



# PORTLAND MAINE

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*Penny St. Louis Littell- Director of Planning and Development  
Marge Schmuckal, Zoning Administrator*

October 30, 2008

Oliver Keithly  
96 Crestview Drive  
South Portland, ME 04106

RE: 6 Custom House Wharf – 030-A-001 – WCZ Waterfront Central Zone -- permit application #08-1362

Dear Mr. Keithly,

I am in receipt of your request to change the use and make alterations for such use at the previous Boones Restaurant area for the new Harbors Edge banquet function enterprise. Please note that this permit application is denied.

In August, 2008 through your attorney, you requested a zoning determination on the legal status and use of the previous Boones area. On August 15, 2008 I responded with a letter in which I determined that you had lost the restaurant use of the previous Boones restaurant. Again through your attorney, you applied for an appeal of my letter to the Zoning Board of Appeals. However, you requested a hearing date of January 8, 2009.

At the current time my zoning determination letter still stands.

This letter of denial for permit application #08-1362 does not constitute a new window to appeal. The determination letter issued on August 15, 2008 is the basis of any appeal.

Your permit will not be reviewed any further at this time.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: Penny St. Louis Littell, Director of Planning and Development  
Gary Wood, Corporation Counsel  
Chris Hanson, Code Enforcement  
file



**6 - 20 Custom House Wharf  
Portland Maine 04101**

**Office of Oliver Keithly  
207-831-3521 cell  
oliver@mainecomedy.com**

Dear Chris,

5/1/09

Thank you for coming down yesterday, it was good to see you. As we discussed yesterday, I would forward you the last Plan Review Summary from State Fire, and I have attached it to this fax. I also let you know that I would supply you with a copy of the plan of corrections from my State Fire Inspection last Wednesday 4/22/09. I have not received the letter in the mail yet, although I did verbally go over it with the inspector yesterday. As soon as it comes to my office I will fax a copy to you.

Per my previous agreement with State Fire, the sprinkler system will be installed by 4/1/10. Per our discussion yesterday the Harbour's Edge Kitchen will be completed by 9/1/09. I also did call inspections this morning to leave a message to set up the final inspection of the Harbour's Edge space for early next week. I am waiting to hear back. If you need to get a hold of me this afternoon for any reason please feel free to call me on my cell phone 207-831-3521.

Lastly I would like to thank you for all of your help in wading through this over the past year and a half. Respectfully,

Oliver H. Keithly III

Fax From:

Oliver@

Cogee Entertainment

6-20 Custom House Wharf

Portland, ME 04101

207.831.3521 ph.

207.761.9686 fax

*Fax'd  
5/1/09  
601/15*

Attn:

Chris Hanson

874 756-8716

1 of 3



Oliver Keithly - 031-3521

# PORTLAND MAINE

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Penny St. Louis Littell- Director of Planning and Urban Development  
Marge Schmuckel, Zoning Administrator

February 27, 2009

James F. Cloutier  
Cloutier, Barrett, Cloutier & Conley  
465 Congress Street  
Portland, Maine 04101-3528

RE: Boone's Restaurant/Harbor's Edge -- 030-A-001 -- WCZ Waterfront Central Zone  
Known as 6 Custom House Wharf

Dear Attorney Cloutier,

I am in receipt of additional documentation concerning the site of the former Boone's Restaurant on Custom House Wharf in Portland. This supplementary information assists me in revising my original determination letter to you dated August 15, 2008.

The additional documentation includes a lease between the proprietors of Custom House Wharf (Kenneth N. Magowan, Its Treasurer) and Harbors Edge, LLC (Stormy Keithly, Its President) dated November 1, 2005. Supporting documentation includes two affidavits and dated deposit slips signed by Kenneth Magowan. Such affidavits clearly state, "...my consistent understanding has been that this property was grandfathered for restaurant use and the renewed use of the property was to be for restaurant use." He also states, "I, on behalf of the landlord have never consented to anyone seeking a change of use, and my discussions with Mr. Keithly have always been that he intended and sought to use the property for its grandfathered uses."

An affidavit of Oliver Keithly was also submitted at this time. That affidavit states, "My intention is and has been to operate the space formerly used by Boone's Restaurant as an additional area of my restaurant. This includes using the space as a dining area open to the public for walk-in table service when it is open. I expect it will likely have more limited hours in the winter months and to use it most heavily during the seasonal months of May through October."

In regard to the kitchen, Mr. Kenneth Magowan also states, "In addition, however, from the start, Mr. Keithly and I have agreed that the Harbor's Edge must continue to have all of the necessary installations for a free standing bar and kitchen, in case service logistics make that necessary, and in the case of the interest of the Proprietors, in the case that some future user needs to return the space to a separate and fully enclosed facility. The renovations as completed, therefore, include all of the fire and safety and other code requirements to install a kitchen within it..."

# City of Portland Health Inspection Report

Establishment Name: Pac Hldc Rest / Conedy Conn.  
 No. of Risk Factor/Intervention Violations: \_\_\_\_\_  
 No. of Repeat Risk Factor/Intervention Violations: \_\_\_\_\_  
 Date: 04/30/09  
 Time In: \_\_\_\_\_  
 Time Out: \_\_\_\_\_

License/Est. ID#: 88Z  
 Address: 16 Costen House  
 City/State: Portland, ME  
 Zip Code: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Licensee Name: 2/10  
 Owner Name: \_\_\_\_\_  
 Purpose of Inspection: Ann-21  
 Est. Type: \_\_\_\_\_  
 Risk Category: \_\_\_\_\_

## FOODBORNE ILLNESS RISK FACTORS AND PUBLIC HEALTH INTERVENTIONS

Circle designated compliance status (IN, OUT, N/A) for each numbered item  
 IN= in compliance OUT=not in compliance N/O=not observed N/A=not applicable  
 Mark "X" in appropriate box for COS and/or R  
 COS=corrected on-site during inspection R=repeat violation

Compliance Status	COS	R	Supervision	Compliance Status	COS	R	Potentially Hazardous Food Time/Temperature
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	PIC present, demonstrates knowledge, and performs duties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	516 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Employee Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	517 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Management awareness; policy present	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	518 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Proper use of reporting, restriction & Exclusion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	519 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Good Hygienic Practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	520 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Proper eating, tasting, drinking, or tobacco use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	521 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	No discharge from eyes, nose, and mouth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	522 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Preventing Contamination by Hands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	523 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Hands clean & properly washed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	524 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	No bare hand contact with RTE foods or approved alternate method properly followed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	525 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Adequate handwashing facilities supplied & accessible	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	526 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Approved Source	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	527 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food obtained from approved source	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	528 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food received at proper temperature	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	529 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food in good condition, safe, & unadulterated	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	530 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Required records available: shellstock tags, parasite destruction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	531 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Protection from Contamination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	532 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food separated & protected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	533 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food-contact surfaces: cleaned & sanitized	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	534 IN OUT N/A
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Proper disposition of returned, previously served, reconditioned, & unsafe food	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	535 IN OUT N/A

## GOOD RETAIL PRACTICES

Good Retail Practices are preventative measures to control the addition of pathogens, chemicals, and physical objects into foods.  
 Mark "X" in box if numbered item is not in compliance Mark "X" in appropriate box for COS and/or R COS=corrected on-site during inspection R=repeat violation

Compliance Status	COS	R	Safe Food and Water	Compliance Status	COS	R	Proper Use of Utensils
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Pasteurized eggs used where required	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2141 IN-use utensils: properly stored
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Water & ice from approved source	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2142 Utensils, equipment & linens: properly stored, dried & handled
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Variance obtained for specialized processing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2143 Single-use & single-service articles: properly stored & used
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food Temperature Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2144 Gloves used properly
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Proper cooling methods used; adequate equipment for temperature control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2145 Utensil, Equipment and Vending
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Plant food properly cooked for hot holding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2146 Food & non-food contact surfaces cleanable, properly designed, constructed, & used
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Approved thawing methods used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1146 Warewashing facilities: installed, maintained, & used; test strips
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Thermometers provided & accurate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1147 Non-food contact surfaces clean
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food Identification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1148 Physical Facilities
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Food properly labeled; original container	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4148 Hot & cold water available; adequate pressure
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Insects, rodents, & animals not present	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5149 Plumbing installed; proper backflow devices
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Contamination prevented during food preparation, storage & display	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5150 Sewage & waste water properly disposed
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Personal cleanliness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2151 Toilet facilities: properly constructed, supplied, & cleaned
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Wiping cloths: properly used & stored	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2152 Garbage & refuse properly disposed; facilities maintained
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>	Washing fruits & vegetables	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1153 Physical facilities installed, maintained, & clean
<input checked="" type="checkbox"/> IN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1154 Adequate ventilation & lighting; designated areas used

Person in Charge (Signature): Debrah Gudge Date: 04/30/09

Health Inspector (Signature): \_\_\_\_\_ Follow-up: YES  NO  (circle one) Follow-up Date: \_\_\_\_\_

30 A001

# City of Portland Health Inspection Report

Establishment Name

Portlock Rest / Candy Conn.

As Authorized by 22 MRSA § 2496

Date

04/30/09

License/EST. ID #

881

Address

16 Coston House

City/State

Portland, ME

Zip Code

Telephone

### TEMPERATURE OBSERVATIONS

Item/Location	Temp	Item/Location	Temp
Food			
Hand sink	110°F	Cooler #2	36°F
Warewasher	150 PPM	Freezer #2	15

### OBSERVATIONS AND CORRECTIVE ACTIONS

Violations cited in this report must be corrected within the time frames below, or as stated in sections 8-405.11 and 8-406.11 of the Food Code.

Item Number

- 14  Food Contact Surfaces Warewasher Cross-Contam 50-100 PPM 4-30-11
- 27  Consumer advisory provided w/in One Year 3-6-11
- 37  Contamination @ Storage seal walk-in styro-foam to prevent bacterize 3-20-11
- 47  In-use utensils - stored faced down (COS) 3-20-12

Person in Charge (Signature)

Date

Health Inspector (Signature)

Date 04/30/09

Based upon this supplementary evidence, I have reversed my decision stated in my original determination letter dated August 15, 2008. I have now determined that under section 14-387 there was no abandonment of use nor intent to discontinue the grandfathered restaurant use. The lease indicates that less than one year passed from the expiration of the City's restaurant/liquor license on June 12, 2005 and the signed lease between Mr. Magownan and Mr. Keithly on November 1, 2005.

The kitchen plumbing and electrical has remained prepped for the required kitchen equipment installation. It is expected that the kitchen will be restored as outlined in the submitted affidavits. The use of the Harbor's Edge during the seasonal months of May through October mimics the traditional use of Boone's Restaurant which was open the months of March through December.

In conclusion, the location of the Harbor's Edge within the prior Boone's Restaurant, including a 17' x 78' exterior deck (as denoted within the executed lease) is considered to be a continued nonconforming restaurant use within the Waterfront Central Zone.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: Joseph Gray, City Manager  
Penny St. Louis Littell, Director of Planning and Development  
Gary Wood, Corporation Counsel  
Alex Jaegerman, Planning Division Head  
William Needleman, Planner  
Chris Hanson, Code Enforcement Officer  
Alexandra Murphy, City Clerk's Office



# PORTLAND MAINE

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*Penry Littell- Director of Planning and Development  
Marge Schmuckel, Zoning Administrator*

August 15, 2008

James F. Cloutier  
Cloutier, Barrett, Cloutier & Conley  
465 Congress Street  
Portland, Maine 04101-3528

COPY

RE: Boone's Restaurant/Harbor's Edge - 030-A-001 - WCZ Waterfront Central Zone

Dear Attorney Cloutier,

I am in receipt of your determination request concerning the site of the former Boone's Restaurant on Custom House Wharf in Portland.

It may be helpful to outline the zoning history regarding the Portland waterfront and Custom House Wharf. The original 1957 zoning on which our current land use zoning ordinance is based originally delineated the waterfront area as an I-3b industrial zone. In April 1983, the land use ordinance was amended to create separate waterfront districts (W-1, W-2, W-3) which allowed marine related uses, residential uses and limited commercial uses such as retail and restaurants. After a City referendum concerning the waterfront and its allowable uses, on May 5, 1987 the voters "stipulated that only marine related uses be permitted within the W-1 waterfront zone" which was the underlying zone for Custom House Wharf at that time. That referendum made many of the existing waterfront uses legally nonconforming, including The Porthole Restaurant and Boones Restaurant. The Portland waterfront was rezoned on January 4, 1993 with new nomenclatures, i.e. WCZ, WPDZ and WSUZ, and with completely revised texts. The current underlying zone for Custom House is currently governed by the WCZ Waterfront Central Zone.

The history of uses for this portion of Custom House Wharf is also an important recognition. Prior to the 1987 referendum there were three (3) distinct uses located in this area on Custom House Wharf: Boones Restaurant, Casco Bay Lines (situated in the middle between the two other uses) and the Porthole Restaurant. This is an important historic fact that has been ignored in your letter which states that only restaurant uses had occupied this area of the wharf. Casco Bay Lines moved to Maine State Pier and vacated their space in November, 1988. Boones Restaurant went out of business in 2005. At that time their kitchen was completely dismantled, with the equipment auctioned off. The area occupied by the Boone's kitchen and the westerly portion of the dining area has been unoccupied since at least 6/12/05. It is my understanding that there are no indication or



plans that the kitchen in this space will be restored now or in the future. On 6/12/05 Boones Restaurant license to operate through the City Clerk's office expired.

It is noted that this office has never received any documentation as to when your client leased this space. Your statement that, "In essence, at all times, the property has been under lease agreement by the owner to others, to operate restaurant facilities on the property. The majority of the property has been continuously open for business for that purpose, other than during portions of 2007 and early 2008 when life safety requirements for the pier structure interrupted business." is not factual. Boones Restaurant which has been the majority area of the space on this portion of the wharf compared to the Casco Bay Lines and the Porthole Restaurant has been continuously unoccupied and dysfunctional since June 2005.

Your reasoning of continued use blurs different City and State authorities and their designated functions as a manner of determining zoning compliance. It is noted that the Assessor's function is that of assessing by State Law. If there is an illegal use in a structure, they will assess that use with no regard to zoning. That is their job. Their assessment of property and use does not legalize any illegal uses. The Land Use Zoning Ordinance is used to determine the legal uses of property. In the same vein, you have asserted that the State Liquor officials have in some manner validated the desired uses your client wants by the combining of liquor license under one domain.

