

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

**TO:** Mayor and City Council

**FROM:** Alexander Jaegerman, Planning Division Director

**DATE:** April 7, 2015

**DISTRIBUTION:** City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan, Jeff Levine, Mike Bobinsky, Jen Thompson

**SUBJECT:** Material substitution for apron at Munjoy Heights townhouse development (79 Walnut Street)

**SPONSOR:** Acting City Manager  
(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 \_\_\_\_\_ **Final Action** April 27<sup>th</sup> [Only one reading is required]

**Can action be taken at a later date:** \_\_\_\_\_ Yes \_\_\_\_\_  No (If no why not?)  
Project is nearing completion and the final paving is ready to be completed..

**PRESENTATION: (List the presenter(s), type and length of presentation)** Staff from Planning and the Department of Public Services will be present to answer questions.

**I. SUMMARY OF ISSUE (Agenda Description)**

The applicant, Jonathan Culley of Redfern Munjoy LLC, received Planning Board approval to develop the townhomes known as “Munjoy Heights” on December 17, 2013 and the project is now in the final stages of construction. The applicant requested a brick apron where the pedestrian/vehicle access links the 29 new townhouses known as “Munjoy Heights” to Walnut Street, as shown in the attached plan. The City’s Sidewalk Replacement Materials map specifies a brick sidewalk with asphalt apron at this location and the City Council is requested to approve this substitution of brick for the 205 sq ft asphalt apron area.

The Council is also requested to approve the associated easement that the applicant has agreed to: it confirms that the apron shall be solely the responsibility of the applicant or subsequent owners and its repair, replacement and maintenance will be carried out in accordance with the City’s Technical Manual.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

The project includes a pedestrian/vehicle area between the townhouses that is surfaced with brick and other non-asphalt materials to create an attractive character to the area, and the applicant would like the small section of abutting apron to be of a similar material rather than the asphalt that is required by strict compliance with the Sidewalk Materials policy. The replacement and maintenance easement that the applicant has agreed is similar to easements that have been agreed for similar substitutions elsewhere.

**III. INTENDED RESULT**

An integrated and attractive apron area for this project.

**IV. COUNCIL GOAL ADDRESSED**

The item is being brought before the City Council so that the Sidewalk Materials Policy is addressed through the requirement for the easement; this links to the following goal:

*Improve City Services: Operate the city government in an efficient and effective manner that is responsive to all segments of the community in a manner that is transparent and accountable.*

**V. FINANCIAL IMPACT**

There is no financial impact related to this request.

**VI. STAFF ANALYSIS**

Planning Division staff note that the brick apron was shown on the plans approved by the Planning Board, accompanied by a note stating “subject to City Council approval”. Staff were concerned that the apron would be subject to vehicle use and is near well used pedestrian routes (a route to school and Jack Path) and therefore it was recommended that a maintenance and replacement easement was appropriate to ensure the brick is maintained. The Department of Public Services supports the substitution subject to the easement being in effect and the Legal Department has confirmed that this does not require TS&E committee review.

**VII. RECOMMENDATION**

The City Council is recommended to approve the material substitution (brick to be substituted for asphalt in apron area) as shown on the attached plan, and the associated attached maintenance and replacement easement.

**VIII. LIST ATTACHMENTS**

- A. Order (to follow)
- B. Plan SK-1 of the apron area
- C. Maintenance and Replacement Easement, as agreed with the applicant and City Associate Corporation Counsel 3.20.2015
- D. DPS e-mail of support

Prepared by: Jean Fraser

Date: Draft 4.7.2015



*As agreed applicants attorney and City Corporation Counsel 3.20.2015*

### **REPLACEMENT EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (“Grantor”), FOR VALUABLE CONSIDERATION, does hereby GRANT to Redfern Munjoy LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of P.O. Box 8816, Portland, ME 04014 ( the “Grantee”), easements for the purposes set forth below, over portions of Grantor’s land as described below (collectively, “Grantor’s Land”). The land which is subject to the easements granted herein abuts land of Grantee, located at 79 Walnut Street in Portland, Maine which is described in the Subdivision Plan of Munjoy Heights, Prepared by Nadeau land Surveys, dated December 6, 2013, and recorded in the Cumberland County Registry of Deeds in Plan Book 214, Page 48 (“Grantee’s Land”).

