

# Verrill Dana<sub>LLP</sub>

Attorneys at Law

JOHN P. GIFFUNE  
PARTNER  
jgiffune@verrilldana.com  
Direct. 207-253-4646

ONE PORTLAND SQUARE  
PORTLAND, MAINE 04112-0586  
207-774-4000 • FAX 207-774-7499  
www.verrilldana.com

27-F-2

April 14, 2011

Richard McCarthy, Director  
Department of Public Safety  
Office of the State Fire Marshal  
52 State House Station  
Augusta, ME 04333-0052

Tammy Munson, Division Director  
Inspection Services Program  
Planning and Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

RECEIVED  
APR 19 2011  
Dept. of Building Inspections  
City of Portland Maine

Re: 28 Monument Square – Code Violations

Dear Mr. McCarthy and Ms. Munson:

This firm represents Robert and Marianne Dodge and Charles and Dalinda Carpenter who reside on the third and fourth floors, respectively, of 28 Monument Square, also known as the Public Market House, in Portland. I am writing to notify you of several serious code violations that are of great concern to my clients.

As you may know, the basement, first and second floors of the Public Market House are occupied by various retail restaurants and vendors of food and beverages. At present, the second floor is occupied by, among other things, Kamasoupra which makes and sells soup on site and to various restaurants in the Portland area. Kamasoupra's soup is presently prepared in large quantities in what appear to be ten-gallon pots. The soup, including sautéing of vegetables, is cooked on an electric range that is without an exhaust hood to vent offensive odors to the outdoors. Based on the enclosed report evaluating the operations of the various establishments at the Public Market House, we have concluded that the lack of an exhaust hood is a violation of Section 11-21 of the City of Portland Code of Ordinances which states:

All rooms in which food is prepared or served . . . shall be well-ventilated sufficient to prevent objectionable odors and vapors, condensation, and the accumulation of grease and smoke on walls, ceilings, or fixtures. Ventilation

Richard McCarthy  
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hoods or devices shall be designed to prevent grease or condensation from dripping into food or onto food contact surfaces. . . . Ventilation systems shall discharge in such manner as not to create a nuisance.

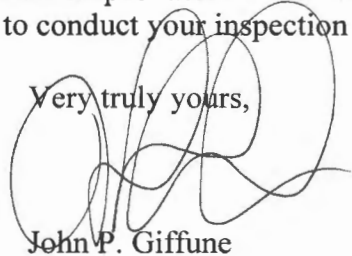
In addition, the quantity of soup being prepared on site is outside Kamasouptra's permitted use which is specifically defined as "retail." We understand that Kamsouptra is producing soup for sale on a wholesale basis to other restaurants in the Portland area.

Recently, a new food vendor, Deux Cochon, has commenced operations on the second floor. This vendor was recently seen frying bacon, an activity that we understand is a code violation absent proper ventilation.

The lack of adequate ventilation, together with the lack of fire-rated sealant applied at utility chases, among other locations, is causing offensive odors to penetrate my clients' living space. Please note that the lack of fire-rated sealant at the utility chases is itself a violation of code. My clients are very concerned that in light of the inadequate sealing of utility chases, a fire on the first and second floors would spread unchecked to their residences. These conditions cannot continue. For your information, enclosed with this letter is a letter report describing these and other code violations.

We respectfully request that your office inspect these conditions without delay. Kindly contact my office to advise when you plan to conduct your inspection of the premises.

Very truly yours,



John P. Giffune

JPG:d

Enclosure

cc: Charles and Dalinda Carpenter  
Robert and Marianne Dodge

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Dept. of Building Inspections  
City of Portland Maine

# GRANT HAYS ASSOCIATES

April 5, 2011

Mr. James Thibodeau  
Associated Design Partners, Inc.  
80 Leighton Road  
Falmouth, Maine 04105

Re: Existing Conditions Walk-Thru  
28 Monument Square, Portland, Maine

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APR 19 2011

Dept. of Building Inspections  
City of Portland, Maine

Dear Jim,

I visited the above referenced building on Thursday, March 31, 2011 with Warren Gerow and John Giffune to observe the occupancy classifications and visible construction elements of the structure. We met with the Owner of the condominium residence on the uppermost floor, who accompanied us throughout the walk-thru. He also provided us with comments regarding concerns about various construction elements; and the excessive cooking odor problems he and his wife were experiencing within their unit from the operations on the lower floors.