I disagree with your assertion that the area of Boones Restaurant is legally nonconforming and may continue a restaurant use. Under 14-387, I have determined that the restaurant use has been discontinued for more than a period of twelve months. The removal of a restaurant kitchen for more than twelve months renders the restaurant use vacated. The loss of the kitchen under these circumstances is a major determining factor for defining a restaurant. Your client does not wish to restore the former Boones Restaurant kitchen. In fact, it is my understanding your client wishes to use the former Boones Restaurant space, renamed Harbors Edge, not as a "grandfathered" restaurant, but as a different use for a banquet function enterprise. I conclude, therefore, that space shown on attachment #1, labeled "Applicant site plan submittal", has no grandfathered use status and must comply in all respects with current zoning.

You have the right of appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: Penny St Louis Littell, Director of Planning and Development  
Gary Wood, Corporation Counsel  
Joseph Gray, City Manager

John Elias Baldacci  
Governor



Maine Department of Public Safety  
State Fire Marshal's Office  
52 State House Station  
Augusta, Maine 04333-0052



Anne H. Jordan  
Commissioner  
Chief John C. Dean  
State Fire Marshal  
Fax 207-287-6251

Phone 207-626-3880

### Statement of Deficiencies and Plan of Corrections

Facility Name: Porthole/Comedy Connection/Harbors Edge.  
Location: 6,16,20 Custom House Wharf  
Portland, ME  
Facility Type: Assembly  
Telephone : (207) 774-5554  
Resource ID : File #64773

Owner Name: Proprietors of Custom House Wharf  
Address: 18 Custom House Wharf  
Portland, Maine 04101

During an inspection of your facility a certified State Inspector has found the following violations.

In this right hand column you are required to indicate how and when you will have these violations corrected. Complete this information and return this "Plan of Correction" to the above address within 10 days of receipt of this statement.

All exits must be kept free and clear at all times the facility is occupied. Emergency exit signs and emergency lighting must be maintained at all times. Lighting must be maintained all the way to the "public way". An accurate count of the number of people occupying the facility at any time must be maintained.

Harbors Edge Banquet facility:  
171 With Tables & Chairs  
366 Without Tables & Chairs

Comedy Club  
156 With Tables & Chairs

Porthole Restaurant  
61 With Table & Chairs

1. 13.2.2.2.4 Locking devices complying with 7.2.1.5.4 shall be permitted to be used on a single door or a single pair of doors if both of the following conditions apply:
  - (1) The door or pair of doors serve as the main exit from assembly occupancies having an occupant load not greater than 600.
  - (2) Any latching devices on such a door(s) from an assembly occupancy having an occupant load of 100 or more are released by panic hardware or fire exit hardware.

**Provide a plan for replacing the doors and keeping the doors unlocked during occupancy.**

Date of Inspection: April 22, 2009  
Date Sent: April 30, 2009  
Inspector: Jon Klages

Owner/Occupant Signature

Date:

**PLEASE SIGN  
& DATE**



Maine Department of Public Safety  
 State Fire Marshal's Office  
 52 State House Station  
 Augusta, Maine 04333-0052



Anne H. Jordan  
 Commissioner  
 Chief John C. Dean  
 State Fire Marshal  
 Fax 207-287-6251

Phone 207-626-3880

**Statement of Deficiencies and Plan of Corrections**

<p>Facility Name: Porthole/Comedy Connection/Harbors Edge.          Location: 6,16,20 Custom House Wharf          Portland, ME          Facility Type: Assembly          Telephone : (207) 774-5554          Resource ID : File #64773</p>	<p>Owner Name: Proprietors of Custom House Wharf          Address: 18 Custom House Wharf          Portland, Maine 04101</p>
<p>During an inspection of your facility a certified State Inspector has found the following violations.</p> <p>In this right hand column you are required to indicate how and when you will have these violations corrected. Complete this information and return this "Plan of Correction" to the above address within 10 days of receipt of this statement.</p>	

2. Patch ceiling by bottom of interior stairs in kitchen of Harbors Edge.
3. Provide fire wall between construction/storage area and porthole restaurant. Ensure fire alarm system is functional in this area.
4. Remove the exit sign from the side door in the Porthole restaurant.

JK/map

**(PENDING/POC)**

Date of Inspection: April 22, 2009  
 Date Sent: April 30, 2009  
 Inspector: Jon Klages

Owner/Occupant Signature

Date:



# PORTLAND MAINE

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[www.portlandmaine.gov](http://www.portlandmaine.gov)

**Corporation Counsel**  
Gary C. Wood

**Associate Counsel**  
Elizabeth L. Boynton  
Penny Littell  
James R. Adolf  
Mary E. Costigan

November 30, 2007

Edward S. McColl, Esq.  
Thompson Bull Furey Bass & MacColl, LLC, PA  
120 Exchange St.  
PO Box 447  
Portland, ME 04112-0447

**Re: Custom House Wharf**

Dear Ed:

The City has not received any information promised by your client relative to Custom House Wharf and the numerous issued raised at his November 9<sup>th</sup> meeting with the City. See attached letter outlining the same. Because no response has been forthcoming, and because the City's attempts to obtain voluntary compliance by your client (to demolish or rehab the building) to address the City's ongoing concerns with safety issues on the wharf have been unavailing, the City is going to present a request to the Portland City Council that the building be demolished forthwith. We will be providing you with the proper notice of the date and time of such hearing.

On a related matter, there were a number of other documents, including a Life Safety Plan, which your client was to submit to both the City and the State Fire Marshall's Office. I will be placing a call to the State Fire Marshall on Monday to inquire as to whether plans have been submitted to them which address the Code violations they noted.

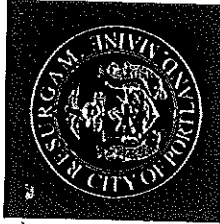
Thank you for your attention to this matter. It is unfortunate that a lack of compliance has brought us to this point.

Sincerely,



Penny Littell

Cc: Lee Urban  
Chris Hanson ✓  
Greg Cass  
Jeanie Bourke  
Marge Schmuckal  
O:\office\legal\penny\2007 letters\mccoll113007.doc



file 07-185

# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life*

[www.portlandmaine.gov](http://www.portlandmaine.gov)

Corporation Counsel  
Gary C. Wood

Associate Counsel  
Elizabeth L. Boynton  
Penny Littell  
James R. Adolf  
Mary E. Costigan

November 19, 2007

Edward S. McColl, Esq.  
Thompson Bull Furey Bass & MacColl, LLC, PA  
120 Exchange St.  
PO Box 447  
Portland, ME 04112-0447

Dear Ed:

I wanted to memorialize several issues and time lines which were discussed with you and your client at the meeting held at City Hall on Friday, November 9, 2007 relative to the Custom House Wharf located in the WCZ zone in the City of Portland. There was a great deal of discussion at the meeting about various zoning, building code and fire safety issues. In sum, however, at least as it relates to your client, Mr. MacGowen, the parties at the table agreed to the following timeline:

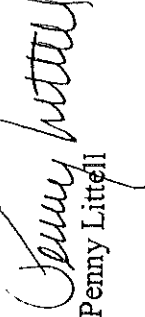
- Mr. MacGowen will contact Chris Hanson, City of Portland Building Inspections Department, on Tuesday, November 13, 2007, to inform when the City should expect to receive the modified Life Safety Analysis from a professional and how your client intends on dealing with those buildings located easterly from the Port Hole to the end of the pier. We expect the analysis will be submitted in a timely fashion.

In addition, by the end of next week, (November 16) Mr. MacGowen will submit a plan to the City on how he will make the dilapidated building on the pier either structurally sound or a timeframe for demolition. The building must be kept secure by the property owner at all times.

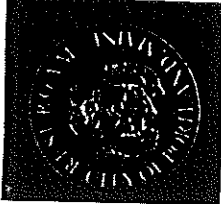
- Mr. MacGowen will provide the uses of each space on the pier and the concomitant space occupied by such use. This may be incorporated into the Life Safety Analysis.

We look forward to receiving these promised items so that we can all proceed with knowing the uses on the pier can continue with appropriate licenses.

Sincerely,

  
Penny Littell

Cc: Greg Cass  
Jeanie Bourke  
Chris Hanson  
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# PORTLAND

*Strengthening a Remarkable City, Built*

Corporation Counsel  
Gary C. Wood

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Sent To Mr. Ken MacGowen  
 Street, Apt. No., or PO Box No. 16 Custom House Wharf  
 City, State, ZIP Portland, ME 04101  
 PS Form 3800, August 2006 See Reverse for Instructions

November 5, 2007

Mr. Ken MacGowen  
16 Custom House Wharf  
Portland, Maine 04101

Dear Mr. Mac Gowen:

This correspondence is in follow up to a **NOTICE**, to you of October 26 posting a property owned by you on Custom House Wharf, namely that space formerly occupied by Boone's Restaurant. As you know, no certificate of occupancy has been issued by the City for that space.

As noted in that letter, the following list of items must be addressed to the satisfaction of the City before occupancy of that space will be allowed. In addition, the City is taking this opportunity to advise you of a number of other outstanding land use and licensing matters needing to be addressed in order to continue the use of your property as previously permitted.

1. Structural Integrity of the Pier

In 2006 TEC Associates undertook some work to the Custom House Wharf on your behalf. That work was limited in scope and caused TEC Associates to comment there should be no occupancy of the space formerly occupied by Boone's Restaurant until repairs are made to the open pier adjacent to that space. The City has received no application from the Proprietors of Custom House Wharf for any repairs to the pier. As a result, no occupancy of the former Boone's Restaurant space, or any other space on the pier, will be permitted until the City receives the following:

- a. confirmation from TEC Associates of the work completed in 2006, including a complete set of final as-built plans for the work and a sign off on the structural integrity of that portion of the pier; and
- b. an application for further pier repairs to the pier and the completion of such work to the satisfaction of a licensed engineer or certification from a licensed engineer that the pier servicing the businesses on Custom House Wharf is in sound condition capable of withstanding occupancy loads.



2. Life Safety Analysis of the Entire Pier

There are several businesses presently occupying the buildings on the Wharf. The City needs to understand and sign off on a certified Life Safety Plan, certified by a qualified professional, for the Wharf. The Plan must include the following:

- a. identification of the various businesses presently occupying space on the pier; and
- b. a comprehensive diagram of the locations and dimensions of the various buildings on the pier; and
- c. the square footage of area consumed by such businesses; and
- d. the location of each business; and
- e. the permitted occupancy load for each occupied space; and
- f. all means on egress for each building; and
- g. a detailed explanation of how each space complies with Life Safety 101 requirements; and
- h. a full set of construction plans for any proposed upgrades to fire protection systems for the pier.

The Life Safety Analysis for the entire pier is required in order to properly evaluate not only fire measures necessary to ensure the safety of each building but also to make an informed determination of the allowable occupancy load for the entire pier and to ensure the convergence point for existing the pier is appropriately wide to ensure safe egress in emergency situations. In the absence of an evaluation for the entire pier, this determination cannot be made. **Upon receipt of this letter, please contact Captain Greg Cass and let him know that date upon which you will submit this information. Should you fail to respond to this letter within two weeks of your receipt of it or fail to provide the requested information within 30 days of the date of this letter, the City be forced to take legal action to ensure the pier is safe.**

3. Dangerous Building

In April 2006 the City informed you of a dangerous, dilapidated building on Custom House Wharf (east side of the Wharf, tax id 030 A 001, beyond number 42). The building was posted in January 2006. Nothing has been done to address this building. A recent inspection observed what appears to be living arrangements within the structure. **You have two weeks to submit a plan of action regarding this building or the City will initiate enforcement action.** The status of this building has not changed despite several communications from the City and its present condition is posing a danger to the public.

4. Newly Approved Building at End of Pier

You received approval through a conditional rezoning to construct a new building at the end of Custom House Wharf. The City understands the building is being advertised for rent. Please understand that the building does not yet fully comply with all site plan requirements. As a result, no certificate of occupancy will issue for that building. Moreover, until the City has received and reviewed the information



requested in #1 above relative to the overall condition of the pier infrastructure, the building will not be allowed to be occupied. The City is providing this information to you at this time so that you can address any outstanding issues/deficits now to avoid any delays later.

We trust that you will respond to the issues raised in this letter immediately and we look forward to working with you to ensure you and your tenants fully meet the City's Code requirements.

Sincerely,



Penny Littell  
Associate Corporation Counsel

Cc: Joseph Gray ✓  
Gary Wood ✓  
Lee Urban  
Fred Lamontange  
Jeanie Bourke  
Greg Cass  
Chris Hanson  
Marge Schmuckal  
Suzanne Hunt

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John Elias Baldacci  
Governor



Maine Department of Public Safety  
State Fire Marshal's Office  
52 State House Station  
Augusta, Maine 04333-0052

Anne H. Jordan  
Commissioner  
Chief John C. Dean  
State Fire Marshal  
Fax 207-287-6251

Phone 207-626-3880

**Statement of Deficiencies and Plan of Corrections**

Facility Name: Comedy Connection/The Porthole/Harbor's Edge  
Location: 16 Custom House Wharf  
Portland, Maine 04101  
Facility Type: Assembly (dance license)  
Telephone: (207) 774-5554  
Resource ID: File # 64773

Owner Name: Cogee Management & Entertainment, Inc.  
Address: 16 Custom House Wharf  
Portland, Maine 04101

During an inspection of your facility a certified State Inspector has found the following violations.

In this right hand column you are required to indicate how and when you will have these violations corrected. Complete this information and return this "Plan of Correction" to the above address within 10 days of receipt of this statement.

**REVISED STATEMENT OF DEFICIENCIES:**

Inspected existing assembly occupancy for the purpose of issuing a dance license.

The facility is divided into three distinct areas with no fire separation between them. (All assembly use spaces).

The Harbor's Edge (capacity 171 with tables and chairs, 366 without tables and chairs- concentrated use)

The Comedy Club (capacity 73 with tables and chairs, 157 without tables and chairs- concentrated use)

The Porthole Restaurant (capacity 61 with tables and chairs-fixed seating)

1. Full evaluation and letter of compliance by a licensed master electrician for the electrical system for the entire building. Numerous violations of NFPA 70 *The National Electrical Code* observed.

