

# CITY OF PORTLAND, MAINE

## PLANNING BOARD

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July 20<sup>th</sup>, 2015

Steve Brinn  
Jewish Community Alliance of Southern Maine  
57 Ashmont Street  
Portland ME 04103

Bradlee Mezquita, PE  
Tighe & Bond  
177 Corporate Drive  
Portsmouth, NH 03801

Project Name: Jewish Community Center and Preschool/Daycare  
Conditional Use and Level III Site Plan

Project #: #2015-058 (Conditional Use and Site Plan)

Address: 1342 Congress Street, Portland

CBL: 191-B016 & 017

Applicant: Jewish Community Alliance of Southern Maine

Planner: Jean Fraser

Dear Mr. Brinn and Mr Mezquita:

On July 14<sup>th</sup>, 2015, the Planning Board considered the Conditional Use and Site Plan application for the construction of a neighborhood center (defined as a "Place of Assembly") and preschool/daycare on the site of the existing St. Patrick's Catholic Church at 1342 Congress Street. The project includes demolition of the existing church (14,960 sq. ft.) and construction of a single story 19,300 sq ft building on a site of 91,126 sq feet. The Planning Board reviewed the proposal for conformance with the standards of the Conditional Use Review and Site Plan Ordinance, and approved the application with the following waivers and conditions as presented below.

### A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on July 14, 2015 for application #2015-058 (Conditional Use and Site Plan) (1342 Congress Street) relevant to Portland's Technical and Design Standards and other regulations; and the testimony presented at the Planning Board hearing:

1. ***Driveway width:***

The Planning Board voted 6-0 (Morrissette absent) to waive Technical Design Standard Section 1.7.1.3 to allow the proposed driveway to be 22.7 feet wide for one section near Congress Street as shown on the Site Plan in Plan P6;

2. ***Soil survey***

The Planning Board voted 6-0 (Morrissette absent) to waive Technical Design Standard Section 7 *Soil Survey Standards* that require a soil survey as the applicant has previously taken soil borings as part of an earlier environmental assessment.

### B. CONDITIONAL USE

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on July 14, 2015 for application #2015-058 (Conditional Use and Site Plan) (1342 Congress Street), relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board voted 6-0 (Morrissette absent) that the proposed conditional use for a place of assembly at 1342 Congress Street as described in the application does meet the standards of Section 14-474 and the standards of Section 14.118 (b) 3 for the R5 zone, without any conditions but granted for two years.

## C. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for the public hearing on July 14, 2015 for application #2015-058 (Conditional Use and Site Plan) (1342 Congress Street), relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing:

The Planning Board voted 6-0 (Morrissette absent) that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions:

- i. That the recorded easement with Charter Westgate, regarding use of the shared drive, shall be submitted to the Planning Authority prior to the issuance of a building permit; and
- ii. That the Parking License (for use of the abutting dental offices lot) and the Drainage Improvements and Temporary Construction Easement (abutters to south) shall be executed and submitted to the Planning Authority prior to the issuance of a building permit; and
- iii. That the applicant revise the curb ramp layout at Congress Street in accordance with the comments of Tom Errico dated June 26, 2015, with revised plans to be reviewed and approved by the Planning
- iv. That the height of the boundary fence along the eastern boundary and associated buffer treatment be the subject of further discussion with the City Arborist, Planning Authority and nearest neighbor (P Bernard) and any agreed revisions be shown on a revised Site Plan/Landscape Plan for final approval prior to the issuance of a building permit; and
- v. The developer/contractor/subcontractor must comply with conditions of the submitted and approved stormwater management plan and sediment and erosion control plan and associated inspection and maintenance manual, based on City standards and state guidelines. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. The two maintenance agreements (one for the applicants site and one for the abutters site) for the stormwater drainage system shall be submitted, signed and recorded with a copy to the Planning Division and Department of Public Services prior to the issuance of a building permit; and
- vi. That additional lighting information shall be submitted in respect of the widened drive access and building entrance nearest to Congress Street to show that the site lighting meets the City Technical Standards, and any deficiencies shall be addressed in a revised lighting plan for review and approval prior to the issuance of a building permit; and
- vii. That all heating, ventilation and air conditioning shall be screened and located away from abutting residential properties.

## STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved site plans:

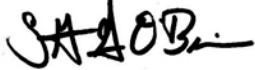
1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend site plan approval must be received before the one (1) year expiration date. The Conditional Use permit will be deemed to have expired unless work has commenced within two (2) years of the approval.

4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

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

If there are any questions, please contact Jean Fraser at 874-8728 or via [jf@portlandmaine.gov](mailto:jf@portlandmaine.gov).

Sincerely,



Stuart O'Brien, Chair  
Portland Planning Board

**Attachments:**

1. Traffic engineering Review comments dated 6.26.2015
2. Planning Board Report
3. City Code Chapter 32
4. Sample Stormwater Maintenance Agreement
5. Performance Guarantee Packet

**Electronic Distribution:**

Jeff Levine, AICP, Director of Planning and Urban Development  
 Barbara Barhydt, Development Review Services Manager  
 Jean Fraser, Planner  
 Philip DiPierro, Development Review Coordinator, Planning  
 Ann Machado, Zoning Administrator, Inspections Division  
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 Doug Roncarati, Stormwater Coordinator, Public Services

Greg Vining, Associate Engineer, Public Services  
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 Jane Ward, Administration, Public Services  
 Jeff Tarling, City Arborist, Public Services  
 Jeremiah Bartlett, Public Services  
 Keith Gautreau, Fire Department  
 Jennifer Thompson, Corporation Counsel  
 Thomas Errico, P.E., TY Lin Associates  
 David Senus, P.E., Woodard and Curran  
 Rick Blackburn, Assessor's Department  
 Approval Letter File

6/26/2015 10:38:35 AM

**From:** Tom Errico [thomas.errico@tylin.com](mailto:thomas.errico@tylin.com)  
**To:** Fraser, Jean  
**CC:** Bartlett, Jeremiah Earley, Katherine Margolis-Pineo, David Tarling, Jeff  
**Subject:** Jewish Community Center - Final Traffic Comments

Jean – I have reviewed the revised application materials and the following represents a status update on my previous comments.

- Maine Traffic Resources conducted a Trip Generation Analysis for the project and concludes that the proposed Jewish Community Center will generate less traffic as compared to St Patrick's Church. The applicant should provide an estimated comparison between the former Church use and the proposed project during the weekday AM and PM peak hours. My general sense is that during the AM peak hour the net change may not be significant given weekday morning Church services. During the weekday PM peak hour, I suspect the Church did not have regular weekday activities, while the proposed use will add traffic in conjunction with the day-care use.