1. Grantor grants to Grantee a permanent and perpetual easement to use and occupy the drive apron at 79 Walnut Street (drive entrance to Munjoy Heights, development approved by the Planning board on December 17, 2013 Project #2013-228 as shown on Exhibit A attached hereto and made a part hereof (the “Apron Easement Area”) together with the right from time to time to bring on the Apron Easement Area and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the Apron Easement Area.

2. At all times the Grantee, specifically including, but not limited to any condominium association as soon as any unit is transferred, shall exclusively be responsible for installing, and constructing the sidewalk, apron and crosswalk utilities as depicted on Exhibit A and shall exclusively be responsible for repairing, replacing, keeping and maintaining the Apron Easement Area in a safe condition generally, and promptly repairing or replacing any broken or displaced bricks or other materials to match the original installation.

3. All work performed upon and use of the Apron Easement Area for the purposes set forth herein shall be in accordance with the City of Portland Technical Manual and the approved construction plans and at Grantee’s sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City’s property adjacent to the Easement Area related to the conduct of any work related to this Easement. Grantee agrees at its sole expense to restore any adjacent City property damaged by work conducted by Grantee related to this Easement to substantially its condition prior to such work, or as close to that condition as is reasonably practicable.

4. Grantee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney’s fees, which arise out of Grantee’s use, or the use of others, of the City's property as described above.

5. Grantee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars (\$400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Grantee under the terms of this Easement. Grantee shall

**As agreed applicants attorney and City Corporation Counsel 3.20.2015**

provide City with evidence of such insurance coverage and maintain such insurance in perpetuity. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101.

6. This Easement is assignable to any subsequent owners of the property and/or building located on the land described on the site plan of Munjoy Heights approved by the Portland Planning Board on December 17, 2013 located at 79 Walnut Street, Portland, Maine, to be recorded herewith in the Cumberland County Registry of Deeds (the "Site Plan"); and the duties and obligations hereunder shall, in any event, run with the land and burden all subsequent owners holding rights to use any portion of the Easement Areas.

TO HAVE AND TO HOLD the aforegranted and bargained easements, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use forever.

IN WITNESS WHEREOF, the City of Portland, the Grantor, has caused this instrument to be duly executed, this \_\_\_\_ day of \_\_\_\_\_, 2015.

WITNESS:

**CITY OF PORTLAND**

\_\_\_\_\_

By: \_\_\_\_\_

Sheila Hill-Christian  
its Acting City Manager

STATE OF MAINE  
CUMBERLAND, ss

\_\_\_\_\_, 2015

PERSONALLY APPEARED the above-named Sheila Hill-Christian, Acting City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

Print name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**From:** David Margolis-Pineo  
**To:** Jean Fraser  
**CC:** Barbara Barhydt; Philip DiPierro  
**Date:** 2/24/2014 3:02 PM  
**Subject:** Munjoy Heights Development

Jean,

I have reviewed the most recent set of plans for Munjoy Heights and find that the review comments submitted by Public Services have been addressed.

It is noted that the applicant is requesting to install a brick driveway apron which does not meet the City's standards for this area of the City and such a request would required a waiver by the City Council. This department is supportive of a waiver request.

**From:** David Margolis-Pineo  
**To:** Jean Fraser  
**Date:** 4/13/2015 3:20 PM  
**Subject:** Change of Materials for Drive Apron

April 13, 2015

Memo To: Jean Fraser  
Barbara Barhydt  
From: David Margolis-Pineo  
Re: 70 Walnut Street – Munjoy Heights

The Department of Public Services has reviewed and is in agreement with the Memorandum from Alex Jaegerman to City Council dated April 7, 2015 with the Subject: Material substitution for apron at Munjoy Heights townhouse development and Attachment C, REPLACEMENT EASEMENT dated March 20,2015.