2. Supervised automatic fire sprinkler system to be installed for the entire building. (No later than 5 years from the date of the inspection, or at a date before 5 years from the date of the inspection determined by the Office of the State Fire Marshal if there is found to be a lack of substantial compliance with the *Life Safety Code* or any other standard adopted by this office).

12-4-07  
**Business Owner**  
Oliver Keithly 207-831-3521  
**Building Owner**  
Ken MacGowan 207-831-0169  
**Architect**  
David Leasure 797-8661

#1 - #3  
Oliver Keithly (the business owner) has been working with Ken MacGowan (the landlord / manager of the owners of Custom House Wharf) and an architect that will address all wiring, fire system and sprinkler system throughout all 3 areas. Renovations to address the Porthole Kitchen and completion of the harbours edge kitchen are scheduled to take place in January pending approval, and upon completion will be signed off on. Work will be completed in a timely manner and we can update you on the status of completion by Feb 1 2008.

Oliver Keithly has received 2 estimates for the needed sprinkler system and is still compiling an estimate of other renovations to be able to give you a date of completion. An update can be given after Oliver and Ken meet about all renovations. A response and timeline will be given no later that Feb 1 2008.

Date of Inspection: 10/18/2007

Inspector: Mark Stevens/Sue Dion

Date Sent: 26 October, 2007

Owner/Occupant Signature:

Date:

John Elias Baldacci

Governor



Maine Department of Public Safety  
State Fire Marshal's Office  
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3. Letter of compliance for the fire alarm system from the manufacturer/installer that the fire alarm system is adequate and provides coverage for the entire building. - (Fire alarm system to comply with NFPA-72 for the entire building)

#4 and #5b  
See Landload for information

4. Remove any storage from the second floor of the building. (Incidental business use may remain on the second floor with adequate protection of exits from the second floor, see item #5.)

#5  
a 2 hour fire wall has been added to the harbours edge kitchen ceiling, and wall between the Comedy Connection and Harbours Edge stairwell wall with a 1.5 hour rated fire doors.

5. a. Provide fire separation for the stairwell leading from the first floor (Harbor's Edge kitchen area) to the second floor. Fire separation to be rated at no less than one hour fire resistive rating with no less than a 45 minute rated fire door assembly.

#6  
Emergency lighting was tested on October 26th during inspection. Inspectors showed Sarah Dearing how to test and also offered to send down paperwork they had on file to easily document. We have started a log that indicates monthly tests and inspections of extinguishers, and emergency lighting. During monthly inspections and test we also refocus all lights.  
Annual Function Test was just done in October of 2007.

b. Second means of egress required for business space above the Comedy Connection.

6. Emergency lighting units to be tested as follows:  
Testing of required emergency lighting systems shall be conducted as follows:

(1) Functional testing shall be conducted at 30-day intervals for not less than 30 seconds.

(2) Functional testing shall be conducted annually for not less than 1 1/2 hours if the emergency lighting system is battery powered.

(3) The emergency lighting equipment shall be fully operational for the duration of the tests required by 7.9.3.1.1(1) and 7.9.3.1.1(2).

(4) Written records of visual inspections and tests shall be kept by the owner for inspection by the authority having jurisdiction.

#7 -# 9  
all props that were present for event on day of inspection have been removed. All Curtains have been treated with fire spray and a can of the spray is kept with the log upstairs for verification.

Date of Inspection: 10/18/2007

Inspector: Mark Stevens/Sue Dion

Date Sent: 26 October, 2007

Owner/Occupant Signature:

Date:

John Elias Baldacci  
Governor



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### Statement of Deficiencies and Plan of Corrections

Facility Name: Comedy Connection/The Porthole/Harbor's Edge Location: 16 Custom House Wharf Portland, Maine 04101 Facility Type: Assembly (dance license) Telephone: (207) 774-5554 Resource ID: File # 64773	Owner Name: Cogee Management & Entertainment, Inc. Address: 16 Custom House Wharf Portland, Maine 04101
During an inspection of your facility a certified State Inspector has found the following violations.	In this right hand column you are required to indicate how and when you will have these violations corrected. Complete this information and return this "Plan of Correction" to the above address within 10 days of receipt of this statement.

7. All curtains, decorations, props and scenery used must be fire retardant (treated or manufactured as fire retardant). Proof of fire retardency is required to be maintained by the facility.

8. Fire extinguishers to be inspected by staff once every month. Inspections need to be recorded on the back of the extinguisher tag.

- (a) Location in designated place
- (b) No obstruction to access or visibility
- (c) Operating instructions on nameplate legible and facing outward
- (d) Safety seals and tamper indicators not broken or missing
- (e) Fullness determined by weighing or "hefting"
- (f) Examination for obvious physical damage, corrosion, leakage, or clogged nozzle
- (g) Pressure gauge reading or indicator in the operable range or position

9. Emergency lighting to be adequate to allow for a level of 1-foot candle (10.8 lux) at floor level along the path of egress.

10. Use of extension cords to be eliminated in the facility.

11. Secure compressed gas tanks in the (back storage room of the Comedy Connection area and in the Porthole Restaurant). Tanks should be secured to prevent them from falling over.

12. Exit doors in the facility are to remain unlocked

#10  
all unnecessary extension cords have been removed and during renovations being done in January additional outlets will be put in to address all other extension cords.

#11  
all full bottled gas tanks have been secured to wall at porthole and comedy connection with bung cords

#12  
Staff has been reminded that all exit doors must be unlocked if there is staff in the building.

Date of Inspection: 10/18/2007

Inspector: Mark Stevens/Sue Dion

Date Sent: 26 October, 2007

Owner/Occupant Signature:

Date:

John Elias Baldacci  
Governor



Maine Department of Public Safety  
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Portland, Maine 04101

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whenever the building is occupied by the public or by employees.

13. Hasp locks or bolt latches are not permitted on any exit doors. Any door marked with an exit must be secured with door hardware that opens with one motion and without special tools or knowledge. Any exit serving a room with an occupant load greater than 100 persons can be secured only with panic or fire exit hardware.

14. The provisions of item #13 will apply to both doors in each pair of doors located in the Porthole Restaurant. A single door in the Porthole Restaurant is not wide enough to be considered an egress compliant door. In an existing facility an egress compliant door must be a minimum of 28 (twenty eight) inches in clear opening width.

15. The gas stove in the Porthole Restaurant must be adequately protected to prevent against contact with the stove by patrons or employees resulting in burns.

16. The hood system in the kitchen of the Porthole Restaurant needs to be cleaned to bare metal at frequent intervals. (Significant accumulation of grease observed).

17. Complete evaluation of the hood system in the Porthole Restaurant to be conducted by a competent service company to determine hood system compliance with NFPA 96.

#13 and 14

The Harbours Edge and Comedy Connection meet the 100 person requirements. The Porthole Doors are original and do not meet the requirements. During the renovation closure the doors will be made to meet requirements or replaced.

for now when we are open the double doors are unlocked so that you can push through the door.

#15

During the Portholes closure and renovations in January a better barrier.

#16 and #17

Until inspection we were cleaning the hood 2 times a year. The new recommendations, were at the beginning of our busy summer season, 1/2 way through our busy season, and again in the fall. We will abide this.

During the closure in January kitchen is being completely renovated including the hood being signed off on.

Date of Inspection: 10/18/2007

Owner/Occupant Signature:

Inspector: Mark Stevens/Sue Dion

Date:

Date Sent: 26 October, 2007

John Elias Baldacci  
Governor



Maine Department of Public Safety  
State Fire Marshal's Office  
52 State House Station  
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18. Any vertical openings between the 1<sup>st</sup> floor and the 2<sup>nd</sup> floor need to be adequately sealed.

MS/map

(PENDING/POC)

#18

vertical openings in Harbours Edge Kitchen  
Area have been sealed

Date of Inspection: 10/18/2007

Inspector: Mark Stevens/Sue Dion

Date Sent: 26 October, 2007

Owner/Occupant Signature:

Date:

Plans Review Summary  
Custom House Wharf  
Portland, ME  
11/3/08

Architect Associates, Inc.  
David Leasure  
1344 Washington AVE.  
Portland, ME 04103

Your drawings have been reviewed under the Federal ADA, Maine State Human Rights and NFPA 101 Life Safety Code, 2006 Edition and all referenced publications; please submit new drawings indicating changes:

1. All doors in two-hour rated walls shall be 90 min rated doors. ✓
2. Harbours Edge; hood and duct system shall terminate above the roof and be shown on plans. Duct system shall be shown in rated shaft or equivalent.
3. Port Hole; doors shall swing towards egress. ✓
4. Second floor; no exiting through storage areas. ~~do~~ *corner wall* ✓
5. Sheet LS-202 no incidental assembly on second floor; per inspection on 10/23/08 ✓  
incidental office space and storage for Custom House Wharf only.
6. Stair "B" and all second floor exiting shall be completed before upstairs is occupied ✓  
with incidental office space.
7. Building "B" shall be separated from Building "A" by two-hour fire rating. ✓
8. Building "A" adjacent to building "B" on the first floor shall be separated by two-hour fire barrier. ✓
9. Roof and floor structure connecting building "A" and "B" shall be two-hour fire rated. ✓
10. Please show on drawings a full fire alarm on all levels and occupancies throughout building "A"; this also must include outside on the water side of building "A" Fire alarm system shall be voice annunciation. ✓

Thank You,

Ronald J. Peaslee, CFI  
Maine State Fire Marshal's Office  
Plans Review  
207/ 626-3885



John Elias Baldacci  
Governor



Maine Department of Public Safety  
State Fire Marshal's Office  
52 State House Station  
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Inspected an existing assembly occupancy for the purpose of issuing a dance license.

The facility is divided into three distinct areas with no fire separation between them. (All assembly use spaces).

The Harbor's Edge (capacity 171 with tables and chairs, 366 without tables and chairs- concentrated use)

The Comedy Club (capacity 73 with tables and chairs, 157 without tables and chairs- concentrated use)

The Porthole Restaurant (capacity 61 with tables and chairs-fixed seating)

1. Full evaluation and letter of compliance by a licensed master electrician for the electrical system for the entire building. Numerous violations of NFPA 70 *The National Electrical Code* observed.
2. Supervised automatic fire sprinkler system to be installed for the entire building. (No later than 5 years from the date of the inspection, or at a date before 5 years from the date of the inspection determined by the Office of the State Fire Marshal if there is found to be a lack of substantial compliance with the *Life Safety Code* or any other standard adopted by this office).
3. Letter of compliance for the fire alarm system from the manufacturer/installer that the fire alarm system is adequate and provides coverage for the entire building.

*NOTE: Oliver will have  
12/3/07 David leave submit  
occupancy plan for  
Comedy Connection.*

*Oliver  
C&P to*

Date of Inspection: 10/18/2007 Owner/Occupant Signature:

Inspector: Mark Stevens/Sue Dion

Date:

Date Sent : 25 October, 2007

John Elias Baldacci  
Governor



Maine Department of Public Safety  
State Fire Marshal's Office  
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4. Remove any storage from the second floor of the building. (Incidental business use may remain on the second floor with adequate protection of exits from the second floor, see item #5.)

5. a. Provide fire separation for the stairwell leading from the first floor (Harbor's Edge kitchen area) to the second floor. Fire separation to be rated at no less than one hour fire resistive rating with no less than a 45 minute rated fire door assembly.

b. Second means of egress required for business space above the Comedy Connection.

6. Emergency lighting units to be tested as follows:

Testing of required emergency lighting systems shall be conducted as follows:

- (1) Functional testing shall be conducted at 30-day intervals for not less than 30 seconds.
- (2) Functional testing shall be conducted annually for not less than 1½ hours if the emergency lighting system is battery powered.
- (3) The emergency lighting equipment shall be fully operational for the duration of the tests required by 7.9.3.1.1(1) and 7.9.3.1.1(2).
- (4) Written records of visual inspections and tests shall be kept by the owner for inspection by the authority having jurisdiction.

7. All curtains, decorations, props and scenery

Date of Inspection: 10/18/2007

Owner/Occupant Signature:

Inspector: Mark Stevens/Sue Dion

Date:

Date Sent : 25 October, 2007

John Elias Baldacci  
Governor



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used must be fire retardant (treated or manufactured as fire retardant). Proof of fire retardency is required to be maintained by the facility.

8. Fire extinguishers to be inspected by staff once every month. Inspections need to be recorded on the back of the extinguisher tag.

- (a) Location in designated place
- (b) No obstruction to access or visibility
- (c) Operating instructions on nameplate legible and facing outward
- (d) Safety seals and tamper indicators not broken or missing

- (e) Fullness determined by weighing or "hefting"
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9. Emergency lighting to be adequate to allow for a level of 1-foot candle (10.8 lux) at floor level along the path of egress.

10. Use of extension cords to be eliminated in the facility.

11. Secure compressed gas tanks in the (back storage room of the Comedy Connection area and in the Porthole Restaurant). Tanks should be secured to prevent them from falling over.

Date of Inspection: 10/18/2007

Owner/Occupant Signature:

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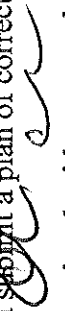

Date:

Date Sent : 25 October, 2007

**CONSENT AGREEMENT/COMPLIANCE ORDER**  
**Porthole/Comedy Connection**  
**86 Commercial Street**

This document constitutes an agreement between Oliver Keithly and the City of Portland, by and through its certified Code Enforcement Officer, Chris Hanson (hereafter referred to as "City") for purposes of enforcing and resolving violations of the NFPA 101 "Life Safety Code" and the IBC 2003 "Building Code" adopted by the City of Portland.

Keithly agrees as follows:

- 1) Cogee Entertainment has been approved by the City for 250 outside seats associated with License #587 for Porthole Restaurant and Comedy Connection, Order #298-07/08, per the City Council.
- 2) Keithly will submit a revised outside Life Safety Plan by a licensed design professional and a Life Safety Evaluation as required by Capt. Gregory Cass, Portland Fire Department, per ~~NFPA 101-13.4.1.1~~ 2006 ed. As adopted by the City 
- 3) Keithly will submit a Life Safety Plan to the State of Maine State Fire Marshall's Office. Keithly will address all deficiencies previously noted by that agency (dated December 4, 2007) and ~~submit~~ <sup>File sent 10/25/07</sup> a plan of correction. 
- 4) Keithly will obtain all necessary permits associated with proposed work on plans received by the City and revisions noted on the plan dated January 30, 2008 and received on March 21, 2008. ( Phase 1 ) 
- 5) Keithly will submit a letter from a licensed engineer station the Pier will support live load with 250 plus people dancing.