**Status: The applicant has submitted updated trip generation information and is estimating an increase of 50 to 60 additional PM peak hours trips as compared to the former St. Patrick's Church. The applicant has noted that this estimate is likely high given existing facility conditions, which I agree with given my site observations. I find the trip generation estimate to be reasonable and I have no further comment.**

- I find driveway conditions along Congress Street to be improved with the elimination of existing driveways.

**Status: I have no further comment.**

- The driveway entering the site from Congress Street is noted as having a width of 22.7 feet. This width (in the area where parking maneuvers occur) does not meet City standards and thus a formal waiver should be requested by the applicant.

**Status: I find the proposed driveway width to be acceptable given that most vehicles will be passenger cars and that a secondary driveway via the Westgate Shopping Center will be provided. I support this waiver request.**

- A detectible warning panel is not required at the site driveway on Congress Street.

**Status: The plans have been revised and I have no further comment.**

- I would suggest a tip-down curb entering the driveway on Congress Street, as currently provided.

**Status: The curb ramp layout should be revised so that the ramp flare does not impact accessibility along the sidewalk route. Having a tip-down design will help to address this issue.**

- The applicant shall provide a Parking Supply analysis that documents parking needs both under a typical weekday scenario and during Community Center events.

**Status: The applicant has provided an analysis of event parking demand and estimates a need for approximately 50 vehicles. I find this estimate to be generally reasonable and given agreements for use of abutting parking lots, I find the projects parking supply to be acceptable. I have no further comment.**

- I find the vehicular connection to Westgate Shopping Center to be an excellent access management strategy that will allow traffic from the Community Center to utilize the traffic signal at Stevens Avenue. I would note that this connection can also serve traffic from the abutting medical office building and traffic from Lassell Street. Accordingly, I would suggest that access use rights be provided. While I would prefer that the connection to the Westgate Shopping Center to be more direct, given the potential for vehicle/pedestrian conflict, the proposed plan appears acceptable. The applicant should provide a response on this issue and how they see traffic circulation interacting with site activity.

**Status: An agreement has been provided and I have no further comment.**

- The applicant shall consider the formal delineation of the driveway along the medical office property boundary, when entering from Congress Street.

**Status: The site plan has been revised and I find conditions to be acceptable.**

- The applicant should provide specifics about how the Daycare pick-up and drop-off activity will be managed from traffic perspective.

**Status: The applicant has provided the requested information and I have no further comment.**

- I'm concerned that the ITE data is not a good source for estimating traffic for the proposed project. I would suggest that the applicant conduct traffic counts/surveys at existing facilities to better estimate traffic levels. I would also like to get a better understanding on historic traffic activity at St. Patrick's Church. I recognize that traffic volumes are not likely to be available, but information on daily services and other event details would be helpful for my review and understanding of project impacts. The applicant should attempt to provide specific church service information, if available.

**Status: As noted above the applicant has provided a reasonable estimate and I have no further comment.**

- The pick-up and drop-off of daycare and others will need to be carefully managed. Accordingly, the applicant should provide specific details on how this process will take place. This should include what building entrances will be used, sidewalk facilities between parking spaces and the noted entrance, etc. I would note that the pick-up/drop-off program must be managed such that vehicles are not parking along the driveway off Congress Street.

**Status: I have reviewed existing JCA activity at their current Portland site and I have recommended that a barrier be constructed that prevents pedestrians from accessing the building entrance near Congress Street. The applicant has revised the site plan to include a 18" sitting wall along the curb. While the height of the wall is mountable by pedestrians, I do believe the physical presence of the wall will deter drop-off and pick-up activity near Congress Street. Accordingly, I find conditions to be acceptable.**

Please contact me if you have any questions.

Best regards,

Thomas A. Errico, PE

Senior Associate

Traffic Engineering Director

**TYLIN** INTERNATIONAL

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# PLANNING BOARD REPORT PORTLAND, MAINE

Jewish Community Center and Preschool/Daycare 1342 Congress Street

Conditional Use & Level III Site Plan Review

Jewish Community Alliance of Southern Maine, Applicant

Project # 2015-058

CBL: 191 B-16 & 17

Submitted to: Portland Planning Board Public Hearing Date: July 14, 2015	Prepared by: Jean Fraser, Planner Date: July 10, 2015
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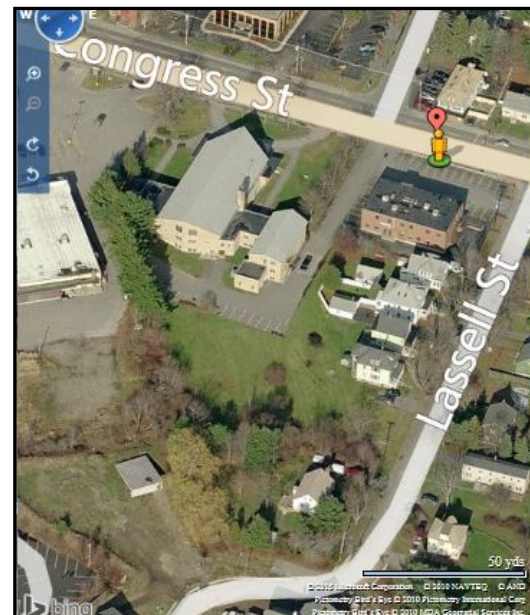
## I. INTRODUCTION

The Jewish Community Alliance of Southern Maine, as represented by Bradlee Mezquita of Tighe & Bond, has submitted a final Level III Site Plan and Conditional Use application for the construction of a single story 19,300 sq ft neighborhood center (defined as a “Place of Assembly”) and preschool/daycare on the site of the existing St. Patrick’s Catholic Church next to Westgate Shopping Center and extending back to Lassall Street behind residential properties.

The Planning Board considered this project at a Workshop on May 19, 2015 and since then the applicants have developed a comprehensive final submission that includes agreements with neighbors and addresses all of the traffic, parking and stormwater management concerns.

The existing church was closed in 2013 and its removal is a requirement in the terms of the sale (P&S Agreement in Attachment D) from the Roman Catholic Bishop of Portland. It will be demolished and a new building constructed. The existing church is not designated an historic landmark nor is within an historic district, so the demolition is not part of the current review.

The two acre site is located in the R5 residential zone where both “Places of Assembly” and “Day care facilities” are conditional uses, although in this case the Planning Board is the reviewing authority for the “Places of Assembly” aspect of the proposal, and the Zoning Board of Appeals (ZBA) has approved the preschool/daycare element of the project (Attachment 8).



