for stormwater service charge credits, and to provide all necessary information with a letter requesting the credit. The department of Public Works is not responsible for initiating a credit application, performing engineering calculations, or otherwise assisting in the preparation of a request for a credit. Credits will only be applied if the requirements outlined in the city's stormwater credit manual are met including but not limited to completion of on-going maintenance, guaranteed right-of-entry for inspection, and submittal of annual self-certification reports or other required reports as required per ordinance and rule.

(c) Credits will be applied to the stormwater service charge while stormwater facilities or management practices are functioning as approved by the city. If the approved practice or facility is not functioning as approved, or is terminated, the credit will be cancelled. Once the credit has been cancelled, the customer must reapply for the credit.

(d) The department of Public Works will only review complete credit requests. If approved, the credit will be applied to the first bill issued 30 days after the approval. Credits may be made retroactive, one calendar year from the date of the first billing period of the charge.

(e) A credit of up to one hundred percent (100%) of the stormwater service charge may be approved.  
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 24-86. Billing.**

(a) All charges under this article shall be sent to the record owner of a given property. The record owner may request, subject to the approval of the director of the Department of Public Works, that the full charge be billed to the owner's designated tenant. The director may direct billing to the

tenant of the property if the tenant is currently billed for water and sanitary sewer charges. The record owner shall be liable for payment even if the stormwater service charges are billed to the tenant of the property.

(b) Condominiums shall have the full charge for the developed land equally divided among all condominium owners of developed land. The condominium owners may appeal the director in writing to adjust the fraction of the charge applied to each condominium owner. The director will require signed confirmation from each condominium owner of developed land that they approve the adjustment to the fraction of the charge applied.

(c) Bills shall contain an amount for stormwater service user charges, and if delinquent, as provided in section 1-16 of this Code, shall include charges for interest to be computed in the same manner as provided for real estate taxes and such delinquency may be collected by a civil action against the owner and/or may result in a lien being placed on the property as specified in section 24-88.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-87. Right of appeal and adjustments.**

(a) A record owner may request review of the amount of the stormwater service charge imposed on such owner by written request to the director of the Department of Public Works within 30 calendar days of the date the customer receives the service charge bill.

(b) The owner must demonstrate the impervious surface area is less than the amount used in calculating the developed land's stormwater service charge. Factors that will be considered include the impervious surface area of the property.

(c) An owner must comply with all rules and procedures adopted by the director when submitting a request for appeal or adjustment of the stormwater service charge and must provide all necessary information to make a determination.

(d) The director of the Department of Public Works or his/her designee shall review the service fee and issue a determination, in writing, within 30 calendar days.

(e) With a finding that the impervious surface area is less than the amount used to calculate the developed land's stormwater service charge, the sole remedy to the owner shall be re-calculation of the stormwater service charge based on the corrected impervious surface area. A finding that the impervious surface area is not less than the amount used to calculate the developed land's stormwater service charge shall be conclusive with respect to that property and shall remain effective unless the owner changes the impervious surface area of the property.

(f) An owner may appeal the director of the Department of Public Works decision to the city manager or his/her designee within 30 days of the date of the decision. An owner may appeal a decision of the manager to a court of competent jurisdiction pursuant to the applicable Rules of Civil Procedure.  
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-88. Right of enforcement and violations.**

(a) The director of the Department of Public Works or his/her designee is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(b) It shall be unlawful for any person to violate or to fail to comply with the requirements of this article or its fees. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

(c) Any person who violates this article may also be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this article also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this section; this responsibility shall be

in addition to any penalties, fines or injunctive relief imposed under this section.

(d) Without limiting the foregoing, failure to comply with this article may also be enforced as a nuisance and be subject to an abatement action, in addition to, or alternatively to, the enforcement actions described above.

(e) *Consent agreement.* The enforcement authority, with the approval of corporation counsel and the city manager, may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(f) *Delinquent fees.* Any owner that fails to pay the stormwater service charge when due shall be responsible for the amount of the unpaid service charge, interest on the unpaid amount, and attorneys' fees and other costs of collection. To the extent permitted by law, the fee, when overdue, including interest and penalties, is a lien on real property and may be collected in the same manner as a sewer user lien pursuant to state law. Delinquent amounts ~~may~~ also may also be collected by a civil action against the person.  
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

#### **Sec. 24-89. Limitation of liability.**

This article shall not be interpreted to mean that property subject to the charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater drainage systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Therefore the following limitations on liability, in addition to any other limitations or immunities existing in law, are set forth:

(1) It is the express intent of the city that this article will protect the public health, safety and welfare of properties and persons in general. However, this ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the service area.