Based on the above agreement, the Code Enforcement Officer for the City of Portland orders Oliver Keithly to comply with this agreement as outlined no later than July 3, 2008 for paragraphs 4 and 5, and no later than July 25, 2008 for paragraphs 2 and 3.

Dated: 6/27/08

  
Oliver Keithly

**From:** Gregory Cass  
**To:** Benjamin Wallace; Chris Hanson; mark.j.stevens@maine.gov; Penny Littell ; Suzanne Hunt  
**Date:** 8/22/2008 3:43:50 PM  
**Subject:** summary of Harbors Edge insp.

The following items were not completed upon inspection 08-22-08.  
This inspection was conducted using the Life Safety Plan submitted by Mr. Keithly.

The exterior emergency lights have not been installed.

The smoke detector tested failed to operate.

the ceiling tiles and recessed light fixtures in the bathroom areas need to be replaced with fire rated Sheetrock.

The stair enclosure behind the bathrooms needs at least one coat of compound on all joints and screw heads to complete the fire rating.

The E-Lights and exit signs were being installed during the inspection but will need to be checked prior to occupancy.

1 fire extinguisher still needs to be mounted. There are several penetrations to the 2nd floor that need to be rated.

A compliance letter from a licensed electrician stating Harbors Edge meets NFPA 70.

All areas subject to assembly use shall have a sign posted stating the occupant load for that area. Hand rails are required on ramps

A complete sprinkler system is required for all assembly areas including under the pier. A date must be established for the completion of this system.

The signs posting Harbors Edge against occupancy have been removed and must be replaced until a certificate of occupancy has been established for this property.

There are discrepancies in regard to the occupant load for the exterior decks.

The submitted plan states 605. An occupant load of over 600 requires 3 means of egress, an occupant load of over 300 requires a voice evacuation fire alarm system. I believe you requested and were granted 250 from the city council. Please submit plans stating requested occupant load for this area.

Plans AND PERMITS for all work to be completed need to be submitted to the Building Insp. Div.

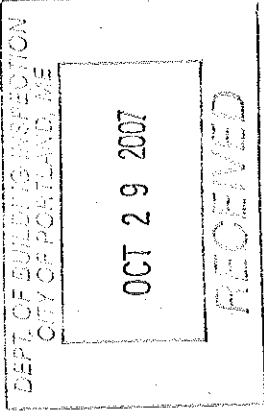
I believe there were some plumbing issues as well. Chris or Suzzane can address those.

Captain Greg Cass  
Portland Fire Dept.  
Fire Prevention Officer

**TRANSMITTAL  
COVER SHEET**

DATE: October 25, 2007

TO: Mr. Oliver Kiethly  
Boones (Harbour's Edge) Restaurant  
16 Custom House Wharf  
Portland, Maine 04101



**DAVID D. LEASURE**  
ARCHITECTURAL ASSOCIATES, INC.

**TRANSMITTAL:**

Copies	Date	Description	Action Code
3 sets	10/24/07	Revised Construction Documents	E
3 ea.	N/A	Fire Resistance U.L. Listed Assembly # L208	E
3 ea.	10/28/06	L & L Structural Special Inspections Letter	E
3 ea.	09/15/06	State of Maine (Fire Marshall) Construction Permit	E

Action A. Action Indicated on transmitted item.  
B. No Action Required.  
C. For Signature & return to this office.

D. For Signature & forwarding as noted below  
E. See Remarks below.

**SUBJECT:** Boone's (Harbour's Edge) Restaurant: Revised construction drawings, data per Meeting with City Officials.

**MEMORANDUM:**

Dear Oliver:

Attached please find revised construction drawings and relevant supporting data for increased code compliance of the above referenced project to governing codes. The drawings have been revised to incorporate improvements to the 2 Hr. fire barrier (party wall), installation of opening protectives (fire doors) in the fire barriers, closure of existing floor and wall fire barrier penetrations, installation of the required sprinkler system and fire barrier rating of the existing upper floor.

It was our understanding at the meeting on October 12, 2007 with Mr. Chris Hansen - Code Enforcement Officer, for the City of Portland that the City would allow the applicant to delay installation of the required automatic sprinkler system for a period not to exceed three years from the date of the subject meeting. In lieu of immediate installation of the sprinkler system, the City would require immediate upgrading of all fire barriers (floor and partitions) noted on the drawings to the fire barrier rating noted thereon. Please see the attached U.L. listed fire resistance design # L208 which is the closest assembly found that compares to the existing heavy timber and plank floor observed in the facility that would provide a minimum 1 hr. fire barrier rating, once all penetrations and other noted improvements to the floor system are made.

Secondly, in response to the permit request for special inspections, we hereby resubmit the special inspections letter from L & L Structural Engineering, Inc. dated September 28, 2006 that addresses, in paragraph 2, that the headers and single 2x6 jack studs meet code requirements for vertical bearing support in lieu of double 2x6 jack stud requirement.

Wpwin80/Data/Boones\_Rest\_Trans

Page 1 of 2

**COMMERCIAL • RESIDENTIAL • PLANNING • CONSULTING**

1344 WASHINGTON AVENUE PORTLAND, MAINE 04103 (207) 797-8661 FAX (207) 797-8533

Please submit this cover letter and attached information to the Code Enforcement officer and let me know if you or he need any additional documentation or supporting information.

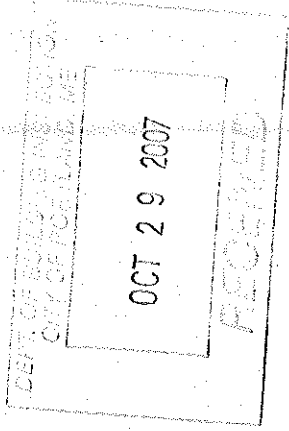
Best Regards,



DAVID D. LEASURE - ARCHITECTURAL ASSOCIATES INC.  
1344 WASHINGTON AVENUE  
PORTLAND, MAINE (207) 797-8661

cc:

Ken Macgowan - Proprietors of Custom House Wharf.  
File



15 June 2006

1405  
Mr. Michael Nugent, Manager  
Inspection Services Program  
Planning & Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

Re: Proprietors of Custom House Wharf  
Restaurant Renovation

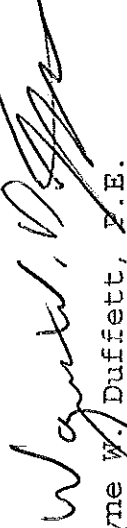
Dear Mr. Nugent:

Enclosed are plans and specifications for repairs to the timber pier under the former Boone's Restaurant at Custom House Wharf. Upon satisfactory completion of the work, the repaired area will support a live load of 100 psf. The repairs consist of the removal of deteriorated wood piles under the building and splicing in new timbers. To compensate for the loss of lateral capacity provided by driven piles, the new work is braced with 3x10 sway braces and by a concrete encasement of the pile splice. TEC Associates will provide routine inspection of the work in progress to insure compliance with the plans and specifications.

The open pier outside the building is not within the scope of work covered by these plans. Outside the building however, deteriorated piles can be replaced with new driven piles. It is my recommendation that the open pier adjacent to the former Boone's Restaurant not be opened until repairs are made.

Please call me with any questions.

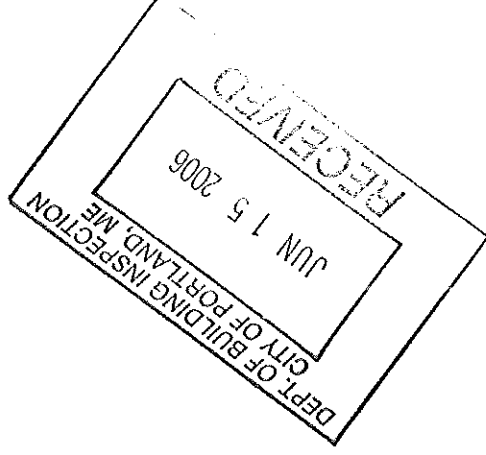
Very truly yours,  
TEC ASSOCIATES



Wayne W. Duffett, P.E.

Enclosure

cc: Ken Macgowan





SECTION 06130

MARINE TIMBER CONSTRUCTION

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Provide all labor, materials, equipment, and incidentals necessary to complete the work specified in this Section.
- B. Scope of work includes, but is not necessarily limited to, furnishing and installing the following:
  - 1. Splicing and bracing timber piles
  - 2. Replacing timber pile caps
  - 3. Other incidental work as shown on the drawings or described in the specifications.
- C. Related work specified elsewhere includes:
  - None.

1.02 REFERENCES

- A. Except as noted elsewhere, the work shall conform to the latest edition of the following codes and standards:
  - 1. American Society for Testing and Materials (ASTM): specifications and standards herein referred to.
  - 2. American Association of State Highway and Transportation Officials (AASHTO): specifications and standards herein referred to.
  - 3. American Wood Preservers Association (AWPA): specifications and standards herein referred to.

1.03 PRODUCT DELIVERY, STORAGE, AND HANDLING

- A. All products provided under this Specification shall be delivered, stored, and handled so that they are not lost, stolen, or damaged before installation in the work. Any material provided by the Contractor which is lost, stolen, or damaged will be replaced by the Contractor at its cost and expense.

1.04 SUBMITTALS

- A. The Contractor shall submit to the Engineer certification that the structural timber provided meets the

requirements for quality, grade, and pressure treatment required by the Specifications.

- B. Submit manufacturer's catalog data, specifications, and instructions for epoxy resin supplied by other than pre-approved suppliers.

## PART 2 - PRODUCTS

### 2.01 GENERAL

- A. All materials provided by the Contractor shall meet the requirements of this Section. Any material rejected by the Engineer as not complying with these Specifications shall be replaced by the Contractor at no expense to the Owner.

- B. The Contractor will supply all material necessary for the work including but not limited to structural timber, spikes, nails, lags, bolts, pins, and miscellaneous metals. All material supplied by the Contractor will conform to these Specifications. All material shall be new unless otherwise approved by the Engineer.

### 2.02 STRUCTURAL TIMBER

#### A. SPECIES ACCEPTABLE

- 1. Timber: 2" to 4" thick, 5" and wider - Douglas Fir #2 grade or better or Southern Pine #2 grade or better.  
Timber: Beams and Stringers, Posts and Timbers - Douglas Fir Dense #1 grade or better (WCLIB and WWPA). 5" and thicker - Southern Pine #1 SR grade or better (SPIB).

#### B. DESIGN AND MANUFACTURE, SAWN LUMBER

- 1. All timber will be well manufactured, cut square at ends, be sawn four sides, have top and bottom parallel unless otherwise indicated, and have inner and outer bark removed. Material shall be rough lumber except as otherwise specified, sized within  $\frac{1}{8}$ " of nominal in width and thickness. Length will be acceptable at  $-\frac{1}{4}$ " to  $+6$ ".
- 2. Straightness: Only very light warp permitted, slope of grain is limited to 1" in 14".

3. Wane: Wane is limited to 1/12 nominal width of face.

4. Shakes and Checks: Restrictions on shakes, checks, and splits apply whether material is seasoned or unseasoned. The grading of any combination of these imperfections is based on the judgement of the inspector.

Shakes and pith shakes are measured at the ends of pieces and must be wholly enclosed without extending to a surface at or away from end. The size is the distance between lines enclosing the shake and parallel to wide faces of piece and shall not exceed one third the width of the wide face.

Checks are measured as the penetration from and perpendicular to the wide face. The size shall not exceed one third the width of the wide face.

Splits are not permitted away from ends of pieces. End splits are limited to a length not exceeding the thickness of the timber.

5. Density: Density shall average on one end or the other not less than six annual rings per inch and one-third or more summer wood.

6. Knots: Knots shall be sound and tight and be encased. Through knot holes or other holes are not allowed but surface pits or cavities from broken knots or similar causes not over 1/2 inch deep and not involving unsoundness are permitted. Knots in narrow faces or at the edges of wide faces at any point in the length of the piece shall be limited to sizes of 1 inch in pieces 2 or 3 inches thick, 1 1/2 inches in pieces 4 or 5 inches thick, 2 inches in pieces 6 or 7 inches thick, 2 1/2 inches in pieces 8 to 10 inches thick, and 3 inches in pieces 12 inches or thicker. Such knots shall be measured and limited between lines parallel to the edges of the piece.

7. Lumber furnished shall meet or exceed the design values by AASHTO Standard Specifications for Highway Bridges for lumber used at 19% maximum moisture content and surfaced dry or surfaced green as permitted.

#### C. CONDITIONING, SAWN LUMBER

1. American Wood Preservers Association (AWPA) Standards and Specifications shall govern all timber conditioning.

D. TREATMENT, SAWN LUMBER

1. All timber provided in accordance with this Specification shall be treated to a retention of 2.5 pounds per cubic foot of chromated copper arsenate (CCA) in accordance with AWPA Standard C2.

2.03 HARDWARE

- A. Hardware shall include bolts with necessary nuts and washers, nails, screws, spikes, pins, and other metal fastenings. Bolts and nuts shall conform to ASTM A307 Standard Specification for Carbon Steel Bolts, 60,000 psi Tensile Strength, unless otherwise indicated on the Drawings.
- B. Washers shall be dock washers or "OG" washers at the contractor's option. Provide washers under bolt nut and head.
- C. Timber connectors and other metal fastenings shall be of the type and size shown. Nails shall be common wire nails.

2.04 ZINC-COATING

- A. Hot-dip galvanize all hardware and steel items in accordance with ASTM A153 Standard Specification for Zinc Coating (Hot-Dip) on Iron and Steel Hardware. Button head pins and boat spikes may be furnished in plain steel.

2.05 EPOXY RESIN

- A. Epoxy resin shall be CrownWeld Pro 101 or CrownWeld Pro Gel 102 as manufactured by Crown Polymers, Hampshire, IL or Osmoweld as manufactured by Osmose Wood Preserving, Madison, WI or approved equal.