**Applicant:** Jewish Community Alliance of Southern Maine

**Consultants:** Bradlee Mezquita of Tighe & Bond

## II. REQUIRED REVIEWS

<i>Applicant’s Proposal</i>	<i>Applicable Standards</i>
New structure of 19, 300 sq ft	Level III Site Plan
Place of Assembly (Neighborhood Center) of 10,000 sq ft or less	Institutional Conditional Use in the R5 zone [14.118 (b) 3] (Planning Board review)
Day care facilities	Other Conditional Use in the R5 zone [14.118 (c) 3] (Zoning Board of Appeals review)



**III. WAIVERS:**

<i>Waiver</i>	<i>Standard</i>
<b>Soil survey:</b> The applicant requests a waiver for completing a soil survey, as they have undertaken soil borings as part of an earlier environmental assessment.	<i>Technical Manual Section 7 Soil Survey Standards</i> requires soil surveys for all Level III site plan applications. Staff support a waiver of this requirement.
<b>Driveway Width:</b> The applicant requests a waiver from the 24 feet width requirement to provide 22.7 foot wide drive for one section near Congress Street where it is opposite the abutters existing parking, some of which is on the applicant’s property.	<i>Technical Manual Section 1.7.1.3</i> specifies that driveway access is preferred to be 24 feet wide, and a minimum of 20 feet. Staff support this waiver ( <u>Att 2</u> )

**IV. PROJECT DATA**

<i>SUBJECT</i>	<i>DATA</i>
<b>Existing Zoning</b>	R-5 Residential
<b>Existing Use</b>	Vacant church
<b>Proposed Use</b>	Place of Assembly and Day Care (new building)
<b>Parcel Size</b>	2 acres (91,146 sq ft)
<b>Impervious Surface Area</b>	
--Existing	36,810 sq ft
--Proposed	48,310 sq ft
--Net Change	11,500 sq ft
<b>Total Disturbed Area</b>	Approx 85,000 sq ft
<b>Building Footprint</b>	(both are single story buildings)
--Existing	14,960 sq ft
--Proposed	19,300 sq ft
--Net Change	4,340 sq ft
<b>Parking Spaces</b>	
-Existing	13
-Proposed	50
# handicapped	2
<b>Bicycle parking Spaces</b>	
-Existing	0
-Proposed	3
<b>Estimated cost of the project</b>	TBD

**V. EXISTING CONDITIONS**

The parcel is in the R5 zone and located between the Westgate Shopping center (B2 zone) to the west and the 1330 Dental offices to the east, on the south side of Congress Street. The paved area alongside the dental building is part of the site and includes one of the existing access drives, which would be enhanced for the proposed neighborhood center. The Congress Street sidewalk is in good condition (Att 4), but the area of the drive access is not clearly defined and the proposal will remove the row of five (5) trees along the side. There is other existing peripheral vegetation that is also proposed to be removed.

The existing St Patrick’s Catholic Church faces Congress Street with a looped drop off drive to the door.

The Westgate Plaza parking lot hugs the western edge of the site, and there is a shared access driveway that links the Plaza and the rear part of the church site. The owners of the Plaza have formalized the previous shared use in a signed easement (Att J).



The site is triangular in shape with the southern corner on Lassall Street. It includes a large area of grass at the rear (with some edge vegetation) and is bounded on the east by 5 properties: a commercial dental office and four residential buildings that front Lassall Street. Two of the residential owners are concerned about the fencing of the grassed area that connects to Lassall Street (see right and [PC 1 and 4](#)).



## V. PROPOSED DEVELOPMENT

The applicant proposes to demolish the existing church building and construct a new single story building with a larger footprint (19,300 sq ft) to accommodate a neighborhood center and daycare facility (described in [Attachment A](#) and shown in [Plans P2 to P16](#)).

The neighborhood center is at the front of the building and falls under the ordinance definition (14-47) of a neighborhood center:

*Neighborhood Center: A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and services, usually owned and operated by a public or nonprofit group or agency. A neighborhood center is 10,000 square feet or less.*

The floor plan helps to understand how the site will work in terms of pedestrian and vehicle access, and play areas for the children. A detailed and slightly revised floorplan is in [Attachment K](#), but this colored version helps to clarify the combination of uses: (Congress Street is to the right):

- Orange: Approx 4000 sq ft assembly area
- Blue: Offices
- Green: Day care

The Site Plan below (and in [Plans P5 and P6](#)) includes:

- Two drives (drop off loop at front removed)
- Parking lot for 50 vehicles
- Two play areas, both fenced
- Lighting in the rear part of the site
- Snow storage around parking lot
- Stormwater management
- Stockade fence along the two sides of the rear boundary

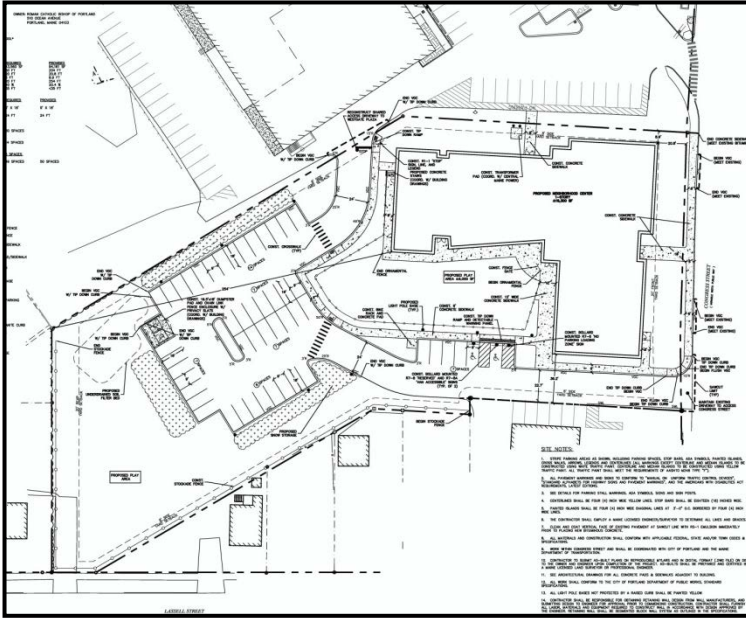


Added since the Workshop: (see comparison of plans below)

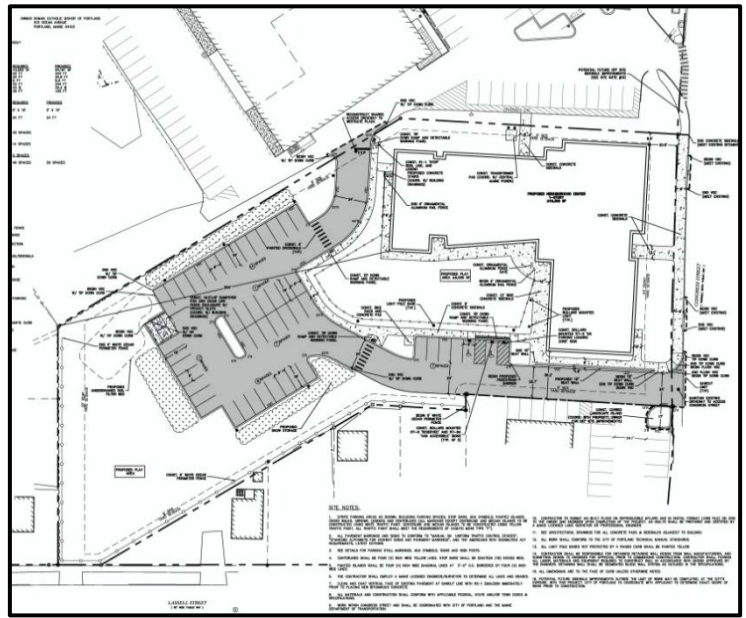
- 17 foot wide curbed landscaped island to delineate the driveway off of Congress Street
- Incorporated a barrier along west side of the main drive to prevent cars stopping to drop off
- Additional planting
- Revised lighting to reduce trespass
- Revised stormwater management and treatment
- Revised the elevations

The applicant has also arranged for 3 easements to facilitate the development and the stormwater agreements have also been submitted ([Attachments J, M and N](#)).