(2) The city shall not be held liable for flood damage or assessing and removing pollution sources, and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the city, or its officers, agents or employees for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.

(3) The issuance of any permit, plan approval or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of monetary damages against the city or its officers, employees or agents.

(4) Operation of stormwater drainage systems located on private property or public property not owned by the city and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvements of the system, shall be the legal responsibility of the property owner, except as may be affected by the laws of the State of Maine and the United States of America.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-90. Severability.**

Each section of this ordinance is severable from all other sections. If any part of this ordinance is deemed invalid by a court or competent jurisdiction, remaining portions of the ordinance shall not be affected and shall continue in full force. Whenever this ordinance conflicts with any other ordinance of the city, State of Maine, or federal government, the stricter standard shall apply, except as limited by state or federal law.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

**Sec. 24-91. Reserved.**  
**Sec. 24-92. Reserved.**  
**Sec. 24-93. Reserved.**  
**Sec. 24-94. Reserved.**

Order 32-18/19  
Tab 44 7-16-18

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 6  
Re: RENTAL HOUSING ADVISORY COMMITTEE**

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

1. That Chapter 6, Article XI., Section 6-225 of the  
Portland City Code is hereby amended to read as follows:

**6-225. Rental Housing Advisory Committee**

(a) There is hereby created a Rental Housing  
Advisory Committee (the "Committee").

(b) The Committee shall be comprised of ~~nine seven~~  
~~(97)~~ members, including three (3) members who are  
landlords ~~landlord representatives~~, three (3) members who  
are tenants, ~~Tenant representatives~~ one (1) member who is  
not a landlord or a tenant, one (1) member experienced in  
legal rights/interest of tenants, and one (1) member with  
experience in legal rights/interests of landlords. ~~and one~~  
~~(1) at-large resident representative who is neither a~~  
~~Tenant nor a Landlord of rental property, all of whom~~  
~~shall be appointed by the City Council.~~ All members of the  
Committee shall be residents of the City of Portland and  
shall be appointed by the City Council to serve staggered  
terms set by City Council order. The Southern Maine  
Landlord Association will submit one name for  
consideration for the landlord representative position.  
Pine Tree Legal Assistance will submit one name for the  
tenant representative position.

(c) The Committee shall be co-chaired by one (1)  
Landlord representative and one (1) Tenant representative  
as agreed to by the members of the Committee.

(d) The Committee shall meet not less than  
quarterly and shall undertake the following duties:

~~1. Compile and provide the Housing Committee with City of Portland housing market data;~~

~~2. Report annually to the Housing Committee on the state of the housing market in the City of Portland; and~~

3.1. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues ~~to the City's housing ordinances or policies.~~

4.2. Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

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

**DISTRIBUTE TO:** City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English, Mona Bector

**FROM:** Planning and Urban Development and Housing and Community Development

**DATE:** June 28, 2018

**SUBJECT:** Amendment to Chapter 6 section 6-225, Rental Housing Advisory Committee

**SPONSOR:** Housing Committee, Councilor Jill Duson, Chair

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

**COUNCIL MEETING DATE ACTION IS REQUESTED:**  
**1<sup>st</sup> reading: July 16, 2018 Final Action: August 13, 2018**

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

**PRESENTATION:** Staff will be available for presentation

**I. ONE SENTENCE SUMMARY**

The Housing Committee voted to recommend changes to the structure and duties of the Rental Housing Advisory Committee which is created under Chapter 6 Buildings and Building Regulations, Article XI, Tenant Housing Rights, Section 6-225, Rental Housing Advisory Committee.

**II. AGENDA DESCRIPTION**

Section 6-225 of the Tenant Housing Rights Ordinance creates a Rental Housing Advisory Committee. At the May 23 Housing Committee meeting, the Committee discussed changes to the composition of the Rental Housing Advisory Committee, and their recommended duties.

The current ordinance language:

***Section 6-225. Rental Housing Advisory Committee***

***(a) There is hereby created a Rental Housing Advisory Committee (the "Committee")***

*(b) The Committee shall be comprised of seven (7) members, including three (3) Landlord representatives, three (3) Tenant representatives and one (1) at-large resident representative who is neither a Tenant nor a Landlord of rental property, all of whom shall be appointed by the City Council. All members of the Committee shall be residents of the City of Portland and shall serve staggered terms set by City Council order.*

*(c) The Committee shall be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.*

*(d) The Committee shall meet not less than quarterly and shall undertake the following duties:*

- 1. Compile and provide the Housing Committee with City of Portland housing market data;*
- 2. Report annually to the Housing Committee on the state of the housing market in the City of Portland; and*
- 3. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes to the City's housing ordinances or policies.*