The building is a five (5) story masonry exterior bearing wall structure with wood-framed floors and roof. The building appears to be fully sprinkled, and has a fire alarm system. The basement level is utilized for commercial cooking/food prep space to support the upper two floors of restaurants, and also includes spaces for dry storage, general storage, mechanical/utilities, and a walk-in cooler. There is also a non-ADA restroom, elevator, two sets of stairs, and an elevator machine room. The building electrical panels are located on a corridor wall adjacent to the commercial kitchen area. Currently, open stud framed walls have been erected to enclose a portion of the commercial kitchen area, permitted by the City of Portland on February 1, 2010. The residential Owner indicated the work in this area has been idle for many months.

The first and second floor levels of the building are occupied by restaurant-type establishments forming the "Portland Public Market", as well as a beer & wine retail shop. Most of the restaurant establishments utilize small appliances within their space, such as coffeemakers, espresso makers, toasters, Panini grilles, blenders, grinders, food warmers, conveyor-type pizza ovens/toasters, and convection/microwave ovens. One establishment is utilizing a range/cooktop for open-pan/pot cooking without the required NFPA exhaust hood at the second floor level. The basement level NFPA exhaust hood terminates at the exterior wall second floor level just below two exterior operable double-hung windows, which are both located less than 10' from the ductwork termination point.

The third and fourth floors are two residential condominiums, with the upper unit also having a penthouse, or partial fifth floor level. The level of finish within these units would be considered "upper end" or luxury in the current real estate market, given the level of detail observed in the fit-up.

Code Synopsis: 2009 IBC

Occupancy Classification:	A-2 Assembly (Restaurant/Café) R-2 Residential
Occupancy Separation:	2 hours between A-2/R-2 or 1 hour if fully sprinkled/alarmed
Height/Area Limitation:	2 story/9,500 sf at A-2 4 story/16,000 sf at R-2

P. O. BOX 6179, FALMOUTH, MAINE 04105 ♦ (207) 871-5900, FAX (207) 871-9308

Height/Area Modification: 3 story/28,500 sf if fully sprinkled/alarmed  
5 story/48,000 sf if fully sprinkled/alarmed

Observations:

Basement:

1. The posted construction permit dated 2/1/10 has expired. The work appears incomplete.
2. The existing grease trap in the commercial kitchen area appears to be connected to an excessive amount of sinks. The capacity and service schedule should be confirmed.
3. The walk-in cooler appears to have non-NFPA equipment (cooling unit) and finishes.
4. One electrical panel has electrical tape over breaker switches.
5. There is a significant void in the ceiling/floor construction assembly along the length of the west masonry wall. Additionally, there are multiple areas where pipe/conduit penetrations do not appear to be fully sealed. This may be a contributing factor to the presence cooking odors detected in the floors above.

First Floor:

1. There are numerous voids in the ceiling/floor construction assembly along the length of the west masonry wall and the rear/south exterior wall. Additionally, there are multiple areas where pipe/conduit penetrations do not appear to be fully sealed, particularly at the vertical chase at the southwest corner of the building (beer & wine retail space). Again, this may be a contributing factor to the presence of cooking odors detected in the floors above.

Second Floor:

1. The rated fire-separation ceiling/floor construction assembly between the Third floor Residential Condominium and the Second floor Assembly occupancy appears to be incomplete at the masonry perimeter walls. The sheetrock finish has visible voids into the brick shelf/wood framing. Additionally, the utility room pipe/conduit penetrations do not appear to be fully sealed in a workmanlike manner. These voids should be completely sealed for a fully rated one-hour fire separation.
2. An electric range was observed in use with open pan cooking (sautéing) and a large pot (simmering) without the presence of a code-compliant NFPA approved exhaust hood. It appears this activity, in combination with the contributing odors from the lower floors, and item #1 above may be contributing to the cooking odors experienced in the residential units above.
3. The basement exhaust hood exterior duct termination is less than 10' from two (2) operable double hung windows at the south wall. Code requires such exhaust to be 10' minimum clear from these openings.

Summary:

It is our opinion the aforementioned conditions are code violations, and therefore should be rectified so as to be in compliance with the State of Maine Fire Marshal's Office and the City of Portland Code Enforcement Office.

Please do not hesitate to contact me directly with any questions or comments.

Regards,



Michael F. Hays, Principal  
GRANT HAYS ASSOCIATES, INC  
Maine License #ARC1724

cc: John P. Giffune – Verrill Dana LLP

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