As presented to Workshop



Final for hearing (see also Plan P6)

**VI. PUBLIC COMMENT AND WORKSHOP DISCUSSIONS**

**Workshop on May 19, 2015**

The preliminary site plan submission was considered by the Board to be somewhat weak because a number of issues did not appear to have been addressed, including traffic and parking safety in respect of the daycare use; how the parking demand would be addressed; and information on the scale and compatibility of the design. The applicant has submitted a final application that is very comprehensive although the design element may still be an issue.

**Public comments**

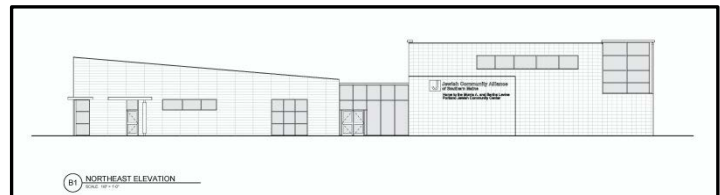
A total of 147 notices of this Hearing were sent to property owners within 500 feet and to interested citizens, and the notice was published in the July 3<sup>rd</sup> / 6<sup>th</sup>, 2015 editions of the *Portland Press-Herald*. A Neighborhood Meeting is required for this project and was held on May 5, 2015 and attended by 16 people; the notes of the meeting are included at Attachment I. As of the time of completing this Report, the Planning office has received a total of 5 public comments (Attached as PC1- PC5), of which the last two are since the Workshop. PC1 and PC4 are from Patricia Bernard who is the closest neighbor, backs onto the area nearest to the day care entrance and has a number of concerns. These are discussed within the site plan review section of this report.

The letter from the Libbytown Neighborhood Association (PC 5) raises concerns regarding the design of the new building as it faces Congress Street. There are no design standards that apply to this R5 location and the proposed front and east elevations are shown below:

AS PRESENTED AT WORKSHOP:



AS PRESENTED FOR HEARING:  
(extract from Plan P2)



The applicant was requested to clarify the thinking behind the design and submitted the following (Attachment O):

*We are very appreciative with the feedback provided us from the Libbytown Neighborhood Association in their letter to the Jewish Community Alliance of Southern Maine dated June 30, 2015. With respect to the concern raised regarding the elevation of the front façade of the community hall, and the desire for additional embellishment, we offer the following. The form of the community hall is being carefully designed to consider the appropriate scale at both a vehicular and pedestrian level on the north corner of the site while responding to internal program demands. Its architectural expression is principally achieved through its cladding and fenestration materials and layout as well as the graphic nature of the building's sign, all of which are being constantly refined through the design process. The exterior elevations submitted as part of the Planning Board submission graphically represent these qualities but don't offer the experiential perception of perspective and the relationship of this form to its context – the surrounding neighborhood and adjacent structures. We are glad to continue to update interested parties as we progress in this endeavor and are confident that this building's expression will be an enhancement to the community.*

## **VII. RIGHT, TITLE AND INTEREST AND FINANCIAL/TECHNICAL CAPACITY**

### ***Right, Title and Interest***

The owner of the property is the Roman Catholic Bishop of Portland and a Purchase and Sale Agreement between the owner and the applicant was submitted (Attachment D). The applicant was requested to secure the rights to access from the Westgate Plaza owners prior to the hearing because the project would not be possible without it, and that was submitted in Attachment J. The City's legal Department reviewed this easement and finds it acceptable while noting the limitations on the easement running with the land (outlined in Paragraph 5) means that the easement will no longer be in effect if the ownership or use of the property changes substantially (Attachment 6).

### ***Financial Capacity***

A letter from Key Bank dated April 2, 2015 was submitted as evidence of financial capacity (Attachment E).

## **VIII. STAFF REVIEW**

### **A. ZONING ASSESSMENT**

The site is located in the R5 residential zone and the submitted site plan includes a zoning assessment in respect of dimensions, and the proposal meets these zoning requirements. The daycare is a conditional use in this zone (14-118) and was reviewed by the ZBA on May 21, 2015 and found to be in compliance with the standards (Attachment 7).

### **B. CONDITIONAL USE REVIEW**

The site was previously a religious place of assembly and is now proposed as a neighborhood center with a large daycare facility. The daycare use is a ZBA conditional use review. The proposed neighborhood center is approximately 6500 sq ft (according to the data on the overall site plan (Plan P5) and comprises an assembly room of about 4000 sq ft and offices and conference rooms in the wing nearest Congress Street. The applicant's cover letter addresses the conditional use standards (Attachment A).

Per 14-118 (b) 3, the Planning Board is the reviewing authority for the Neighborhood Center which is classified as a Place of Assembly, as defined:

*Place of assembly: A building or portion of a building used as a community hall, neighborhood center, private and fraternal organization or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, neighborhood center, private and fraternal organization or place of religious assembly where fifteen (15) or fewer people, not including the permanent residents of a single family dwelling, assemble.*

The ordinance standards and staff comments are listed below (ordinance text is in *italics*):

Sec. 14-118. Conditional uses.

*The following uses shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:*

*(b) Institutional: Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article, or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:*

3. *Places of assembly;*

*Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:*

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

**Staff comment:** The proposal is replacing a religious place of assembly with a neighborhood center place of assembly with no expansion.

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

**Staff comment:** The proposal does not displace any residential uses.

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

**Staff comment:** The daycare facility is not considered an institutional use and therefore there is just the neighborhood center to be considered.

*d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and*

**Staff comment:** The applicant has submitted a Level III Site Plan application which is being reviewed concurrently.

The following standards apply to all conditional uses:

*2. Standards. The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that the proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. The Board shall find that this standard is satisfied if it finds that:*

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

**Staff comment:** The site is in the R5 zone which allows schools, hospitals, colleges and universities, most of which would have greater traffic generation and parking requirements than the proposed use. It is located immediately adjacent to the B2 zone, which allows a range of business uses (eg restaurants, theatres and performance halls) as well as the institutional uses allowed in the R5 zone.