PART 3 - EXECUTION

3.01 GENERAL

- A. The Contractor shall be required to conduct and phase all work in a manner that will not interfere with the operations of pier owners and tenants.

3.02 CONSTRUCTION

- A. Framing: Cut and frame all timber so that joints will have full bearing and proper fit at contact surfaces. Work is to be set to required lines and levels with members plumb and true or as indicated on the Drawings. No shimming other than that indicated on the Drawings will be permitted. Open joints are unacceptable and must

be filled with epoxy resin to the satisfaction of the Engineer. Avoid cutting off treated ends of lumber where possible.

- B. Bracing: Use the full length of bracing members and avoid cutting off treated ends of bracing where possible. Cut ends of bracing shall not be installed in the water where possible. Bolts shall be located not less than 12 inches from the ends of bracing unless necessary to suit field conditions. Block bracing as required to account for misalignment of piles. Minimum length of blocks shall be 18 inches and blocks shall be securely held with nails or spikes. Blocks shall be drilled for all fasteners.
- C. Fastening: Work is to be securely fastened and attached with adequate nails, spikes, bolts, pins, etc. as shown on the Drawings or otherwise necessary to suit field conditions. Secure all blocks and shims with pins, spikes, or common nails as appropriate. Use dock washers or OG washers under all bolt heads and nuts in contact with wood. Vertical bolts shall have nuts on the lower end. Bore holes for spikes, pins, and bolts with a bit of the same diameter or smallest dimension of the spike to prevent splitting. All bolt heads or nuts on the top or outer face of timbers or piles subject to vessel contact or foot traffic shall be countersunk.
- D. The use of cutting torches on, under, or within ten feet of timber piers is prohibited.

### 3.03 FIELD TREATMENT

- A. Timber cuts and bored holes during the work must be treated with Cuperinol Wood Preservative or approved equal.

### 3.04 DEFECTIVE WORK

- A. Any damaged material shall be repaired or replaced to the satisfaction of the Engineer.
- B. Any material improperly installed in the work shall be removed and replaced or corrected to the satisfaction of the Engineer.

END OF SECTION

15 June 2006

Mr. Michael Nugent, Manager  
Inspection Services Program  
Planning & Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

Re: Proprietors of Custom House Wharf  
Restaurant Renovation

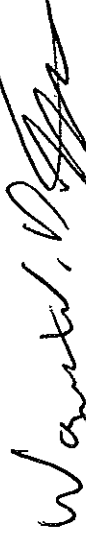
Dear Mr. Nugent:

Enclosed are plans and specifications for repairs to the timber pier under the former Boone's Restaurant at Custom House Wharf. Upon satisfactory completion of the work, the repaired area will support a live load of 100 psf. The repairs consist of the removal of deteriorated wood piles under the building and splicing in new timbers. To compensate for the loss of lateral capacity provided by driven piles, the new work is braced with 3x10 sway braces and by a concrete encasement of the pile splice. TEC Associates will provide routine inspection of the work in progress to insure compliance with the plans and specifications.

The open pier outside the building is not within the scope of work covered by these plans. Outside the building however, deteriorated piles can be replaced with new driven piles. It is my recommendation that the open pier adjacent to the former Boone's Restaurant not be opened until repairs are made.

Please call me with any questions.

Very truly yours,  
TEC ASSOCIATES



Wayne W. Duffett, P.E.

Enclosure

cc: Ken Macgowan

DEC 13 2007



# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life - [www.portlandmaine.gov](http://www.portlandmaine.gov)*

*Lee Urban- Director of Planning and Development  
Michael J. Nugent- Inspections Division Director*

January 03, 2006

PROPRIETORS OF CUSTOM HOUSE  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

**CBL: 030 A001001**  
**Located at 86 COMMERCIAL ST**

**Hand Delivery**

Dear G E MacGowan,

## STOP WORK ORDER

An evaluation of the above-referenced property on 01/03/2006 revealed that building construction was being conducted without benefit of a valid building permit as required by Section 105.1 of the 2003 International Building Code and the 2003 International Residential Code of the City of Portland.

Appropriate permitting has not been issued for the property listed above, therefore all construction activity at that property must STOP immediately. This is a STOP WORK ORDER pursuant to Section 114. of 2003 International Building Code and the 2003 International Residential Code of the City of Portland.

You may resume construction activity only after issuance of the appropriate building permit and the subsequent lifting of this order. Building Permit Applications are available in this office, Room 315 at Portland City Hall, from 8:00 a.m. to 4:00 p.m. weekdays except holidays.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code and in Title 30-A of M.R.S.A. Section 4452. This constitutes an appealable decision pursuant to Section 112 of the City of Portland Building Code.

If you wish to discuss this matter, or you have any questions, please feel free to contact me.

Sincerely,

Arthur Rowe @ (207) 874-8697  
Building Inspector

15 June 2006

Mr. Michael Nugent, Manager  
Inspection Services Program  
Planning & Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

Re: Proprietors of Custom House Wharf  
Restaurant Renovation

Dear Mr. Nugent:

Enclosed are plans and specifications for repairs to the timber pier under the former Boone's Restaurant at Custom House Wharf. Upon satisfactory completion of the work, the repaired area will support a live load of 100 psf. The repairs consist of the removal of deteriorated wood piles under the building and splicing in new timbers. To compensate for the loss of lateral capacity provided by driven piles, the new work is braced with 3x10 sway braces and by a concrete encasement of the pile splice. TEC Associates will provide routine inspection of the work in progress to insure compliance with the plans and specifications.

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Please call me with any questions.

Very truly yours,  
TEC ASSOCIATES

  
Wayne W. Duffett, P.E.

Enclosure

cc: Ken Macgowan

DEC 13 2007





21 December 2007

Ms. Penney Littell  
 Corporation Counsel  
 City of Portland  
 389 Congress Street  
 Portland, ME 04101

Re: Custom House Wharf

Dear Ms. Littell:

The repairs to bents 28-30 under the Comedy Connection are 90% complete with some labor-intensive low tide work remaining at one pile. I am satisfied that the work has sufficiently restored structural capacity and have no objection to public occupation of the Comedy Connection. I am satisfied that the exterior decks outside the Comedy Connection and Harbor's Edge (former Boones) are sufficient for public egress with the requirement that all snow load be removed.

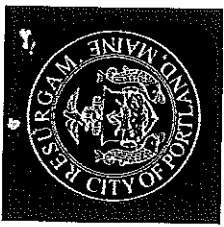
Please call me with any questions or concerns.

Very truly yours,  
 TEC ASSOCIATES

A handwritten signature in black ink, appearing to read 'Wayne W. Duffett'. The signature is fluid and cursive, written over a horizontal line.

Wayne W. Duffett, P.E.

cc: Kenneth Macgowan



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life* [www.portlandmaine.gov](http://www.portlandmaine.gov)

**Planning and Development Department**  
Lee D. Urban, Director

**Inspection Services Division**  
Jeanie Bourke, Director

# COPY

October 26, 2007

**PROPRIETORS OF CUSTOM HOUSE**  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

**CBL: 030 A001001**  
Located at **86 COMMERCIAL ST**

**Hand Delivery**

Dear PROPRIETORS OF CUSTOM HOUSE WHARF

## POSTING NOTICE

An evaluation of the above-referenced property on 10/22/2007 revealed that the structure fails to comply with Section 14-463 of the Land Use Code of the City of Portland.

*Sec. 14-463 states: No building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority. A Certificate of Occupancy is required.*

Pursuant to Section 14-461, this office declares the Function Room, previously known as Boone's Restaurant posted against occupancy until proper application for permit is submitted and approvals are issued.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code in Title 30-A of M.R.S.A ss 4452.

This constitutes an appealable decision pursuant to Section 14-472 of the Code. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Chris Hanson @ (207) 874-8696  
CEO/Plan Review



*Strengthening a Remarkable City, Building a Community for Life*

*www.portlandmaine.gov*

Corporation Counsel  
Gary C. Wood

October 26, 2007

Ken MacGowen  
Oliver Keithly  
Cogee Entertainment, Inc.  
16 Custom House Wharf  
Portland, Maine 04101

96 Crestview Drive  
South Portland, Maine 04106

Associate Counsel  
Elizabeth L. Boynton  
Penny Littell  
James R. Adolf  
Mary E. Costigan

Dear Mr. Mac Gowen and Keithly:

This is a **NOTICE** to you, and to Cogee Entertainment Inc., that no certificate of occupancy (among other required permits and licenses) has been issued for space on Custom House Wharf formerly occupied by Boone's Restaurant. **NO USE OF THIS SPACE IS PERMITTED UNLESS AND UNTIL THE OWNER/LESSEE OBTAINS FROM THE CITY ALL REQUIRED STATE AND LOCAL PERMITS.**

Should any use of this space take place absent compliance with the Portland City Code and/or State licensing requirements, you will be cited for violations.

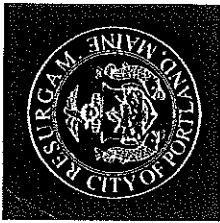
Please be advised that the City will be providing a list of existing issues which must be addressed for that space and the other associated areas before occupancy of that space will be allowed.

Sincerely,

Penny Littell  
Associate Corporation Counsel

Cc: Joseph Gray  
Gary Wood  
Lee Urban  
Fred Lamontange  
Jeanie Bourke  
Greg Cass

Chris Hanson  
Marge Schmuckal  
Suzanne Hunt



# PORTLAND MAINE

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Corporation Counsel  
Gary C. Wood

Associate Counsel  
Elizabeth L. Boynton  
Penny Littell  
James R. Adolf  
Mary E. Costigan

April 10, 2008

Oliver Keithly  
Cogee Entertainment, Inc.  
96 Crestview Drive  
South Portland, Maine 04106

**RE: Application for Liquor, Food Service and Entertainment Licenses for Harbor's Edge, the Comedy Connection and the Port Hole Restaurant/ Request for Outside Seating and Entertainment Use**

Dear Oliver:

The City's License Administrator, Alexandra Murphy, brought it to my attention that you recently filed a renewal application seeking a license that would allow both outside seating and entertainment on the walkway and deck area next to the Comedy Connection and the Porthole Restaurant (Class XI Restaurant/Lounge, Entertainment with Dance). She said that when she pointed out to you that outside seating was not going to be allowed for those uses that you were upset and somewhat angry.

I am at this point confused about your reaction and the application that you filed with Ms. Murphy. When you and your attorneys, and Mr. Macgowan and his attorney, met with me and City Attorney Gary Wood about two weeks ago I thought that the following points were very clear:

- (1) Outside entertainment uses are not allowed by the City's zoning in that area;
- (2) The outside use of a limited amount of area for a limited amount of food service may be permitted under a grandfathering concept once the City has reviewed the additional information that you and your attorney are putting together for us to review;
- (3) No outside use of those areas other than use for normal ingress and egress from the Comedy Connection and the Porthole Restaurant are to be allowed unless and until an engineering plan is created to render that area safe for such a use.

In that regard I have attached the letter dated January 2, 2008 from Wayne Duffett, P.E. to Mr. Ken Macgowan which clearly implies that without the creation and implementation of an engineering plan that the area in question could not possibly be safe for any other use because of the weight of people, tables, equipment, etc., engaged in outside dining or entertainment.

As part of our meeting, Gary and I agreed that in relation to grandfathering we will review the facts that you present along with whatever legal arguments and sources are provided. However, I thought that we all agreed that you need to address and get a decision from the Zoning Administrator, Marge Schmuckal, on what uses are permitted by the City's current zoning and our grandfathering clause before it makes sense for either you or the property owner to invest substantial sums of money in making the area outside of the Comedy Connection and the Porthole Restaurant safe for the uses that you are proposing. In that regard it seems to us that your best legal avenue for ultimate success is to approach both the Planning Board and the City Council for a contract zone, but if you do that please keep in mind that the current zoning restrictions in that area are also within the jurisdiction of the Department of Environmental Protection under the State's Shoreland Zoning law. DEP would therefore, in our opinion, have to also sign onto whatever proposed changes and use are part of the contract rezoning proposal.

William Needelman of our Planning Department is extremely well versed and familiar with the zoning in that area and the reasons for it in terms of both the DEP role and that of the City Council should you or Jim Cloutier have any questions.

I am sending this to you now because I do not want you to undertake activities that are clearly illegal under current zoning as that will result in prosecution by our office.

As we also said at the meeting, it is not within the authority of either our office or the Planning Department to allow the uses that have gone on illegally to continue nor do we have authority to approve them, even though we as individuals might have no personal objections or concerns about those uses. The approval that you need can only come from the City's legislative body which is the City Council, following a review and recommendation from the City's Planning Board.

My recommendation to you at this time is that you file an amended application with the License Administrator seeking a liquor license, food service license, entertainment license and any other licenses that you need for just the inside of the premises currently occupied by the Porthole Restaurant and the Comedy Connection. To the extent that we are able to resolve both the use issues and the safety issues related to the outside area, you can then file an application to add those areas to your existing licenses and we will bring them to the Council as quickly as possible for action.

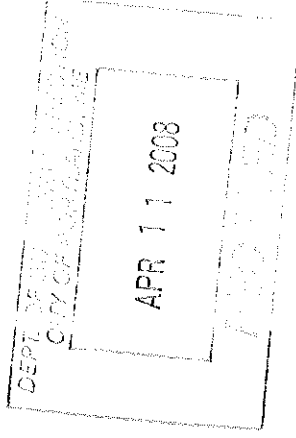
Sincerely,



Penny Littell

Associate Corporation Counsel

Cc: Joe Gray, City Manager  
Gary Wood, Corporation Counsel  
Alexandra Murphy, License Administrator  
Fred Lamontagne, Fire Chief  
William Needelman, Planning  
Chris Hanson, Inspections ✓  
James Cloutier, Esq.  
Ed MacColl, Esq.



2 January 2008

Mr. Ken Macgowan  
18 Custom House Wharf  
Portland, ME 04101

Re: Exterior Decks

Dear Ken:

This letter is to clarify my position on use of the east side exterior decks from bent 13 to bent 40 adjacent to Harbor's Edge, the Comedy Connection, and the Porthole Restaurant. This deck is presently adequate for normal ingress and egress from these businesses provided the entire area is kept free of snow load. This area does have a few poor piles that need to be addressed as part of normal maintenance prior to next summer.

