

**LEWISTON CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
NOVEMBER 19, 2019**

6:00 p.m. Workshop

- A. Presentation on Proposed Public Art Plan– 15 minutes

6:15 p.m. Executive Sessions

- ES-1 Executive Session pursuant to MRSA Title 1, section 405 (6)(c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.
- ES-2 Executive Session regarding consultation with the City Attorney.

7:00 p.m. Regular Meeting

Pledge of Allegiance to the Flag

Update from Lewiston Youth Advisory Council

Mayoral Proclamation – Pancreatic Cancer Awareness Month

Mayoral Proclamation – Honoring National Education Support Professionals Day

Public Comment period – Any member of the public may make comments regarding issues pertaining to Lewiston City Government (3 minutes per speaker; maximum time for all comments is 15 minutes)

ALL ROLL CALL VOTES FOR THIS MEETING WILL BEGIN WITH THE COUNCILOR OF WARD 6.

CONSENT AGENDA: All items with an asterisk (*) are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member or a citizen so requests, in which event, the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

- * 1. Order Authorizing execution of a Municipal Quitclaim Deed for Real Estate located at 47 Russell Street.
- * 2. Order Authorizing execution of a Municipal Quitclaim Deed for Real Estate located at 1128 Lisbon Street.
- * 3. Order, Authorizing the execution of a Quit Claim Deed and any other related documents for the sale of the property at 67 Oak Street.
- * 4. Order, Authorizing the execution of a Quit Claim Deed and any other related documents for the sale of the property at 175 Stetson Road.
- * 5. Authorization to accept transfer of forfeiture funds.

REGULAR BUSINESS:

- 6. Public Hearing on the renewal application for a Special Amusement Permit for Live Entertainment for Fish Bones American Grill, 70 Lincoln Street.

7. Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas – Lisbon Street, Adams Avenue to Main Street, both Sides.
8. Public Hearing and Final Passage regarding an amendment to the Traffic and Vehicles ordinance to establish a Student Drop-Off and Pick-Up Zone designation.
9. Public Hearing and Final Passage regarding amendment to the Business Licensing ordinance regarding Adult Use and Medical Marijuana.
10. Public Hearing and Final Passage regarding an amendment to the Zoning and Land Use Code regarding Adult Use and Medical Marijuana.
11. Public Hearing and Final Passage for Land Use Code Amendments regarding Nursery Schools in additional zoning districts.
12. Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas – Central Maine Medical Center.
13. Ordinance, Amending Chapter 2, Article III, Divisions 12, 13, and 14 of the Code of Ordinances – Department of Public Works.
14. Request to approve First Passage for proposed amendments to existing contract rezoning for properties at 10, 35 and 37 Avon Street and to refer the proposal to the Planning Board for their review and recommendations.
15. Order, Replacing the City Master Policies 40, Treebate, and 62, Tree Planting Policy, with a New Tree Planting Policy, Master Policy 62.
16. Resolve, Amending Master Policy 81 – Miscellaneous Fees and Penalties – to establish Penalties for Violations of the Rental Registration Ordinance.
17. Amendments to the City Business License Fee Schedule Policy regarding the fees for marijuana businesses.
18. Order, Approving the HOME Agreement with Blake & Pine LP and authorizing the City Administrator to Execute the Same.
19. Order, Authorizing Staff to Take Steps to Dispose of the Martel School and Associate Property.
20. Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 86 Nichols Street.
21. Resolve, Accepting and Appropriating a Lead Hazard Control and Green and Healthy Homes Grant from the United States Department of Housing and Urban Development and Authorizing the City Administrator to Execute the Required Grant Agreements.
22. Resolve, Calling Upon the Maine Legislature to Support an Extended Producer Responsibility for Packaging Law.
23. Reports and Updates
24. Any other City Business Councilors or others may have relating to Lewiston City Government.
- + 25. Executive Session regarding a Legal Matter.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, November 19, 2019
6:00 PM

1. Presentation on Proposed Public Art Plan – 15 minutes

In January 2019, the LA Metro Chamber of Commerce and L/A Arts, with formal support from both the City of Lewiston and the City of Auburn, were awarded a Maine Arts Commission grant for \$75,000 to support the implementation of Cultural Plan LA, a plan approved by both cities in 2016. Specifically, this grant funding was awarded to “utilitize arts and culture to enhance LA’s image to attract residents, tourism, and new investment” and to “further the position of arts and culture in local government.” Part of the implementation plan is to create and cultivate broad-based support for a public art plan for the community, select and install two pieces of public art, and cultivate support in the community for public art. A public art work group has been meeting and has developed a proposed public art plan for the city. Representatives of that group will be present on Tuesday to present this plan. Please see the attached information.