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

**Staff comment:** The proposed “place of assembly” creates different impacts as compared to the former church, in that the daycare would be operating every day and the hours and frequency of evening use are not identified in the submissions. It is therefore possible that there could be some noise impacts on the immediate neighbors (4 immediate properties in total with some multifamily) since the parking, access and building entrances are nearer to these residents. However, it is unlikely that the proposed “place of assembly” use would create more noise than a school, hospital, or college/university, which are allowed uses in the R5 zone.

If the Planning Board believes that noise may be a potential concern associated with this conditional use, staff suggest a condition of approval that defines the hours of operation to limit noise issues in the late evening. The B-1 zone, which acts as a transitional zone between residential and commercial uses, currently limits the hours of operation for retail and restaurant uses to 6:00 am to 11:00pm and could be used as a model for this project. The lighting would need to be designed to avoid any impacts on abutters and that would be addressed in the site plan review.

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

Staff comment: The place of assembly use is similar to the former church, with gatherings generally occurring at off-peak hours and with potentially less traffic (due to the proposed assembly room areas being smaller - see details in the Traffic Memo in Attachment F). Larger gatherings will be accommodated with on-site parking, the agreed parking during off peak times at the abutting dental offices, and shared-use parking at the adjacent shopping center, with similar or fewer impacts than those associated with surrounding uses or other allowable uses in the zone.

### **C. DEVELOPMENT REVIEW (SITE PLAN STANDARDS in Section 14-526)**

The applicant has provided a comprehensive application, with additional information and easement/agreements as necessary to facilitate the project (Attachments A to O and Plans P1 to P16). The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's site plan ordinance and applicable regulations.

#### **A. *Transportation Standards***

##### Impact on Surrounding Street system and Access and Circulation

The proposed neighborhood center and daycare would utilize the two main existing drives which currently serve about a dozen parking spaces. The proposed site plan (Plan P5 and Plan P6) shows that these drives would be providing access to 50 space parking spaces, which would be used regularly for dropping off and picking up children from the daycare use.

At the Workshop there were a number of questions regarding the traffic generated by the daycare use and whether it was safe relative to Congress Street, plus other concerns about pedestrian safety. Since then the applicant has met with Tom Errico, Traffic engineering Reviewer, and submitted additional information to address all of the issues raised at the Workshop as described in detail in their cover letter (page 3 & 4 of Attachment A).

Tom Errico, the Traffic Engineering Reviewer, has confirmed that his comments have been addressed in full (Attachment 2) :

- *Maine Traffic Resources conducted a Trip Generation Analysis for the project and concludes that the proposed Jewish Community Center will generate less traffic as compared to St Patrick's Church. The applicant should provide an estimated comparison between the former Church use and the proposed project during the weekday AM and PM peak hours. My general sense is that during the AM peak hour the net change may not be significant given weekday morning Church services. During the weekday PM peak hour, I suspect the Church did not have regular weekday activities, while the proposed use will add traffic in conjunction with the day-care use.*

**Status: The applicant has submitted updated trip generation information and is estimating an increase of 50 to 60 additional PM peak hours trips as compared to the former St. Patrick's Church. The applicant has noted that this estimate is likely high given existing facility conditions, which I agree with given my site observations. I find the trip generation estimate to be reasonable and I have no further comment.**

- *I find driveway conditions along Congress Street to be improved with the elimination of existing driveways.*

**Status: I have no further comment.**

- *The driveway entering the site from Congress Street is noted as having a width of 22.7 feet. This width (in the area where parking maneuvers occur) does not meet City standards and thus a formal waiver should be requested by the applicant.*

**Status: I find the proposed driveway width to be acceptable given that most vehicles will be passenger cars and that a secondary driveway via the Westgate Shopping Center will be provided. I support this waiver request.**

- *A detectible warning panel is not required at the site driveway on Congress Street.*

**Status: The plans have been revised and I have no further comment.**

- *I would suggest a tip-down curb entering the driveway on Congress Street, as currently provided.*

**Status: The curb ramp layout should be revised so that the ramp flare does not impact accessibility along the sidewalk route. Having a tip-down design will help to address this issue.**

- *I find the vehicular connection to Westgate Shopping Center to be an excellent access management strategy that will allow traffic from the Community Center to utilize the traffic signal at Stevens Avenue. I would note that this connection can also serve traffic from the abutting medical office building and traffic from Lassell Street. Accordingly, I would suggest that access use rights be provided. While I would prefer that the connection to the Westgate Shopping Center to be more direct, given the potential for vehicle/pedestrian conflict, the proposed plan appears acceptable. The applicant should provide a response on this issue and how they see traffic circulation interacting with site activity.*

**Status: An agreement has been provided and I have no further comment.**

- *The applicant shall consider the formal delineation of the driveway along the medical office property boundary, when entering from Congress Street.*

**Status: The site plan has been revised and I find conditions to be acceptable.**

- *The applicant should provide specifics about how the Daycare pick-up and drop-off activity will be managed from traffic perspective.*

**Status: The applicant has provided the requested information and I have no further comment.**

- *I'm concerned that the ITE data is not a good source for estimating traffic for the proposed project. I would suggest that the applicant conduct traffic counts/surveys at existing facilities to better estimate traffic levels. I would also like to get a better understanding on historic traffic activity at St. Patrick's Church. I recognize that traffic volumes are not likely to be available, but information on daily services and other event details would be helpful for my review and understanding of project impacts. The applicant should attempt to provide specific church service information, if available.*

**Status: As noted above the applicant has provided a reasonable estimate and I have no further comment.**

- *The pick-up and drop-off of daycare and others will need to be carefully managed. Accordingly, the applicant should provide specific details on how this process will take place. This should include what building entrances will be used, sidewalk facilities between parking spaces and the noted entrance, etc. I would note that the pick-up/drop-off program must be managed such that vehicles are not parking along the driveway off Congress Street.*

**Status: I have reviewed existing JCA activity at their current Portland site and I have recommended that a barrier be constructed that prevents pedestrians from accessing the building entrance near Congress Street. The applicant has revised the site plan to include a 18" sitting wall along the curb. While the height of the wall is mountable by pedestrians, I do believe the physical presence of the wall will deter drop-off and pick-up activity near Congress Street. Accordingly, I find conditions to be acceptable.**

**Parking:** The Site Plan (Plan P5) shows 50 spaces on the plan and this meets the zoning requirement of 49 spaces that is based on:

- 30 spaces for the neighborhood center – based on 1 parking space for each 150 sq ft of floor area used for the neighborhood center, which the Zoning Administrator advises applies to the assembly room/multipurpose rooms only (4375 sq ft);
- 14 spaces for the day care - based on 1 space for each of the 14 day care staff members; and
- 5 spaces for the office component- based on 2000 sq ft of offices and 1 space per 400 sq ft.