Very truly yours,  
TEC ASSOCIATES

  
Wayne W. Duffett, P.E.





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Corporation Counsel  
Gary C. Wood

Associate Counsel  
Elizabeth L. Boynton  
Penny Littlell  
James R. Adolf  
Mary E. Costigan

November 5, 2007

Mr. Ken MacGowen  
16 Custom House Wharf  
Portland, Maine 04101

Dear Mr. Mac Gowen:

This correspondence is in follow up to a **NOTICE** to you of October 26 posting a property owned by you on Custom House Wharf, namely that space formerly occupied by Boone's Restaurant. As you know, no certificate of occupancy has been issued by the City for that space.

As noted in that letter, the following list of items must be addressed to the satisfaction of the City before occupancy of that space will be allowed. In addition, the City is taking this opportunity to advise you of a number of other outstanding land use and licensing matters needing to be addressed in order to continue the use of your property as previously permitted.

1. Structural Integrity of the Pier

In 2006 TEC Associates undertook some work to the Custom House Wharf on your behalf. That work was limited in scope and caused TEC Associates to comment there should be no occupancy of the space formerly occupied by Boone's Restaurant until repairs are made to the open pier adjacent to that space. The City has received no application from the Proprietors of Custom House Wharf for any repairs to the pier. As a result, no occupancy of the former Boone's Restaurant space, or any other space on the pier, will be permitted until the City receives the following:

- a. confirmation from TEC Associates of the work completed in 2006, including a compete set of final as-built plans for the work and a sign off on the structural integrity of that portion of the pier; and
- b. an application for further pier repairs to the pier and the completion of such work to the satisfaction of a licensed engineer or certification from a licensed engineer that the pier servicing the businesses on Custom House Wharf is in sound condition capable of withstanding occupancy loads.

2. Life Safety Analysis of the Entire Pier

There are several businesses presently occupying the buildings on the Wharf. The City needs to understand and sign off on a certified Life Safety Plan, certified by a qualified professional, for the Wharf. The Plan must include the following:

- a. identification of the various businesses presently occupying space on the pier; and
- b. a comprehensive diagram of the locations and dimensions of the various buildings on the pier; and
- c. the square footage of area consumed by such businesses; and
- d. the location of each business; and
- e. the permitted occupancy load for each occupied space; and
- f. all means of egress for each building; and
- g. a detailed explanation of how each space complies with Life Safety 101 requirements; and
- h. a full set of construction plans for any proposed upgrades to fire protection systems for the pier.

The Life Safety Analysis for the entire pier is required in order to properly evaluate not only fire measures necessary to ensure the safety of each building but also to make an informed determination of the allowable occupancy load for the entire pier and to ensure the convergence point for existing the pier is appropriately wide to ensure safe egress in emergency situations. In the absence of an evaluation for the entire pier, this determination cannot be made. **Upon receipt of this letter, please contact Captain Greg Cass and let him know that date upon which you will submit this information. Should you fail to respond to this letter within two weeks of your receipt of it or fail to provide the requested information within 30 days of the date of this letter, the City be forced to take legal action to ensure the pier is safe.**

3.

Dangerous Building

In April 2006 the City informed you of a dangerous, dilapidated building on Custom House Wharf (east side of the Wharf, tax id 030 A 001, beyond number 42). The building was posted in January 2006. Nothing has been done to address this building. A recent inspection observed what appears to be living arrangements within the structure. **You have two weeks to submit a plan of action regarding this building or the City will initiate enforcement action.** The status of this building has not changed despite several communications from the City and its present condition is posing a danger to the public.

4. Newly Approved Building at End of Pier

You received approval through a conditional rezoning to construct a new building at the end of Custom House Wharf. The City understands the building is being advertised for rent. Please understand that the building does not yet fully comply with all site plan requirements. As a result, no certificate of occupancy will issue for that building. Moreover, until the City has received and reviewed the information

requested in #1 above relative to the overall condition of the pier infrastructure, the building will not be allowed to be occupied. The City is providing this information to you at this time so that you can address any outstanding issues/deficits now to avoid any delays later.

We trust that you will respond to the issues raised in this letter immediately and we look forward to working with you to ensure you and your tenants fully meet the City's Code requirements.

Sincerely,



Penny Litrell  
Associate Corporation Counsel

Cc: Joseph Gray  
Gary Wood  
Lee Urban  
Fred Lamontange  
Jeanie Bourke  
Greg Cass  
Chris Hanson ✓  
Marge Schmuckal  
Suzanne Hunt

O:\OFFICE\PENNY\Letters2007\MacGowen110207.doc

**From:** Penny Littell  
**To:** Chris Hanson; Gary Wood; Gregory Cass; Joe Gray  
**Date:** 12/19/2007 9:29:05 AM  
**Subject:** Fwd: Custom House Wharf

>>> "Edward MacColl" <[emaccoll@thomport.com](mailto:emaccoll@thomport.com)> 12/18/2007 1:58:14 PM >>>

Penny,

Thank you for speaking with me this morning. As promised, I am forwarding to you a copy of the electronic mail message Wayne sent to Joe Gray yesterday afternoon. I've spoken with Ken about trying to work constructively to get the code officers whatever they require with respect to pile repairs. Ken agrees that a process that minimizes the involvement of lawyers and focuses the investment on making important repairs would be best. He or Wayne will communicate with the city about how best to go forward.

Ken also mentioned that he is working on options for the older building toward the end of the pier that you referenced in your letter of this morning. Ken told me that several options are being considered, and that he will get the city a proposal promptly.

Ed

-----Original Message-----

**From:** Kenneth Macgowan [<mailto:kmacgowa@maine.rr.com>]  
**Sent:** Tuesday, December 18, 2007 9:08 AM  
**To:** Edward MacColl  
**Subject:** Fw: Custom House Wharf

----- Original Message -----

**From:** Wayne Duffett <<mailto:wayne@tecassoc.com>>  
**To:** [kmacgowa@maine.rr.com](mailto:kmacgowa@maine.rr.com)  
**Sent:** Monday, December 17, 2007 6:42 PM  
**Subject:** Fw: Custom House Wharf

----- Original Message -----

**From:** Wayne Duffett <<mailto:wayne@tecassoc.com>>  
**To:** Joe Gray <<mailto:JEG@portlandmaine.gov>>  
**Sent:** Monday, December 17, 2007 3:37 PM  
**Subject:** Custom House Wharf

Dear Mr. Gray:

I am Ken Macgowan's engineer and was the responsible party that initially closed the Comedy Connection. I am now helping him correct the situation. I have some comments to share with you.

Ken hired Roger Hale to make repairs. I met Roger on-site and we agreed on what was to be done and how. These emergency repairs were ordered stopped by the Building Inspector for lack of building permit. It is disturbing that emergency repairs being made under the supervision of a licensed professional engineer were halted. This prevented the Comedy Connection from reopening in time for this past

weekend and resulted in considerable loss of revenue for the tenant and pay for his employees. On the supposition that a building permit is required (more below), city staff might have worked with us so that the permit process could have been on-going with the emergency repairs, and the business could have reopened. Were it a city pier with the problem, I presume the city would want the same.

I was away last week from Wednesday to Friday, flew into Portland Friday afternoon. I needed to look under Harbor Fish because they were concerned they were to be closed next. At low tide Friday night I was met by a small crowd representing three tenants, all scared to death their businesses were being closed right before Christmas. Had city staff ordered Ken to hire an emergency inspection, I think some panic and anxiety could have been avoided.

Permits for the construction and repair of piers and pilings is the jurisdiction of the Harbor Commission. They have specific rules about when permits are required and these rules have nothing to do with navigational or property rights. Any in-kind repair using the same material requires a notification to them but no permit. Any other work, such as replacing a wood pile with a steel pile, or changing the configuration of a pier or piles, requires a permit. The cost of that permit is based on the value of the construction (i.e. it's a building permit). For any project over \$10,000 the plans must be stamped by a licensed engineer. I don't get building permits from Portland or South Portland for any pier repairs (including yours), I get them from the Harbor Commission. The exception to this seems to be CHW. This issue needs attention.

I realize there is probably more to this story so forgive me on that count. I think this will be a wake-up call for Ken in that he needs to better inspect and maintain his pier. But Custom House Wharf isn't the only pier with problems. I hope this is a wake-up call for the city. Zoning is not an issue I follow so forgive me on that too. But CHW is an example of how the income on these piers doesn't cover the cost of capital. Very expensive infrastructure for low paying tenants. My guess is that more needs to be done to help pier owners get value from their property. Each private pier in Portland has unique circumstances and one zone does not fit all.

Please call with any questions or if a meeting would help.

Regards,

Wayne Duffett

\*\*\*\*\*

\*

Wayne W. Duffett, P.E.  
TEC Associates  
46 Sawyer Street  
South Portland, ME 04106

Tel. 207-767-6068  
Fax 207-767-7125  
Cellular 207-232-3581  
[wayne@tecassoc.com](mailto:wayne@tecassoc.com)

\*\*\*\*\*

\*



# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life - [www.portlandmaine.gov](http://www.portlandmaine.gov)*

Lee Urban - Director of Planning and Development  
Jeanie Bourke - Inspection Division Services Director

December 7, 2007

MR. KEN MACGOWAN  
PROPRIETORS OF CUSTOM HOUSE  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

**CBL: 030 A001001**

Located at 86 COMMERCIAL ST

Known as Custom House Wharf – Seabags-Storage/Office/Kitchen/Restroom, Bents 27-31, Gilberts Chowder House-ext. dining area Bents 1-12  
Outside Deck/Patio area for The Comedy Connection,  
Porthole and former Boones

Hand Delivered

## POSTING NOTICE/HAND DELIVERED

Dear Mr. Macgowan:

An evaluation of the above-referenced property on December 15, 2007 by Wayne Duffett, P.E. of TEC Associates revealed that the pier under Seabags and Gilberts Chowder House's exterior deck fails to comply with Section 115.2 of the Building Code of the City of Portland, as does the deck/patio area adjacent to The Comedy Connection, Porthole and former Boones.

Attached is the engineering report from TEC Associates Consulting Engineers.

Based on that report and pursuant to Section 6-120.1 & 3, this office declares the structure unfit for Occupancy by the public and immediate action is necessary. Therefore, in addition to the formerly posted Boones Restaurant and The Comedy Connection, Seabags storage/kitchen/office/restroom area's, and Gilberts Chowder House exterior dining area must be totally vacated and secured from entry and vandalism until further notice. The outside deck/patio area's adjacent to Comedy Connection, Porthole and Boones must have snow removed and the entrance cordoned off. This deck/patio area may be used for emergency egress only should the same become necessary.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code in Title 30-A of M.R.S.A ss 4452.

This constitutes an appealable decision pursuant to Section 6-127 of the Code. Please feel free to contact me @ 874-8696 if you have any questions or would like to discuss this matter further.

Sincerely,

Chris Hanson,  
Code Enforcement Officer/ Plan Reviewer

15 December 2007

Ms. Penney Littell  
Corporation Counsel  
City of Portland  
389 Congress Street  
Portland, ME 04101

Re: Custom House Wharf

Dear Ms. Littell:

I have made observations of Custom House Wharf during low tides last night and this morning to determine if certain areas of the timber structure were adequate for the present uses.

On the west side, Harbor Fish is supported by bents 1-26. I observed 15 piles randomly located throughout this section that I believe should be replaced in the near future. The random placement of these piles, however, does not materially affect the capacity of the wharf and Harbor Fish remains safe for occupancy.

On the west side, Sea Bags is supported by bents 27-31. I observed 16 piles in this section that I believe should be replaced immediately. Twelve of these piles are concentrated in bents 27 and 28 with each 8-pile bent requiring six new piles. This concentration of poor piles is inadequate for the present loading. Use of this area should cease until repairs are made. The present use of this area is office, kitchen, and storage area for Sea Bags. The remaining area is the Sea Bags production floor, which remains safe for occupancy. I met and spoke with Ms. Beth Shissler, owner of Sea Bags, and she has agreed to remove items stored in this area and physically barricade it from use until bents 27 and 28 are repaired. It is my recommendation that Sea Bags be allowed to continue occupancy of its production floor area. I made no further inspection on the west side.

On the east side, repairs to bents 28-30 under the Comedy Connection are in progress. The contractor performing the work is the Fore River Dock and Dredge Company of South Portland and they are qualified for this task. On completion, I will inspect the work for conformity with the plans and provide a report to you. No work is ongoing at bents 13-25 under the former Boones Restaurant and that area remains closed to the public.

Ms. Penny Littell

-2-

15 December 2007

On the east side, Gilberts Chowder House is supported by bents 1-12. All piles under the building are acceptable and adequate for the loads imposed. Piles and pile caps under the exterior dining area require work and the exterior dining area should not be occupied until repairs are made. This area is presently not in use.

On the east side, the Porthole Restaurant is supported by bents 31-39. I observed 7 piles randomly located throughout this section that I believe should be replaced in the near future. The random placement of these piles, however, does not materially affect the capacity of the wharf and the Porthole Restaurant remains safe for occupancy.

On the east side, bents 13-39 provide exterior access to the former Boones Restaurant, the Comedy Connection, and the Porthole Restaurant. These areas will require upgrading prior to next summer but presently are adequate as a means of exit from these businesses. Mr. Macgowan will remove all snow from this area after each storm to minimize loading and maintain it as a clear path of exit. I made no further inspection on the east side.

After discussing these findings with Mr. Macgowan, it is his intention to complete repairs to bents 28-30 under the Comedy Connection first, repair bents 27 and 28 under Sea Bags second, complete repairs to bents 13-25 under Boones Restaurant third, and make repairs under Harbor Fish and the balance of repairs under Sea Bags and the Porthole Restaurant last. I concur with this schedule on the condition that it is carried out as one continuous mobilization of the contractor and completed without delay. My continued involvement requires that Mr. Macgowan engage us to conduct a thorough inspection of the wharf and annual inspections thereafter, which he has agreed to do.

Please call me with any questions or concerns.

Very truly yours,  
TEC ASSOCIATES



Wayne W. Duffett, P.E.

cc: Kenneth Macgowan



City of Portland  
Inspection Services  
RETURN OF SERVICE

On the 19 day of December, 2007, I made service of the  
Posting Notice upon Sea-Days  
at 86 Commercial St.