2. Executive Session – Economic Development – 15 minutes

3. Executive Session – Legal Issue – 15 minutes

Council Workshop or Meeting Date: November 19, 2019

Presenters: Beckie Conrad and Darby Ray

Subject: Public Art Plan

Information: The Public Art Working Group submits a Public Art Plan for Council consideration. The Plan is designed to provide definitions, guiding principles, and an administrative structure for encouraging and managing public art. The Plan will be used in the near term during the implementation of a three-year Maine Arts Commission grant, which will include the installation of a piece of public art in Auburn in 2020 or 2021.

City Budgetary Impacts: The Plan does not include a financial commitment from the City. (The MAC grant mentioned above includes in-kind City support for site preparation and artwork installation on City property.)

Staff Recommended Action:

Previous Meetings and History:

City Manager Recommendations:

Attachments:

- 1) Public Art Plan
- 2) Maine Arts Commission grant overview and timeline

Proposed Public Art Plan for the City of Lewiston

I. Purpose

In recognition of the value that public art can bring to the cultural, aesthetic, and economic vitality of the community, the Cities of Lewiston and Auburn successfully sought a grant from the Maine Arts Commission to support the development of a Public Art Plan as one piece of “Cultural Plan LA”. A Public Art Working Group comprised of citizens of Lewiston and Auburn, including mayoral appointments, artists, educators, and business people, was established to develop this master plan in consultation with City staff from Lewiston and Auburn. The resulting plan outlines recommendations for a basic administrative structure for public art initiatives in L/A.

II. Mission and Guiding Principles

The mission of the Public Art Plan is to foster and oversee the commissioning and acquisition of permanent and temporary public art, act as a steward of the City’s public art collection, and engage the public in the collection. Public art projects will be accomplished through the direct commissioning of artwork, acquisitions, community partnerships, gifts, and by encouraging public art in private development.

Guiding Principles

1. When the City, on its own or through a partnership, builds or makes a significant renovation or addition to a community facility or park, public art should, whenever possible, be part of the project.
2. Public art should grow out of the richness of the community and, in most cases, be commissioned. Artists should be invited to work in the community and with the community to ensure that the work has meaning and resonance.
3. Public art projects should be commissioned through a transparent, competitive process that values both artistic expertise and community input. The policies and procedures adopted by the City will result in the selection of highly qualified artists and will support them in creating their best work. It will follow professional standards in the field.
4. Public art should be of high artistic quality and integrity. The City, developers, and cultural institutions must pay careful attention to the design of new buildings and public spaces downtown and throughout the community, bringing in fresh design thinking as well as complementing the historic fabric of the community. New public art should be of the same design quality as other aspects of the City’s built environment and should support the cultural fabric of the community.
5. Public art should be for everyone: the people who live and work in the City; the people who visit for entertainment, culture, shopping, and dining; and even the people who are

just passing through. All should have an opportunity to experience art in public places. Art should invite interaction, contemplation, and discussion.

III. **Definitions**

Public Art

Public art includes a variety of accessible, original cultural experiences and/or physical works of art located within a public place that enrich the City by contributing to its uniqueness and stimulating learning, reflection, and conversation. Public art may include permanent or temporary works. Public art should engage the site, its context, and audience. Public art may possess functional as well as aesthetic qualities.

Artwork

Artwork shall mean works in any style, expression, genre, and media created by an artist as defined herein that may be permanent, temporary, and/or functional. Artwork may be stand-alone and integrated into architecture, landscaping, or other site development if designed by an artist as defined herein. Excluded are gifts of state by foreign governments or by other political jurisdictions of the United States.

Public Place

- a) A public place is a publicly accessible landscape, structure, or infrastructure-- typically owned or under the jurisdiction of the City. Public places include, but are not limited to, public parks, plazas, streets and boulevards (right-of-way), bridges, stairways, buildings, and water features.
- b) Art within public places contributes to the unique identity of a location and can stimulate discussion and imagination.
- c) Privately owned places can also include public art insofar as the artwork is public facing and designed to engage the public.