The following recommended changes are from the May 23 meeting of the Housing Committee:

- (b) The Committee shall be comprised of nine (9) members, including
- three (3) members who are landlords
  - three (3) members who are tenants
  - one (1) member who is not a landlord or a tenant
  - one (1) member experienced in legal rights/interest of tenants nominated by Pine Tree Legal Assistance
  - one (1) member with experience in legal rights/interests of landlords nominated by the Southern Maine Landlord Association

- All members of the Committee shall be residents of the City of Portland and shall serve staggered terms set by City Council order.
- All members will be appointed by the City Council.
- The Southern Maine Landlord Association will submit one name for consideration for the landlord representative positions.
- Pine Tree Legal Assistance will submit one name for the tenant representative positions.
- The Committee will be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.
- The City's Planning and Urban Development Department, through the Housing and Community Development Division, will be the staff liaison to the Rental Housing Advisory Committee, attend all meetings and keep the minutes of the Committee.

(d) The Committee shall meet not less than quarterly and shall undertake the following duties:

1. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy

issues.

2. Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

### **III. BACKGROUND**

In November, 2016, the City Council adopted a Tenant Housing Rights Ordinance (Chapter 6 Article XI Tenant Housing Rights Section 6-225 Rental Housing Advisory Committee).

Section 6-225 of the ordinance creates a Rental Housing Advisory Committee. As it is currently written, the Committee is to have seven members with representation from landlords, tenants and one at-large member who is neither a landlord nor a tenant.

At the June 14, 2017 Housing Committee meeting, the committee discussed concerns with the role of the Rental Housing Advisory Committee as outlined in the ordinance. At that time, members of the Housing Committee agreed that it was the original intent of the committee to create an advisory committee that would allow landlords and tenants to work on issues of mutual concern, identify priority areas of contention that they could work on and present recommendations to the council in an advisory capacity. The members of the Housing Committee were concerned that the ordinance language may set unintended expectations of the influence of such an advisory committee. Staff was tasked with returning to the Housing Committee with suggestions to address these concerns. This process was temporarily placed on hold while awaiting the November 2017 election results on the rent stabilization referendum.

During the May 23 Housing Committee meeting, the committee discussed changes to the composition of the Rental Housing Advisory Committee, and their recommended duties. The number of members to the Rental Housing Advisory Committee increased from 7 members to 9 members. One additional member will have experience in legal rights/interests of tenants nominated by Pine Tree Legal Assistance. The other additional member will have experience in legal rights/interests of landlords nominated by the Southern Maine Landlord Association.

The duties of the Rental Housing Advisory Committee will no longer include; compile and provide the Housing Committee with City of Portland housing market data; or report annually to the Housing Committee on the state of the housing market in the City of Portland. The Rental Housing Advisory Committee will continue their duty to; provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes to the City's housing ordinance or policies. The Rental Housing Advisory Committee will add the duty to; identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

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

The goal of this text amendment is to provide to the Housing Committee, from the Rental Housing Advisory Committee, recommendations or proposals for improvements, modifications,

or changes regarding landlord and tenant policy issues, and to identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

The recommended changes to the structure and duties of the Rental Housing Advisory Committee is in keeping with the 2018 Portland City Council Committee on Housing goal to develop and recommend a Housing Advisory Board consistent with the language approved by the Council as part of the 2016 Housing security package, including housing professionals, tenant and landlord representatives, to assist the City in developing and implementing policy options to address existing and developing issues.

**V. FINANCIAL IMPACT**

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

**VII. RECOMMENDATION**

On June 5, 2018 the Housing Committee voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

**VIII. LIST ATTACHMENTS**

Amendments to Ordinance 6-225 Tenant Housing Rights

Prepared by: Victoria Volent

Date: June 28, 2018

## ARTICLE XI. TENANT HOUSING RIGHTS

### 6-219. Purpose.

The purpose of this Article is to address housing insecurity in the City of Portland; to minimize the potential adverse impacts of un-noticed or short-notice rent increases; to educate at-will Tenants of their rights; and to help bring about through fair, orderly and lawful procedures, the opportunity of each person within the City of Portland without regard to, among other things, receipt of public benefits, to rent, enjoy and retain secure housing.

(Ord. No. 76-16/17, 11-21-2016)

### 6-220. Applicability.

This article shall apply to any and all rental housing units in the City limits of Portland.

(Ord. No. 76-16/17, 11-21-2016)

### 6-221. Definitions.

*Discrimination* means the unjust or prejudicial treatment of different categories of people, when those categories are protected from discrimination by municipal, state and federal law, including, but not limited to, categories based on race, color, religious creed, sex, sexual preference, national origin, age, physical handicap or mental handicap, and based on receipt of public assistance, as provided in 5 M.R.S. §4581-A and as amended from time to time.