The on-site provision did not address the demand for special events, and the applicant has provided additional information on the expected parking demand (Attachment A and F) and secured a parking license for about 40+ parking spaces in the dental offices parking lot immediately abutting the site and accessible from the same drive (Attachment N).

Mr Errico has confirmed (Attachment 2):

- *The applicant shall provide a Parking Supply analysis that documents parking needs both under a typical weekday scenario and during Community Center events.*

***Status: The applicant has provided an analysis of event parking demand and estimates a need for approximately 50 vehicles. I find this estimate to be generally reasonable and given agreements for use of abutting parking lots, I find the projects parking supply to be acceptable. I have no further comment.***

## **B. Environmental Quality Standards**

### Landscape Preservation, Buffers and Parking Lot Landscaping

The Demolition Plan in Plan P4 shows the proposed removal of the 5 trees alongside the drive by the dental offices, and a considerable area of vegetation around the back of the site is also removed including near Lassall Street. A further 12 conifer trees are removed along the west boundary, which will become snow storage and parking area. The City Arborist expressed concern about the loss of the trees and also suggested the incorporation of a landscaped island at Congress Street (Attachment 5)

The Landscape Plan (Plan P16) was revised to include additional planting and a 17 foot wide landscaped island between the parking in the dental offices site and the widened drive into the neighborhood center.

At the time of completing this report the City Arborist has not provided final comments and these will be circulated to the Board at the hearing. The creation of the new island is welcomed.

The nearest neighbor (Pat Bernard, see PC 4) is concerned about the height of the stockade fence but is on vacation and there has not been an opportunity to discuss this with her. The applicant has noted her concern in their response letter (Attachment O) and are open to lowering the fence, as is the City Arborist. A suggested condition of approval addresses this unresolved issue of boundary treatment for the nearest neighbor.

### Water quality; Stormwater Management; Erosion control:

The proposal creates an additional 11,500 sq ft of impervious surface and includes an improved stormwater management and treatment system comprising Stormtech chambers and an underdrained soil filter bed. The applicant submitted a Drainage Study as part of the original submission and revised it prior to the Workshop in response to the Peer Engineer Dave Senus's comments. At that time there were three outstanding issues (roof discharge; upgrade and responsibility for the southern outfall, and planting plan for the rain garden) and these have now been addressed to the satisfaction of the Peer Engineering Reviewer (Attachment 1).

The final arrangements involve a temporary easement with the abutter and a stormwater agreement with the abutter as well as the applicant, and these have been drafted and are included in Attachment M. A suggested condition of approval requires these to be executed prior to the issuance of a building permit.

## **C. Public Infrastructure and Community Safety Standards (1)**

### Consistency with Master Plans and Public Safety and Fire Prevention

The proposals are generally acceptable in relation to these standards; the Fire Department has reviewed the fire truck turning templates and considers the access satisfactory (Attachment 4).

### Public Utilities

The capacity to serve letters have been submitted in respect of all utilities except wastewater disposal (Attachment G); a suggested condition of approval relates to that being submitted prior to the issuance of a building permit.

## **D. Site Design Standards**

*(note: there are no design standards that apply to this site)*

Historic Resources:

One of the public comments (PC 2) has suggested that the existing building has historic value and should not be demolished. The City's Historic Preservation Program Manager has been consulted and she confirmed that this question was raised with her in the past and at that time she researched the building/architecture and determined that it did not meet the criteria for historic designation.

The church that is selling the property has made it a requirement of the sale that the building be demolished. Whether it should be designated historic is a decision for the Historic Preservation Program Manager and the Historic Preservation Board.

Exterior Lighting:

The lighting plan has been revised since the Workshop to address earlier concerns regarding trespass (Plan P15). At the Workshop staff had requested further lighting information regarding the area along the improved access drive from Congress Street (at the Congress Street end) and on the front of the building by the entrance from the sidewalk, as the earlier plan did not show any lighting for these areas. Staff requested additional information to evaluate the existing lighting in these areas and whether some additional lighting should be added to address safety and security in those areas. This has not been received, so a suggested condition requests this information.

Noise and Vibration:

There are no anticipated impacts, but the ordinance standards have been reinforced in a suggested condition of approval.

**IX. STAFF RECOMMENDATION**

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed day care center and neighborhood center as proposed by Jewish Community Alliance of Southern Maine. The suggested conditions of approval are largely minor, although staff request guidance from the Board regarding a possible conditional use condition regarding the hours of use for the neighborhood center element of the project (see discussion in VIII B).

**VIII. MOTIONS FOR THE BOARD TO CONSIDER**

**A. WAIVERS**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on March 24, 2015 for application #2014-054 (Conditional Use) and #2013-248 (Site Plan) (709-713 Congress Street), relevant to Portland's Technical and Design Standards and other regulations; and the testimony presented at the Planning Board hearing:

1. *Driveway width:*

The Planning Board (waives/does not waive) Technical Design Standard Section 1.7.1.3 to allow the proposed driveway to be 22.7 feet wide for one section near Congress Street as shown on the Site Plan in Plan P6;

2. *Soil survey*

The Planning Board (waives/does not waive) Technical Design Standard Section 7 *Soil Survey Standards* that require a soil survey as the applicant has previously taken soil borings as part of an earlier environmental assessment.

**B. CONDITIONAL USE**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on July 14, 2015 for application #2014-058 (Conditional Use and Site Plan) (1342 Congress Street), relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board finds that the proposed conditional use for place of assembly at 1342 Congress Street as described in the application **does / does not** meet the standards of Section 14-474 and the standards of Section 14.118 (b) 3 for the R5 zone, subject to the following conditions:

- i. The Jewish Neighborhood Center shall be limited to hours of operation from 6:00 am to 11:00 pm.

### C. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for the public hearing on July 14, 2015 for application #2014-058 (Conditional Use and Site Plan) (1342 Congress Street), relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing:

The Planning Board finds that the plan **is / is not** in conformance with the site plan standards of the land use code, subject to the following conditions:

- i. That the recorded easement with Charter Westgate, regarding use of the shared drive, shall be submitted to the Planning Authority prior to the issuance of a building permit; and
- ii. That the Parking License (for use of the abutting dental offices lot) and the Drainage Improvements and Temporary Construction Easement (abutters to south) shall be executed and submitted to the Planning Authority prior to the issuance of a building permit; and
- iii. That the applicant revise the curb ramp layout at Congress Street in accordance with the comments of Tom Errico dated June 26, 2015, with revised plans to be reviewed and approved by the Planning Authority prior to the issuance of a building permit; and
- iv. That the height of the boundary fence along the eastern boundary and associated buffer treatment be the subject of further discussion with the City Arborist, Planning Authority and nearest neighbor (P Bernard) and any agreed revisions be shown on a revised Site Plan/Landscape Plan for final approval prior to the issuance of a building permit; and
- v. That the final comments of the Department of Public Services shall be addressed to the satisfaction of the Planning Authority prior to the issuance of a building permit; and
- vi. That the outstanding utility letter be submitted to the Planning Authority prior to the issuance of a building permit; and
- vii. The developer/contractor/subcontractor must comply with conditions of the submitted and approved stormwater management plan and sediment and erosion control plan and associated inspection and maintenance manual, based on City standards and state guidelines. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. The two maintenance agreements (one for the applicants site and one for the abutters site) for the stormwater drainage system shall be submitted, signed and recorded with a copy to the Planning Division and Department of Public Services prior to the issuance of a building permit; and
- viii. That additional lighting information shall be submitted in respect of the widened drive access and building entrance nearest to Congress Street to show that the site lighting meets the City Technical Standards, and any deficiencies shall be addressed in a revised lighting plan for review and approval prior to the issuance of a building permit; and
- ix. That all heating, ventilation and air conditioning shall be screened and located away from abutting residential properties.

[Attachments on next page]

**ATTACHMENTS:**

**Report attachments**

1. Peer Engineering Reviewer, Dave Senus comments
2. Traffic Eng. Reviewer Tom Errico comments
3. Dept of Public Services comments
4. Fire Dept. Keith Gautreau comments
5. City Arborist comments 5.15.2015
6. Legal Dept comments re Plaza easement
7. ZBA Determination re Day Care Cond. Use

**Public Comments**

- PC 1 P Barnard  
PC 2 P Jeffrey  
PC 3 P Jeffrey  
PC 4 P Bernard  
PC 5 Libbytown Neighborhood Association

**Applicants submittal**

- A. Tighe & Bond cover letter 6.24.2015
- B. Final Site Plan application
- C. Final Conditional use application (Places of Assembly)
- D. P&S Agreement
- E. Letter of financial capacity (Key Bank) 4.2.2015
- F. Traffic Analysis 3.19.2015; 3.13.2015 and 6.4.2015
- G. Utility letters
- H. Fire Dept Checklist & Wastewater application

**Applicants submittal, con't**

- I. Neighborhood Meeting documents
- J. Charter Westgate Easement Agreement
- K. Floor Plan
- L. Drainage Study
- M. Stormwater agreements
- N. Parking license re dental lot
- O. Response to public comments 7.8.2015

**Plans**

- P1. Survey
- P2. Exterior elevations
- P3. Cover Page
- P4. Existing Conditions and Demolition Plan
- P5. Overall site Plan
- P6. Site plan
- P7. Grading, Drainage and Erosion Control Plan
- P8. Utilities Plan
- P9. Erosion Control Notes and Details
- P10. P13. Details
- P14. Offsite Drainage
- P15. Site Lighting Plan
- P16. Landscape Plan

**CHAPTER 32 STORM WATER**

**Art. I. Prohibited Discharges, §§ 32-1--32-15**

**Art. II. Prohibited Discharges, §§ 32-16--32-35**

**Art. III. Post-Construction Stormwater Management, §§32-36-32-40**

**ARTICLE I. IN GENERAL**

**Sec. 32-1. Definitions.**

For the purposes of this article, the terms listed below are defined as follows:

*Applicant.* "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

*Best management practices ("BMP").* "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*Clean Water Act.* "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

*Discharge.* "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

*Enforcement authority.* "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

*Exempt person or discharge.* "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority



municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

*Municipality.* "Municipality" means the city of Portland.

*Municipal separate storm sewer system, or MS4.* "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

*National pollutant discharge elimination system (NPDES) storm water discharge permit.* "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-storm water discharge.* "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

*Person.* "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

*Pollutant.* "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

*Post-construction stormwater management plan.* "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

*Premises.* "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

*Qualified post-construction stormwater inspector.* "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

*Regulated small MS4.* "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

*Small municipal separate storm sewer system, or small MS4.* "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

*Storm drainage system.* "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

*Storm water.* "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

*Urbanized area ("UA").* "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-2.           Reserved.**

**Sec. 32-3.           Reserved.**

**Sec. 32-4.           Reserved.**

<b>Sec. 32-5.</b>	<b>Reserved.</b>
<b>Sec. 32-6.</b>	<b>Reserved.</b>
<b>Sec. 32-7.</b>	<b>Reserved.</b>
<b>Sec. 32-8.</b>	<b>Reserved.</b>
<b>Sec. 32-9.</b>	<b>Reserved.</b>
<b>Sec. 32-10.</b>	<b>Reserved.</b>
<b>Sec. 32-11.</b>	<b>Reserved.</b>
<b>Sec. 32-12.</b>	<b>Reserved.</b>
<b>Sec. 32-13.</b>	<b>Reserved.</b>
<b>Sec. 32-14.</b>	<b>Reserved.</b>
<b>Sec. 32-15.</b>	<b>Reserved.</b>

## **ARTICLE II. PROHIBITED DISCHARGES**

### **Sec. 32-16. Applicability.**

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

### **Sec. 32-17. Responsibility for administration.**

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

### **Sec. 32-18. Prohibition of non-storm water discharges.**

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-19. Suspension of access to the city's small MS4.**

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-20. Monitoring of discharges.**

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-21. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
  - (2) The cessation of discharges, practices, or operations in violation of this article.
  - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
  - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and



regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-22. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-37. Post-construction stormwater management plan approval.**

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

**Sec. 32-38. Post-construction stormwater management plan compliance.**

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the yare adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

**Sec. 32-39. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
  - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
  - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
  - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-40. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)



**STORMWATER DRAINAGE SYSTEM  
MAINTENANCE AGREEMENT**

**For SITE PLANS (THAT ARE NOT SUBDIVISIONS)**

**IN CONSIDERATION OF** the site plan approval granted by the Planning Board/Planning Authority of the City of Portland to the proposed \_\_\_\_\_ (*name of development and project number*), and the associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit A) submitted by \_\_\_\_\_, prepared by \_\_\_\_\_ (*engineer/agent*) of \_\_\_\_\_ (address) dated \_\_\_\_\_, and pursuant to a condition thereof, \_\_\_\_\_ (*name of owner*) a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of \_\_\_\_\_, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

That it, its successors and assigns, will, at its own cost and expense and at all times in perpetuity, maintain in good repair and in proper working order the \_\_\_\_\_ (*details of the system such as underdrained subsurface sand filter BMP system, rain gardens, storm drain pipes, underdrain pipes, catch basins*), (hereinafter collectively referred to as the “stormwater system”), as shown on the \_\_\_\_\_ Plan in Exhibit A and in strict compliance with the approved Stormwater Maintenance and Inspection Agreement (*insert correct name of document*) prepared for the Owner by \_\_\_\_\_ (copy attached at Exhibit B) and Chapter 32 of the Portland City Code.