Artist

An artist is an individual who creates original works of art and is typically recognized by professional peers and critics as a professional practitioner of the visual, craft, literary, musical, conceptual, or performing arts, as judged by the quality of that practitioner's body of work and experience. This recognition is demonstrated in the artist resume through credentials such as professional training, an exhibition record, past public art commissions, published work, previous performances, reviews, and recommendations.

IV. **Administration**

Public Art Committee (PAC)

To support the Cities of Auburn and Lewiston in managing inquiries about public art and the vetting, creation, installation, and maintenance of public artworks, a Public Art Committee (PAC) shall be established. The PAC shall ordinarily be comprised of ten members: 2 mayoral appointments--one from each City--and the following to be appointed in accordance with procedures established by the body or organization making the appointments: 2 public school appointments--one from each school district; 2

appointments from Arts and Culture LA; 2 appointments from L/A Arts; and 2 appointments from the LA Metro Chamber of Commerce. The PAC shall convene semi-annually or as needed to consider updates to the Public Art Plan as well as inquiries or requests related to public art. During the Maine Arts Commission implementation grant period (2019-2021), the Public Art Working Group (PAWG) shall function as the PAC.

The PAC shall provide expert advice to the Cities in the following areas:

- a) Public Art Plan policies and procedures
- b) Artist selection review panels and processes for art associated with municipal development projects on City-owned property
- c) Artwork review and approval recommendations for municipal development projects on City-owned property
- d) Artwork review and recommendations for murals on City-owned property
- e) Maintenance and conservation of artwork on City-owned property
- f) Review and recommendations on proposed deaccession of artwork on City-owned property
- g) The incorporation of public-facing, public-engaging artwork in private development, should advice on such artwork be in order

Maine Arts Commission Creative Communities = Economic Development (CCED) Grant Overview and Timeline for Council Consideration

In January of 2019, the LA Metro Chamber of Commerce and L/A Arts, with formal support from the City of Auburn and the City of Lewiston, were awarded a Maine Arts Commission grant of \$75,000 to support the implementation of Cultural Plan LA (approved by both City Councils in 2016). Specifically, grant funding was awarded to “utilize arts and culture to enhance LA’s image to attract residents, tourism, and new investment” and to “further the position of arts and culture in local government.” The \$75,000, along with matching funds, is to be spent over a three-year period to achieve three goals:

- Create and cultivate broad-based support for a public art plan for our community;
- Select and install two pieces of public art (one in each city) to generate interest in and support for public art as a community-builder and driver of economic development;
- Cultivate municipal and business support and infrastructure for sustaining a commitment to public art in our community into the future.

Grant implementation is being overseen by a 10-person Public Art Working Group, co-chaired by Beckie Conrad, representing the Chamber, and Darby Ray, representing LA Arts, and including mayoral appointments, artists, educators, and business people from each city. The work of this group over the three-year period is planned as follows:

Year 1 (2019)

- Identification of and public education around public art best practices and model programs/approaches
- Development and City Council approval of a Public Art Plan that provides definitions, guiding principles, and an administrative structure for encouraging and managing public art
- Selection of a Maine-based artist and piece of artwork for installation in 2020

Year 2 (2020)

- Selection of a Maine-based artist and piece of artwork for installation in 2021
- Execution and community celebration of public art installation #1, demonstrating Maine-based art as a catalyst for civic pride, tourism, and economic development
- With municipal and business collaborators, cultivation of ideas for funding the ongoing creation, installation, and maintenance of public art in our community

Year 3 (2021)

- Execution and community celebration of public art installation #2, demonstrating Maine-based art as a catalyst for civic pride, tourism, and economic development
- With municipal and business collaborators, development of a public art ordinance to support the ongoing creation, installation, and maintenance of public art in our community

Public Art Working Group Members, 2019-2021

Beckie Conrad, LA Metro Chamber of Commerce, co-chair

Darby Ray, L/A Arts, co-chair

Sabrina Best, City of Auburn staff, mayoral appointment

Heidi McCarthy, City of Lewiston staff, mayoral appointment

Bill Low, arts curator, Auburn mayoral appointment

Tom Platz, businessman, Lewiston mayoral appointment

Shawn Rice, Edward Little High School art teacher

Jody Dube, Lewiston High School art teacher

Sheri Withers, small business owner, working artist, ACLA appointment

Shoni Currier, Bates Dance Festival Director, ACLA appointment

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

State statutes define the purposes for entering into an executive session .