By delivering a copy in hand.

By leaving copies at the individual's dwelling house or usual place of abode with a person of suitable age or discretion who resides therein and whose name is \_\_\_\_\_

By delivering a copy to an agent authorized to receive service of process, and whose name is \_\_\_\_\_

By (describe other manner of service) \_\_\_\_\_

DATED: 12/19/07  
[Signature]  
Signature of Person Making Service  
CEO/Plan Reviewer  
Title

I have received the above-referenced documents  
[Signature]  
Signature of Person Receiving Service  
\_\_\_\_ Refused to Sign  
\_\_\_\_ Unable to Sign



# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life* - [www.portlandmaine.gov](http://www.portlandmaine.gov)

Lee Urban - Director of Planning and Development  
Jeanie Bourke - Inspection Division Services Director

December 7, 2007

MR. KEN MACGOWAN  
PROPRIETORS OF CUSTOM HOUSE  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

CEB: 030 A001001

Located at 86 COMMERCIAL ST

Known as Custom House Wharf – Seabags-Storage/Office/Kitchen/Restroom, Bents 27-31, Gilberts Chowder House-ext. dining area Bents 1-12  
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Hand Delivered

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Code Enforcement Officer/ Plan Reviewer

15 December 2007

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Ms. Penny Littell

-2-

15 December 2007

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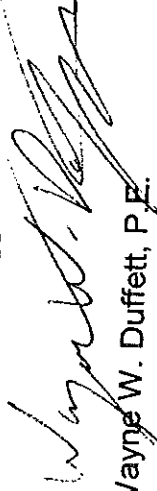
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Please call me with any questions or concerns.

Very truly yours,  
TEC ASSOCIATES



Wayne W. Duffett, P.E.

cc: Kenneth Macgowan



# PORTLAND MAINE

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Lee Urban - Director of Planning and Development  
Jeanie Bourke - Inspection Division Services Director

December 7, 2007

MR. KEN MACGOWAN  
PROPRIETORS OF CUSTOM HOUSE  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

**CBL: 030 A001001**  
**Located at 86 COMMERCIAL ST**  
**Known as Custom House Wharf – Comedy Connection**

## **POSTING NOTICE/HAND DELIVERED**

Dear Mr. Macgowan:

An evaluation of the above-referenced property on December 5, 2007 by Wayne Duffett, P.E. of TEC Associates revealed that the pier under Comedy Connection fails to comply with Section 115.2 of the Building Code of the City of Portland.

Attached is the engineering report from TEC Associates Consulting Engineers. Based on that report and pursuant to Section 6-120.1 & 3, this office declares the structure unfit for Occupancy by the public and immediate action is necessary.

Therefore, in addition to the formerly posted Boones Restaurant, The Comedy Connection must be totally vacated and secured from entry and vandalism until further notice.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code in Title 30-A of M.R.S.A ss 4452.

This constitutes an appealable decision pursuant to Section 6-127 of the Code. Please feel free to contact me if you have any questions or would like to discuss this matter further.

City of Portland  
Inspection Services  
RETURN OF SERVICE

On the 18 day of December, 2007, I made service of the  
Posting Notice upon Ken-Mac Gowan  
at 86 commercial st. Portland, Me.

\_\_\_\_\_ By delivering a copy in hand.

\_\_\_\_\_ By leaving copies at the individual's dwelling house or usual place of abode with  
a person of suitable age or discretion who resides therein and whose name is  
\_\_\_\_\_

\_\_\_\_\_ By delivering a copy to an agent authorized to receive service of process, and  
whose name is \_\_\_\_\_

\_\_\_\_\_ By (describe other manner of service) \_\_\_\_\_  
\_\_\_\_\_

DATED: 12/18/07

Christina  
Signature of Person Making Service

CEO/Plan Reviews  
Title

I have received the above-referenced documents

[Signature]  
Signature of Person Receiving Service

\_\_\_\_\_ Refused to Sign

\_\_\_\_\_ Unable to Sign

Inspection Services  
Michael J. Nugent  
Manager



Department of Urban Development  
Joseph E. Gray, Jr.  
Director

**CITY OF PORTLAND**  
**SECOND BILLING NOTICE**

August 4, 2000

Restaurants Inc.  
6 Custom House Wharf  
Portland ME 04102

RE: Boones (030-A-001)

Dear Sir or Madam:

The City Council passed the following amendment on May 17, 1999:  
**Sec 11-37. Inspection Performance Requirements.**

All licensed Food Service Establishments shall be inspected annually on forms approved by the State of Maine Dept. of Health Engineering. Establishments which obtain a score between 79 and 84 may be inspected monthly until the establishment has achieved the score of 85 or above. Establishments with a score of 78 or less may be reinspected within 10 days of the original unsatisfactory score. Establishments that score below 78 on two consecutive inspections shall be referred to the City Clerk for action pursuant to Chapter 15; provided, however, the foregoing shall not be construed to be a limitation on the authority of the City to refer violations to the City Clerk for action pursuant to Chapter 15.

Reinspection fee for FSE  
inspection

\$75.00 per Re-

Since that date, the City of Portland Inspection Services Team has inspected the above Food Service Establishment on the following dates with the following results:

9/14/99 - 51      9/24/99—79      6/20/00 -- 84

Based on this standard your establishment has been reinspected 3 times. You now owe the City of Portland \$225.00 in reinspection fees. Failure to pay the reinspection fee will cause this office to notify the City Clerk for action pursuant to Chapter 15. Please feel free to contact me at 874-8700, if you wish to discuss this.

Sincerely,

*Michael Nugent*  
Mike Nugent

Manager of Inspection Services

Inspection Services  
Michael J. Nugent  
Manager



Department of Urban Development  
Joseph E. Gray, Jr.  
Director

**CITY OF PORTLAND**  
**BILLING NOTICE**

September 29, 1999

Restaurants Inc.  
6 Custom House Wharf  
Portland ME 04102

RE: Boones (030-A-001)

Dear Sir or Madam:

The City Council passed the following amendment on May 17, 1999:

**Sec 11-37. Inspection Performance Requirements.**

All licensed Food Service Establishments shall be inspected annually on forms approved by the State of Maine Dept. of Health Engineering. Establishments which obtain a score between 79 and 84 may be inspected monthly until the establishment has achieved the score of 85 or above. Establishments with a score of 78 or less may be reinspected within 10 days of the original unsatisfactory score. Establishments that score below 78 on two consecutive inspections shall be referred to the City Clerk for action pursuant to Chapter 15; provided, however, the foregoing shall not be construed to be a limitation on the authority of the City to refer violations to the City Clerk for action pursuant to Chapter 15.

Reinspection fee for FSE inspection \$75.00 per Re-

Since that date, the City of Portland Inspection Services Team has inspected the above Food Service Establishment on the following dates with the following results:

9/14/99 - 51 9/24/99--79

Based on this standard your establishment has been reinspected 1 times. You now owe the City of Portland \$75.00 in reinspection fees. Failure to pay the reinspection fee will cause this office to notify the City Clerk for action pursuant to Chapter 15. Please feel free to contact me at 874-8700, if you wish to discuss this.

Sincerely,

Mike Nugent  
Manager of Inspection Services  
/sap



# Sprinkler Systems, Inc.

P.O. Box 1285

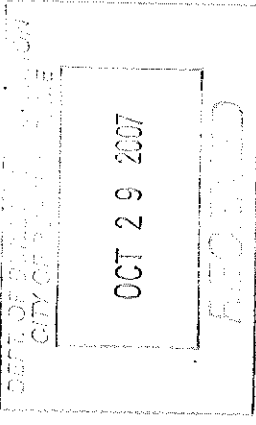
Lewiston, Maine 04243-1285

Ph. (207) 782-0104 Fax (207) 783-4865

Fire Protection Professionals Since 1973

★ Portland Office ★

Phone (207) 775-1521 Fax (207) 879-1387



TO: COBEE ENTERTAINMENT  
 PORTLAND, ME  
 831-3521 F) 761-9686

DATE: 10-26-07

ATTN: OLIVER KEITHLY

RE: THE LOWEST CONNECTION  
 6-16 CUST ON HOUSE WHARF  
 PORTLAND, ME 04101

Message:

Slope: PROPOSE TO INSTALL A PARTIAL NFPA 13 WET SPRINKLER SYSTEM  
 IN THE ABOVE PROJECT PER STATE & LOCAL CODES AND SITE  
 WAREHOUSE ON 10-23-07.  
 + START INSIDE THE BUILDING AT A MINIMUM 6" VIA FRANGE IN CASE  
 + COMBINATION OF EXPOSED & CONCEALED STEEL PIPING  
 + QUICK RESPONSE SPRINKLERS  
 + COVERAGE AREA LIMITED TO KITCHEN AND FUNCTION ROOM  
 + ANY AND ALL APPLICABLE STATE OF MAINE SALES TAXES  
 + ASSUME ADEQUATE HEAT (MIN 400F) IN BUILDING AT ALL TIMES  
 + ASSUME ADEQUATE CITY WATER SUPPLY PRESSURES AND FLOWS  
 + DOUBLE CHECK BACKFLOW PREVENTION.  
 + MINIMUM 48 HOUR LEAD TIME ON DESIGN, APPROVALS, ETC. FROM DATE OF AWARD

NOT INCLUDED  
 IN SCOPE:

- ANY ELECTRICAL OR ALARM WORK
- ANY PAINTING OF PIPE
- ANY REPAIR, PATCHING, OR POINTING OF STRUCTURES
- ANY SEISMIC | EARTHQUAKE BRACING
- ANY UNDERGROUND WORK
- ANY "LIFTING OF TUB" OR SPRINKLER HEAD LOCATIONS
- ANY ATTENDANT OR CONSULTANTS FEES FOR NON-PAYMENT

Quote: \$ 14,600 - (BASE F10)

ADD "1": \$ 10,000 - (SPRINKLER PROTECTION IN GAR.,  
 CONNECTION, PERFORMANCE APLD)

Thank You,

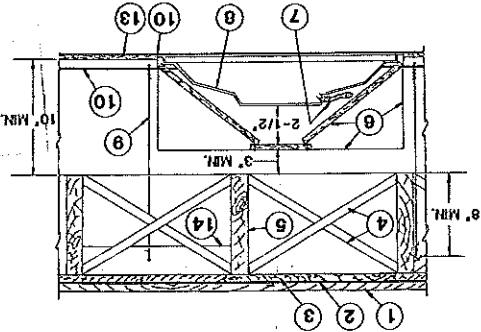
*[Signature]*

Scott E. Gagliardi, Ser  
 ESTIMATING DEPT.

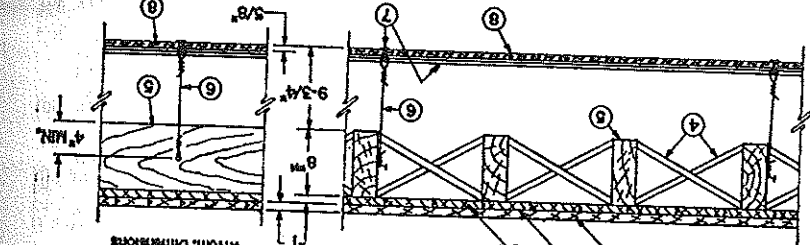
AUTHORIZED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

- In lieu of the dampers described above, Duct Outlet Protection System "A," as described in the Design Information Section may be used with steel ducts.
13. Acoustical Material—Nom 24 by 24 or 48 in. lay-in panels. Border panels supported at walls by min 0.016 in. thick (26 gauge) painted-steel angle with 1 in. legs; or min 0.016 in. thick (26 gauge) 1-3/4 in. deep steel channel with 1 in. bottom flange and 3/4 in. top flange. Panel Dimensions  
Nom. In.  
24 by 24 by 3/4  
24 by 24 by 3/4  
24 by 48 by 5/8 or 3/4  
24 by 48 by 3/4
- USG Interiors Inc.—Types GR-1 (S), FR-3 (S), FR-X1 (S) and FR-X2 (S), FR-X1 (S), FR-X2 (S), GR-1 (S), FR-83 (S), GR-1 (S), FR-83 (S) Type  
600 by 600 by 19  
600 by 1200 by 15 or 19
- USG Interiors Inc.—Types GR-1 (S) and FR-83 (S). The metric size panels may only be used with metric size steel framing members as described under item 10D, and centered 5 in. below sub-flooring. Located to support air-duct hangers and hanger wire panels. Border panels supported at walls by wall molding (item 16).
- 15A. Gypsum Wallboard—(Not shown) As an alternate to item 13 A, nom 600 by 600 or 1200 mm lay-in panels. Border panels supported at walls by wall molding (item 13).
- USG Interiors Inc.—1/2 in. thick Type FC-CB.  
Bearing the UL Classification Marking
- Design No. L208**  
Finish Rating—1 1/2 Hr.
- 
14. Wood Hanger Block—Nom 2 by 4 in., installed between and perpendicular to wood joists, for steel framing members whenever required.
- 15B. Gypsum Wallboard—(Not shown) As an alternate to item 13, nom 2 by 2 or 2 by 4 ft. lay-in panels. Border panels supported at walls by wall molding (item 16).
- USG Interiors Inc.—1/2 in. thick Type FC-CB.  
Bearing the UL Classification Marking
- Design No. L209**  
Finish Rating—1 Hr.  
Unrestrained Assembly Rating—1 Hr.
- 
- 17A. Steel Framing Members—Metal pans—(Not shown) Channel-shaped metal pans in various colors and finishes, installed perpendicular to cross tees or main runners and spaced 4 or 6 in. O.C. The flange edges of the metal pans engage and interlock with the vertical tabs of the corresponding grid adapters with tabs 4 or 6 in. O.C. (See item 7B). End laps of metal pans shall occur adjacent to main runners or cross tees. The metal pans shall each be supported by at least two main runners or cross tees.
- 7B. Steel Framing Members—Grid adapter—(Not shown) For use with Type 1650 metal pans (See item 7A). Angle-shaped adapter with a looped return flange; installed parallel to cross tees or main runners by engaging return flange of adapter to the flange of the cross tee or main runner. The 48 or 24 in. long adapters are intended for use with cross tees or main runners, respectively.
- Chicago Metallic Corp.—Type 1650.
- 7C. Steel Framing Members—Filler strips—(Not shown) (Optional) For use with Type 1650 metal pans. Filler strips are 0.018 to 0.024 in. thick, steel or aluminum, 13/32 or 5/8 in. deep by 3/4 in. wide, placed between the metal pans.
- Chicago Metallic Corp.—Type 1650.
8. Acoustical Materials—24 by 24 or 48 in. lay-in panels. Border panels supported by min 0.016 in. thick (26 gauge) painted-steel angle with 1 in. legs; or, min 0.016 in. thick (26 gauge) painted-steel channel, 1-5/8 in. deep with 1 in. bottom flange and 3/4 in. top flange. (S=Surface perforations.)
- Armstrong World Industries, Inc.—Types 5/8 in. P (S) 24 x 24 or 48 in., or 5/8 in. PC (S) 24 x 48 in.
9. Hold-Down Clips—(Not shown)—1/2 in. wide, 0.021 in. thick spring steel. Two clips placed over cross tees 12 in. from each main tee.  
Bearing the UL Classification Marking
- Design No. L209**  
Finish Rating—1 Hr.  
Unrestrained Assembly Rating—1 Hr.