*Housing unit* means one (1) or more rooms forming a single unit including food preparation, living, sanitary and sleeping facilities used or intended to be used by two (2) or more persons living in common or by a person living alone.

*Landlord* means an owner, manager, lessee, sublessee, managing agent or other person having the right to rent or sell or manage any housing unit or rental property or any agent of these individuals or entities.

*Tenant* means an individual, individuals, an entity, entities, a lessee or sub-lessee, or other person having the right to rent any housing unit or rental property or any agent of

these individuals or entities. This definition includes a Tenant at will as described in 14 M.R.S. §6002, as amended from time to time.

(Ord. No. 76-16/17, 11-21-2016)

**6-222. Discrimination prohibited in sale or rental of housing units.**

(a) A Tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.

(b) A Landlord shall not refuse to rent or impose terms of tenancy on any Tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.

(Ord. No. 76-16/17, 11-21-2016)

**6-223. Notification of rent increases.**

Notwithstanding 14 M.R.S. Section 6015, a Landlord shall give seventy-five (75) days' written notice of any rent increase to a Tenant.

(Ord. No. 76-16/17, 11-21-2016)

**6-224. Protection of Tenants.**

(a) The Planning Department or its designee shall create and make available on the City's publically accessible web site a plain language document that explains Tenancy at Will and the rights and responsibilities of Tenants and Landlords of rental housing units. That document shall also include a checklist of required notices concerning environmental lead hazards, energy efficiency or radon testing, pursuant to 14 M.R.S. Sections 6030-B, 6030-C, and 6030-D, respectively, as amended from time to time.

(b) The document referenced above shall be provided by Landlords to all Tenants in the City of Portland at the commencement of the rental of a housing unit and shall be provided again upon any update to the document made by the Planning Department.

(c) An acknowledgement of receipt of the documents described above must be signed by all Tenants, and a copy of the acknowledgement kept on file by the Landlord for at least three

(3) years and made available for inspection at the request of the City of Portland.

(d) At the time of the annual registration required by Chapter 6, Article VI of the City of Portland Code of Ordinances, all Landlords must certify to the City that they have provided the above-referenced documents to each of their respective Tenants.

(Ord. No. 76-16/17, 11-21-2016)

#### **6-225. Rental Housing Advisory Committee**

(a) There is hereby created a Rental Housing Advisory Committee (the "Committee").

(b) The Committee shall be comprised of ~~nine seven (97)~~ members, including three (3) ~~members who are landlords~~ landlord representatives, three (3) ~~members who are tenants~~ Tenant representatives, ~~one (1) member who is not a landlord or a tenant, one (1) member experienced in legal rights/interest of tenants, and one (1) member with experience in legal rights/interests of landlords, and one (1) at-large resident representative who is neither a Tenant nor a Landlord of rental property, all of whom shall be appointed by the City Council.~~ All members of the Committee shall be residents of the City of Portland and shall be appointed by the City Council to serve staggered terms set by City Council order. The Southern Maine Landlord Association will submit one name for consideration for the landlord representative position. Pine Tree Legal Assistance will submit one name for the tenant representative position.

(c) The Committee shall be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.

(d) The Committee shall meet not less than quarterly and shall undertake the following duties:

- ~~1. Compile and provide the Housing Committee with City of Portland housing market data;~~
- ~~2. Report annually to the Housing Committee on the state of the housing market in the City of Portland; and~~
3. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues to the City's housing ordinances or policies.

4. Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

(Ord. No. 76-16/17, 11-21-2016)

**6-226. Variation by agreement.**

No provision of, or right conferred by, this Article may be waived by a Tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage or induce a Tenant to waive any provision hereof or right hereby shall be a violation of this Article. Nothing herein shall be construed to void any term of a lease that offers greater rights than those conferred hereby.

(Ord. No. 76-16/17, 11-21-2016)

**6-227. Limitation of liabilities.**

(a) Nothing in this Article shall be interpreted to contravene the general laws of the State of Maine; and

(b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.

(Ord. No. 76-16/17, 11-21-2016)

**6-228. Enforcement and remedies.**

(a) Any violation of sections 6-223, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

(b) Any violation of §6-222 of this Article shall be enforced as required by the Maine Human Rights Act, 5 M.R.S.

§§4551, et seq.

(Ord. No. 76-16/17, 11-21-2016)

**6-229. Severability.**

The provisions of this Article are severable. If any of its provisions are held invalid by act of competent jurisdiction, all other provisions of this Article shall continue in full force and effect.

(Ord. No. 76-16/17, 11-21-2016)