GAB/kmm

REQUESTED ACTION:

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To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

**LEWISTON CITY COUNCIL
MEETING OF NOVEMBER 19, 2019**

AGENDA INFORMATION SHEET: AGENDA ITEM NO. ES-2

SUBJECT:

Executive Session regarding consultation with the City Attorney.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings. Discussing a legal matter with the City Attorney is a topic permitted under the statutes.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The state statutes outline the issues allowed to be discussed in an executive session.

CA/BJ/kmm

REQUESTED ACTION:

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To enter into an Executive Session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 1

SUBJECT:

Order Authorizing execution of a Municipal Quitclaim Deed for Real Estate located at 47 Russell Street.

INFORMATION:

One of the most powerful collection tools in a municipality's arsenal is the ability to lien properties for delinquent taxes (real and special only), water and sewer balances, and most recently stormwater balances. Once a lien is recorded, eighteen months must lapse without payment before the lien matures. Prior to maturity, the City Council may waive the right to foreclose on a maturing lien as you have done in the past. If the lien is permitted to mature, the municipality may elect to foreclose on the property or, if subsequent payment is received, return the property to its owner via a quitclaim deed.

At this time, the Finance Director is asking the Council to approve a municipal quitclaim deed for the property located at 47 Russell Street. The quitclaim deed will release any interest the City may have by virtue of undischarged real estate tax liens or utility liens on this property. Payments due for this property have all been received in full. Should the Council approve this Order, the quitclaim will be issued to the owners.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

GAB/kmm

REQUESTED ACTION:

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To approve the Order authorizing execution of a municipal quitclaim deed for real estate located at 47 Russell Street.



COUNCIL ORDER

Order, Authorizing Execution of a Municipal Quitclaim Deed – Real Estate Located at 47 Russell Street.

WHEREAS, the owners, Robert and Lisa True, failed to pay their bills on a timely basis for 47 Russell Street (Tax Map 193, Lot 113, Parcel 00-007910); and

WHEREAS, a tax lien was filed on June 15, 2016 (Book 9387 Page 154) and matured on December 15, 2017 in the amount of \$1,589.17; and

WHEREAS, a tax lien was filed on June 13, 2017 (Book 9615 Page 178) and matured on December 13, 2018 in the amount of \$2,385.41; and

WHEREAS, payment will be received in full at closing;

NOW, THEREFORE, BE IT ORDERED by the **CITY COUNCIL** of the **CITY of LEWISTON,**

That a quitclaim deed is hereby authorized to release the City's interest in the property located at 47 Russell Street to the new owner.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 2

SUBJECT:

Order Authorizing execution of a Municipal Quitclaim Deed for Real Estate located at 1128 Lisbon Street.

INFORMATION:

One of the most powerful collection tools in a municipality's arsenal is the ability to lien properties for delinquent taxes (real and special only), water and sewer balances, and most recently stormwater balances. Once a lien is recorded, eighteen months must lapse without payment before the lien matures. Prior to maturity, the City Council may waive the right to foreclose on a maturing lien as you have done in the past. If the lien is permitted to mature, the municipality may elect to foreclose on the property or, if subsequent payment is received, return the property to its owner via a quitclaim deed.

At this time, the Finance Director is asking the Council to approve a municipal quitclaim deed for the property located at 1128 Lisbon Street. The quitclaim deed will release any interest the City may have by virtue of undischarged real estate tax liens or utility liens on this property. Payments due for this property have all been received in full. Should the Council approve this Order, the quitclaim will be issued to the owners.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

GAB/kmm

REQUESTED ACTION:

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To approve the Order authorizing execution of a municipal quitclaim deed for real estate located at 1128 Lisbon Street.



COUNCIL ORDER

Order, Authorizing Execution of a Municipal Quitclaim Deed – Real Estate Located at 1128 Lisbon Street.