Owner of the subject premises further agrees, at its own cost, to keep a Stormwater Maintenance Log. Such log shall be made available for inspection by the City of Portland upon reasonable notice and request.

Said agreement is for the benefit of the said City of Portland and all persons in lawful possession of said premises and abutters thereto; further, that the said City of Portland and said persons in lawful possession may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further, that after giving the Owner written notice and a stated time to perform, the said City of Portland, by its authorized agents or representatives, may, but is not obligated to, enter upon said premises to maintain, repair, or replace said stormwater system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the Owner upon written demand. Any funds owed to the City under this paragraph shall be secured by a lien on the property.



This Agreement shall also not be construed to allow any change or deviation from the requirements of the site plan most recently and formally approved by the Planning Board/Planning Authority of the City of Portland.

This agreement shall bind the undersigned only so long as it retains any interest in said premises, and shall run with the land and be binding upon the Owner's successors and assigns as their interests may from time to time appear.

The Owner agrees to record a copy of this Agreement in the Cumberland County Registry of Deeds within thirty (30) days of final execution of this Agreement. The Owner further agrees to provide a copy of this Agreement to any Condominium Association or management company, and to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions and the successor or assign will obtain and forward to the City's Department of Public Services and Department of Planning and Urban Development a similar Addendum from any other successor or assign.

For the purpose of this agreement and release "Owner" is any person or entity who is a successor or assign and has a legal interest in part, or all, of the real estate and any building. The real estate shown by chart, block and lot number in the records on file in the City Assessor's office shall constitute "the property" that may be entered by the City and liened if the City is not paid all of its costs and charges following the mailing of a written demand for payment to the owner pursuant to the process and with the same force and effect as that established by 36 M.R.S.A. §§ 942 and 943 for real estate tax liens.

Any written notices or demands required by the agreement shall be complete on the date the notice is attached to one or more doors providing entry to any buildings and mailed by certified mail, return receipt requested or ordinary mail or both to the owner of record as shown on the tax roles on file in the City Assessor's Office.

If the property has more than one owner on the tax rolls, service shall be complete by mailing it to only the first listed owner. The failure to receive any written notice required by this agreement shall not prevent the City from entering the property and performing maintenance or repairs on the stormwater system, or any component thereof, or liening it or create a cause of action against the City.

Dated at Portland, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
*(name of company)*

\_\_\_\_\_  
*(representative of owner, name and title)*

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_

Personally appeared the above-named \_\_\_\_\_ *(name and title)*, and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

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

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

Exhibit A: Approved Grading and Drainage Plan *(name of the plan showing the Stormwater System in detail)*

Exhibit B: Approved Stormwater Maintenance and Inspection Agreement



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov*

## **Planning & Urban Development Department**

Jeff Levine, AICP, Director

## **Planning Division**

Alexander Jaegerman, FAICP, Director

## **Performance Guarantee and Infrastructure Financial Contribution Packet**

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

### Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

**SUBDIVISION/SITE DEVELOPMENT**  
**Cost Estimate of Improvements to be covered by Performance Guarantee**

Date: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address/Location: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Developer: \_\_\_\_\_

Form of Performance Guarantee: \_\_\_\_\_

Type of Development: Subdivision \_\_\_\_\_ Site Plan (Level I, II or III) \_\_\_\_\_

**TO BE FILLED OUT BY THE APPLICANT:**

<u>Item</u>	<b>PUBLIC</b>			<b>PRIVATE</b>		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL							
Silt Fence	_____	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____	_____

**INSPECTION FEE (to be filled out by the City)**

	<b>PUBLIC</b>	<b>PRIVATE</b>	<b>TOTAL</b>
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

**SAMPLE FORM**

**SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]**

**[Date]**

Jeff Levine  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: **[Insert: Name of Developer]**  
**[Insert: Address of Project, Portland, Maine]**  
**[Insert: Application ID #]**

**[Insert: Name of Bank]** hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at

\_\_\_\_\_ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. \_\_\_\_\_.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").



The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements ]**.

Date: \_\_\_\_\_

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

**[Name]**

**[Title]**

Its Duly Authorized Agent

**SAMPLE FORM**

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
ESCROW ACCOUNT  
[ACCOUNT NUMBER]

**[Date]**

Jeff Levine  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: **[Insert: Name of Developer]**  
**[Insert: Address of Project, Portland, Maine]**  
**[Insert: Application ID #]**

**[Insert: Name of Bank]** hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

**[Bank]** will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at \_\_\_\_\_ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. \_\_\_\_\_.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements ]**.

Date: \_\_\_\_\_

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

**[Name]**

**[Title]**

Its Duly Authorized Agent

Seen and Agreed to: **[Applicant]**

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

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: \_\_\_\_\_

Developer's Name and Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Account Number: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Application of \_\_\_\_\_ [Applicant] for \_\_\_\_\_ [Insert street/Project Name] at \_\_\_\_\_ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$\_\_\_\_\_ [amount of performance guarantee] on behalf of \_\_\_\_\_ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on \_\_\_\_\_ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] approval, dated \_\_\_\_\_ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship;  
or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements ]**.

Seen and Agreed to:

By: \_\_\_\_\_  
[Applicant]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\*\*\*\*Planning Division Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Development Review Coordinator

Date: \_\_\_\_\_

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

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**Distribution**

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. \*\*\*\*Signature required if over \$50,000.00.



**Infrastructure Financial Contribution Form**  
**Planning and Urban Development Department - Planning Division**

**Amount \$**

**City Account Number:** 710-0000-236-98-00

**Project Code:** \_\_\_\_\_

(This number can be obtained by calling Cathy Ricker, x8665)

**Project Name:**

**Application ID #:**

**Project Location:**

**Project Description:**

**Funds intended for:**

**Applicant's Name:**

**Applicant's Address:**

**Expiration:**

If funds are not expended or encumbered for the intended purpose by \_\_\_\_\_, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) \_\_\_\_\_

**Form of Contribution:**

Escrow Account

Cash Contribution

**Interest Disbursement:** Interest on funds to be paid to contributor only if project is not commenced.

**Terms of Draw Down of Funds:** The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

**Date of Form:**

**Planner:**

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- Attach the approval letter, condition of approval or other documentation of the required contribution.
- One copy sent to the Applicant.

**Electronic Distribution to:**

Peggy Axelsen, Finance Department  
Catherine Baier, Public Services Department  
Barbara Barhydt, Planning Division  
Jeremiah Bartlett, Public Services Department  
Michael Bobinsky, Public Services Department  
Diane Butts, Finance Department  
Philip DiPierro, Planning Division  
Katherine Earley, Public Services Department  
Michael Farmer, Public Services Department  
Alex Jaegerman, Planning Division  
David Margolis Pineo, Public Services Department  
Matt Rancourt, Public Services Department  
Jeff Tarling, Public Services Department  
Planner for Project