OCT 29 2007



1. Finish Floor—1 by 4 in. T&G; laid perpendicular to joists, or 5/8 in. plywood, min grade "Un- delayment," with T&G long edges, and conforming to joists with PS 1-66. Face grain of plywood to be perpendicular to joists with joints staggered.
2. Alternate Finish Flooring—The alternate finish flooring may consist of the following:  
Floor Topping Mixture\*—10-13 gal. of water to 170 lbs. of floor topping mixture to 695 lbs. of sand. Compressive strength 900 psi minimum. Thickness to be 1 in. minimum. Building pa- per (item 2) optional.  
Floor Crete Systems, Inc.—Type II.
- System No. 2  
Floor Topping Mixture\*—Foam concentrate mixed 40:1 by volume with water and expanded at 100 psi through a foam nozzle. Mix at rate of 1.4 cu ft of preformed foam to 94 lbs Type I Portland Cement and 300 lbs of sand with approximately 5.5 gal of water. Cast density of Floor Topping Mixture 100 (+ or -) 5 pcf. Min compressive strength 1000 psi. Thickness 1-1/2 in.
- System No. 3  
Elastzell Corp. of America—Type FF.
- System No. 4  
Floor Topping Mixture\*—6.8 gal of water to 80 lbs of floor topping mixture to 1.9 cu ft of sand. Min compressive strength 1000 psi. Firm-Fill, Firm-Fill High Strength and Gyp-Span Radial. Hacker Industries, Inc.—Firm-Fill, Firm-Fill High Strength and Gyp-Span Radial.
3. Subfloor—1 by 6 in. T&G, laid diagonally, or 1/2 in. plywood, min grade "standard," with ex- terior glue, and conforming with PS 1-66. Face grain of plywood to be perpendicular to joists with joints staggered.
4. Building Paper—Commercial red rosin, 0.010 in. thick.  
Hacker Industries, Inc.—Firm-Fill, Firm-Fill High Strength and Gyp-Span Radial.
5. Subfloor—1 by 6 in. T&G, laid diagonally, or 1/2 in. plywood, min grade "standard," with ex- terior glue, and conforming with PS 1-66. Face grain of plywood to be perpendicular to joists with joints staggered.



**L & L STRUCTURAL**  
ENGINEERING SERVICES, INC.

Six Q Street  
South Portland, ME 04106  
Phone: (207) 767-4830  
Fax: (207) 799-5432

September 28, 2006

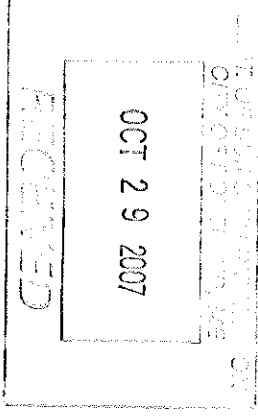
David D. Leasure  
**David D. Leasure Architectural Associates, Inc.**  
1344 Washington Avenue  
Portland, Maine 04103

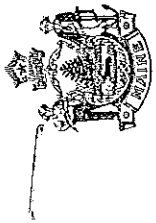
Subject: Former Boones Restaurant located on Custom House Wharf in Portland, Maine.

Dear Mr. Leasure,

We have completed our review of the window and door assembly at the above mentioned project. We have also reviewed the requirements of IBC 2003 section 2308.9.5.2 specifically Table 2308.9.5. This table does not address the geometric parameters and ground snow loading of this specific project. However, we performed a structural analysis of the headers and supporting jack studs utilizing allowable stresses provided by the American Institute of Timber Construction (AITC) and the National Design Specification (NDS).

As you know at the 6'-0" openings on the water side (2) 18" Versa-Lams were installed and at the 34" openings (2) 14" Versa-lams were installed. In either case the Versa-lam beams are capable of supporting the second floor load and roof load. In addition we checked the single 2x6 jack studs on each end of the headers which have 1 1/2" of bearing in accordance with IBC section 2308.9.5.2. The jack studs at the 6'-0" opening are 43% stressed and bearing stress are within tolerable limits. By comparison the headers and jack studs at the 34" openings are also acceptable. Similarly on the street side of the project the (2) 2x6 headers and 2x4 jack studs also have sufficient structural capacity to support the building load and are therefore considered acceptable.





*State of Maine*  
*Department of Public Safety*  
Construction Permit



Reviewed  
for Barrier  
Free

Not Sprinkled

# 16132

**BOONES RESTAURANT RENOVATION**

Located at: CUSTOM HOUSE WHARF  
PORTLAND

Occupancy/Use: ASSEMBLY CLASS C

Permission is hereby given to:

OLIVER KIETHY

16 CUSTOM HOUSE WHARF  
PORTLAND, ME 04101

to construct or alter the afore referenced building according to the plans hitherto filed with the Commissioner and now approved.  
No departure from application form/plans shall be made without prior approval in writing. This permit is issued under the provision of Title 25, Chapter 317, Section 2448 and the provisions of Title 5, Section 4594 - F.

Nothing herein shall excuse the holder of this permit for failure to comply with local ordinances, zoning laws, or other pertinent legal restrictions. Each permit issued shall be displayed/available at the site of construction.

*This permit will expire at midnight on the 14<sup>th</sup> of March 2007*

Dated the 15<sup>th</sup> day of September A.D. 2006

Commissioner

Comments:

**Copy-2 Architect**

DAVID D. LEASURE

1344 WASHINGTON AVE.  
PORTLAND, ME 04103



# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life • [www.portlandmaine.gov](http://www.portlandmaine.gov)*

Lee Urban - Director of Planning and Development  
Jeanie Bourke - Inspection Division Services Director

October 26, 2007

PROPRIETORS OF CUSTOM HOUSE  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

**CBL: 030 A001001**  
Located at 86 COMMERCIAL ST

Hand Delivery

Dear PROPRIETORS OF CUSTOM HOUSE WHARF

## POSTING NOTICE

An evaluation of the above-referenced property on 10/22/2007 revealed that the structure fails to comply with Section 14-463 of the Land Use Code of the City of Portland.

*Sec. 14-463 states: No building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority. A Certificate of Occupancy is required.*

Pursuant to Section 14-461, this office declares the Function Room, previously known as Boone's Restaurant posted against occupancy until proper application for permit is submitted and approvals are issued.

Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code in Title 30-A of M.R.S.A ss 4452.

This constitutes an appealable decision pursuant to Section 14-472 of the Code. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Chris Hanson @ (207) 874-8696  
CEO/Plan Review

Sincerely,

Chris Hanson @ 874-8696  
Code Officer/Plan Reviewer

Cc. Penny Little  
Gary Wood  
Joseph Gray  
Lee Urban  
Fred Lamontagne  
Greg Cass  
Marge Schmuckal

November 5, 2007

Mr. Ken MacGowen  
16 Custom House Wharf  
Portland, Maine 04101

Dear Mr. Mac Gowen:

This correspondence is in follow up to a **NOTICE** to you of October 26 posting a property owned by you on Custom House Wharf, namely that space formerly occupied by Boone's Restaurant. As you know, no certificate of occupancy has been issued by the City for that space.

As noted in that letter, the following list of items must be addressed to the satisfaction of the City before occupancy of that space will be allowed. In addition, the City is taking this opportunity to advise you of a number of other outstanding land use and licensing matters needing to be addressed in order to continue the use of your property as previously permitted.

1. Structural Integrity of the Pier

In 2006 TEC Associates undertook some work to the Custom House Wharf on your behalf. That work was limited in scope and caused TEC Associates to comment there should be no occupancy of the space formerly occupied by Boone's Restaurant until repairs are made to the open pier adjacent to that space. The City has received no application form the Proprietors of Custom House Wharf for any repairs to the pier. As a result, no occupancy of the former Boone's Restaurant space, or any other space on the pier, will be permitted until the City receives the following:

- a. confirmation from TEC Associates of the work completed in 2006, including a compete set of final as-built plans for the work and a sign off on the structural integrity of that portion of the pier; and
- b. an application for further pier repairs to the pier and the completion of such work to the satisfaction of a licensed engineer or certification from a licensed engineer that the pier servicing the businesses on Custom House Wharf is in sound condition: capable of withstanding occupancy loads.

2. Life Safety Analysis of the Entire Pier

There are several businesses presently occupying the buildings on the Wharf. The City needs to understand and sign off on a certified Life Safety Plan, certified by a qualified professional, for the Wharf. The Plan must include the following:

- a. identification of the various businesses presently occupying space on the pier; and
- b. a comprehensive diagram of the locations and dimensions of the various buildings on the pier; and
- c. the square footage of area consumed by such businesses; and
- d. the location of each business; and
- e. the permitted occupancy load for each occupied space; and
- f. all means of egress for each building; and
- g. a detailed explanation of how each space complies with Life Safety 101 requirements; and
- h. a full set of construction plans for any proposed upgrades to fire protection systems for the pier.

The Life Safety Analysis for the entire pier is required in order to properly evaluate not only fire measures necessary to ensure the safety of each building but also to make an informed determination of the allowable occupancy load for the entire pier and to ensure the convergence point for existing the pier is appropriately wide to ensure safe egress in emergency situations. In the absence of an evaluation for the entire pier, this determination cannot be made. **Upon receipt of this letter, please contact Captain Greg Cass and let him know that date upon which you will submit this information. Should you fail to respond to this letter within two weeks of your receipt of it or fail to provide the requested information within 30 days of the date of this letter, the City be forced to take legal action to ensure the pier is safe.**

### 3. Dangerous Building

In April 2006 the City informed you of a dangerous, dilapidated building on Custom House Wharf (east side of the Wharf, tax id 030 A 001, beyond number 42). The building was posted in January 2006. Nothing has been done to address this building. A recent inspection observed what appears to be living arrangements within the structure. **You have two weeks to submit a plan of action regarding this building or the City will initiate enforcement action.** The status of this building has not changed despite several communications from the City and its present condition is posing a danger to the public.

### 4. Newly Approved Building at End of Pier

You received approval through a conditional rezoning to construct a new building at the end of Custom House Wharf. The City understands the building is being advertised for rent. Please understand that the building does not yet fully comply with all site plan requirements. As a result, no certificate of occupancy will issue for that building. Moreover, until the City has received and reviewed the information requested in #1 above relative to the overall condition of the pier infrastructure, the building will not be allowed to be occupied. The City is providing this information to



You at this time so that you can address any outstanding issues/deficits now to avoid any delays later.

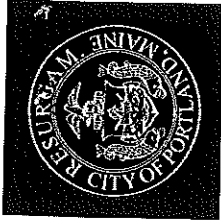
We trust that you will respond to the issues raised in this letter immediately and we look forward to working with you to ensure you and your tenants fully meet the City's Code requirements.

Sincerely,

Penny Littell  
Associate Corporation Counsel

Cc: Joseph Gray  
Gary Wood  
Lee Urban  
Fred Lamontange  
Jeanie Bourke  
Greg Cass  
Chris Hanson  
Marge Schmuckal  
Suzanne Hunt

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# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life* · [www.portlandmaine.gov](http://www.portlandmaine.gov)

**Planning and Development Department**  
Lee D. Urban, Director

**Inspection Services Division**  
Jeanie Bourke, Director

October 26, 2007

PROPRIETORS OF CUSTOM HOUSE  
5 EASTERN PROMENADE  
PORTLAND, ME 04101

**CBL: 030 A001001**  
**Located at 86 COMMERCIAL ST**

**Hand Delivery**

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Failure to comply will result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code in Title 30-A of M.R.S.A ss 4452.

This constitutes an appealable decision pursuant to Section 14-472 of the Code. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Chris Hanson @ (207) 874-8696  
CEO/Plan Review



# PORTLAND

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[www.portlandmaine.gov](http://www.portlandmaine.gov)

Corporation Counsel  
Gary C. Wood

October 26, 2007

Ken MacGowen  
Oliver Keithly  
Cogee Entertainment, Inc.  
16 Custom House Wharf  
Portland, Maine 04101

Associate Counsel  
Elizabeth L. Boynton  
Penny Littell  
James R. Adolf  
Mary E. Costigan

96 Crestview Drive  
South Portland, Maine 04106

Dear Mr. Mac Gowen and Keithly:

This is a **NOTICE** to you, and to Cogee Entertainment Inc., that no certificate of occupancy (among other required permits and licenses) has been issued for space on Custom House Wharf formerly occupied by Boone's Restaurant. **NO USE OF THIS SPACE IS PERMITTED UNLESS AND UNTIL THE OWNER/LESSEE OBTAINS FROM THE CITY ALL REQUIRED STATE AND LOCAL PERMITS.**

Should any use of this space take place absent compliance with the Portland City Code and/or State licensing requirements, you will be cited for violations.

Please be advised that the City will be providing a list of existing issues which must be addressed for that space and the other associated areas before occupancy of that space will be allowed.

Sincerely,

Penny Littell  
Associate Corporation Counsel

Cc: Joseph Gray  
Gary Wood  
Lee Urban  
Fred Lamontange  
Jeanie Bourke  
Greg Cass



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Lee D. Urban, Director

**Inspection Services Division**  
Jeanie Bourke, Director

October 26, 2007

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CEO/Plan Review

# COPY



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Gary C. Wood

October 26, 2007

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