WHEREAS, the owners, James and Timothy Wong and Tony Eng, failed to pay their bills on a timely basis for 1128 Lisbon Street (Tax Map 150, Lot 434, Parcel 00-000938); and

WHEREAS, a tax lien was filed on June 18, 2008 (Book 7461 Page 342) and matured on December 18, 2009 in the amount of \$10,382.27; and

WHEREAS, a tax lien was filed on June 17, 2009 (Book 7721 Page 268) and matured on December 17, 2010 in the amount of \$10,460.40; and

WHEREAS, a tax lien was filed on June 16, 2010 (Book 7953 Page 135) and matured on December 16, 2011 in the amount of \$10,359.79; and

WHEREAS, a tax lien was filed on June 17, 2011 (Book 8182 Page 25) and matured on December 17, 2012 in the amount of \$10,467.30; and

WHEREAS, a tax lien was filed on June 13, 2012 (Book 8418 Page 131) and matured on December 13, 2013 in the amount of \$10,619.90; and

WHEREAS, a tax lien was filed on June 19, 2013 (Book 8700 Page 219) and matured on December 19, 2014 in the amount of \$10,630.33; and

WHEREAS, a tax lien was filed on June 18, 2014 (Book 8935 Page 137) and matured on December 18, 2015 in the amount of \$10,906.55; and

WHEREAS, a tax lien was filed on June 23, 2015 (Book 9165 Page 260) and matured on December 23, 2016 in the amount of \$10,983.97; and

WHEREAS, a tax lien was filed on June 15, 2016 (Book 9387 Page 181) and matured on December 15, 2017 in the amount of \$11,285.21; and

WHEREAS, a tax lien was filed on June 14, 2017 (Book 9615 Page 245) and matured on December 14, 2018 in the amount of \$11,354.26; and

WHEREAS, a storm water lien was filed on March 19, 2018 (Book 9803 Page 83) and matured on September 19, 2019 in the amount of \$666.38; and

WHEREAS, payment was received in full totaling \$108,116.36;

NOW, THEREFORE, BE IT ORDERED by the **CITY COUNCIL** of the **CITY of LEWISTON**,

That a quitclaim deed is hereby authorized to release the City's interest in the property located at 1128 Lisbon Street to the owner.

LEWISTON CITY COUNCIL

MEETING OF November 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 3

SUBJECT: Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 67 Oak Street.

INFORMATION:

The City recently accepted bids for the vacant, tax acquired property located at 67 Oak Street on which the City condemned and subsequently demolished a building. A single bid in the amount of \$712.38 was received from Daniel and June Roux, the owners of the abutting three unit property at 71 Oak Street. The Roux indicate that they intend to use this property as Greenspace for their current property. The 71 Oak Street property has a two-car driveway that is long enough for off-street parking for six vehicles.

The City's total net expenses associated with this property are \$36,996.82, including unpaid taxes and utilities and demolition and legal costs.

If the property is used to simply increase the size of the parcel at 71 Oak Street from .10 to .16 acre, the value increase would be minimal at less than \$2,000. Should it be used for parking, the value would remain at the current \$10,600 assessment level.

The Planning Board recommended that this property be disposed of and did not recommend a minimum value. Disposal through the bid process was recommended by the Finance Committee.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/Kmm

REQUESTED ACTION:

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To approve the Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 67 Oak Street.



COUNCIL ORDER

Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 67 Oak Street.

Whereas, the City condemned and demolished a structure at 67 Oak Street; and

Whereas, taxes on this property remained unpaid and a lien eventually matured, allowing the City to take possession; and

Whereas, the Planning Board recommended that the City sell this property and the Finance Committee recommended such sale be accomplished through the formal bid process; and

Whereas, bids were solicited and a single bid was received from the owners of an adjacent property who intend to use 67 Oak Street for open space to complement their property;

Now, therefore, be it ordered by the City Council of the City of Lewiston that

Staff is hereby authorized to execute a quit claim deed and any other required documents for the sale of the 67 Oak Street to Daniel and Jane Roux in return for their bid price of \$712.38 plus associated legal costs.

City of Lewiston



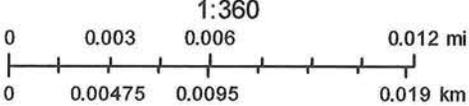
October 22, 2019

polygonLayer

 Override 1

LewistonGIS.DBO.LEW_parcel_poly_sub_layeredwithdata_w

LewGIS.SDE.LEW_roadcl_geocode



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

LEWISTON CITY COUNCIL

MEETING OF November 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 4

SUBJECT: Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 175 Stetson Road.

INFORMATION:

The City recently accepted bids for the vacant, tax acquired property located at 175 Stetson on which the City condemned and subsequently demolished a building. A single bid in the amount of \$22,000 was received from Robert Raymond, a contractor who plans to build a \$225,000 to \$250,000 home on the property within the coming year.

The City's total net expenses associated with this property are \$18,457.42, including unpaid taxes and utilities and demolition and legal costs.

The Planning Board recommended that this property be disposed of and recommended a minimum sales price of \$25,680. Disposal through the bid process was recommended by the Finance Committee.

Staff recommends that the Council accept Mr. Raymond's bid of \$22,000 in light of the significant investment he anticipates making at this location and that the property will be transferred via quit claim deed, which may require Mr. Raymond to incur additional legal costs to clear the property's deed for financing and subsequent resale.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

ERB/kmm

REQUESTED ACTION:

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To approve the Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 175 Stetson Road.



CITY OF LEWISTON, MAINE

November 19, 2019

COUNCIL ORDER

Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 175 Stetson Road.

Whereas, the City condemned and demolished a structure at 175 Stetson Road; and

Whereas, taxes on this property remained unpaid and a lien eventually matured, allowing the City to take possession; and

Whereas, the Planning Board recommended that the City sell this property with a minimum price of \$25,680, the property's assessed value, and the Finance Committee recommended such sale be accomplished through the formal bid process; and

Whereas, bids were solicited and one bid was received from Robert Raymond, a contractor who plans to construct a home for resale on this property with an estimated value of between \$225,000 and \$250,000; and

Whereas, given the investment planned for this property, the Council finds the price offered to be acceptable;

Now, therefore, be it ordered by the City Council of the City of Lewiston that

Staff is hereby authorized to execute a quit claim deed and any other required documents for the sale of 175 Stetson Road to Robert Raymond for \$22,000 plus closing costs for the purpose of constructing a home for resale with an estimated value of \$225,000 to \$250,000, with the proceeds to be credited to the General Fund.

City of Lewiston



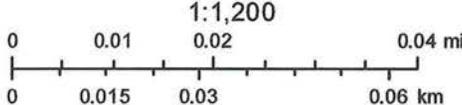
October 22, 2019

polygonLayer

 Override 1

LewistonGIS.DBO.LEW_parcel_poly_sub_layeredwithdata_w

LewGIS.SDE.LEW_roadcl_geocode



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 5

SUBJECT:

Authorization to accept transfer of forfeiture funds.

INFORMATION:

The Lewiston Police Department is requesting that the City Council authorize the acceptance of funds, in the amounts outlined below and/or attached, as reimbursement for costs associated with assisting in a criminal investigation.

The funds are available to the Lewiston Police Department due to its substantial contribution to the investigation of this or a related criminal case.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

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That pursuant to Title 15, Maine Revised Statutes Annotated, Section 5824(3) and Section 5822(4)(A), the City Council hereby acknowledges and approves of the transfer of items as outlined on the attached listing, less administrative fees or any portion thereof, in the cases of US Department of Justice Drug Enforcement Administration vs the cases outlined on the attached listing. Being funds forfeited pursuant to court process. It is further acknowledged that these funds shall be credited to the "City of Lewiston Drug Enforcement Program" account.



MEMO



Date: October 15, 2019
To: Kathy Montejo, City Clerk
From: Brian O'Malley, Chief of Police
Re: Forfeiture funds

The following investigations are pending in federal court and upon a favorable final disposition, the funds in the cases listed below will be released to the Lewiston Police Department. Please make the necessary notifications to the City Council that would allow them to address the issue and consent to the acceptance of these funds.

Please credit these funds to the Federal Drug Forfeiture Account, number 5902-351450.

Our share of each of the following is yet to be determined and is less administrative fees:

SEE ATTACHED

Asset ID	Description	Asset Value
17-FBI-002634	Commercial Complex at 726 Forrest Avenue	830,000.00
17-FBI-002658	Commercial Complex	225,000.00
17-FBI-002708	Financial Instrument - Money Order - Value = \$3,700.00	3,700.00
17-FBI-002971	\$7,275.00 U.S. Currency	7,275.00
18-DEA-638508	\$10,400.00 U.S. Currency	10,400.00
18-DEA-638886	\$18,000.00 U.S. Currency	18,000.00
18-DEA-638888	\$36,700.00 U.S. Currency	36,700.00
18-DEA-638935	\$88,000.00 U.S. Currency	88,000.00
18-DEA-638936	\$10,860.00 U.S. Currency	10,860.00
18-DEA-638938	\$5,000.00 U.S. Currency	5,000.00
18-DEA-638945	\$5,887.00 U.S. Currency	5,887.00
18-DEA-638951	\$1,045.00 U.S. Currency	1,045.00
18-DEA-638954	\$4,835.00 U.S. Currency	4,835.00
18-DEA-639131	\$3,920.00 U.S. Currency	3,920.00
18-DEA-639292	Jewelry/Precs Item - Value = \$11,500.00	11,500.00
18-DEA-639304	Vehicles - Truck - 2015 GMC Sierra SLE 2500	26,825.00
18-DEA-639305	Vehicles - Passenger - 2008 Lamborghini Gallardo 2 Door	82,100.00
18-DEA-639306	Vehicles - Passenger - 2007 Porsche 911 Carrera 4S	38,025.00
18-DEA-639307	Jewelry/Precs Item - Value = \$3,350.00	3,350.00
18-DEA-639308	Jewelry/Precs Item - Value = \$6,000.00	6,000.00
18-DEA-639310	Vehicles - Truck - 2018 GMC Sierra Denali	53,825.00
18-DEA-639312	Vehicles - Trailer - 2017 Sure-Trac STWCH10224TA Pro Series	7,595.00
18-DEA-639316	Vehicles - Other - 2023 Ford T-Bucket Roadster	22,000.00
18-DEA-639317	Vehicles - Passenger - 1987 Buick Regal Grand National	25,900.00
18-DEA-639320	Vehicles - Passenger - 1969 Chevrolet Chevelle SS396	32,000.00
18-DEA-639321	Vehicles - Passenger - 1967 Chevrolet Nova Coupe	45,000.00
18-DEA-639660	Vehicles - Recreational - 2017 Polaris ACE 500 ATV	4,285.00
18-DEA-639664	Vehicles - Passenger - 2014 Nissan GT-R Sedan	53,675.00
18-DEA-641270	\$43,320.00 U.S. Currency	43,320.00
18-DEA-643406	\$25,122.00 U.S. Currency	25,122.00
19-DEA-646215	Commercial Unit at 29 Avon Street	110,240.00
19-DEA-648682	\$9,019.00 U.S. Currency	9,019.00

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 6

SUBJECT:

Public Hearing on the renewal application for a Special Amusement Permit for Live Entertainment for Fish Bones American Grill, 70 Lincoln Street.

INFORMATION:

We have received a renewal application for a Special Amusement Permit for Live Entertainment from Fish Bones American Grill, 70 Lincoln Street.

The Police Department has reviewed and approved the application.

There was no reference to this business or property address in the Council Constituent Concern log, as maintained by the Administrator's Office.

The business owner has been notified of the public hearing and requested to attend.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To grant a Special Amusement Permit for Live Entertainment to Fish Bones American Grill, 70 Lincoln Street.

**CITY OF LEWISTON
APPLICATION FOR SPECIAL AMUSEMENT PERMIT**

Date of Application: 10/05/2019

Expiration Date: 11/17/2019

- Class A - \$125.00 - restaurants with entertainment, which **does not have dancing**
 Class B - \$125.00 - lounges/bars with entertainment, which **does not have dancing**
 Class C - \$150.00 - either restaurants or lounges/bars with entertainment, including dancing
 Class D - \$150.00 - function halls with entertainment, including dancing
 Class E - \$150.00 - dance hall or nightclub that admits persons under the age of 21
 Class F - \$150.00 - "chem-free" dance hall or nightclub for patrons aged 18 yrs and older, with no liquor

Renewal Applicants: Has any or all ownership changed in the 12 months? Yes No

****PLEASE PRINT****

Business Name: Fish Bones American Grill Business Phone: (207) 333-3663

Location Address: 70 Lincoln Street, Lewiston, ME 04240

(If new business, what was formerly in this location: _____)

Mailing Address: 70 Lincoln Street, Suite 1A, Lewiston, ME 04240

Email address: office@fishbonesgrill.com

Contact Person : Paul F. Landry Phone: (207) 576-2599

Owner of Business: Hospserv, Inc Date of Birth: 8/17/1962

Address of Owner: 340 East Road, Wales, ME 04280

Manager of Establishment: Paul F. Landry Date of Birth: 8/17/1962

Owner of Premises (landlord): Bates Mill Development Corp., LLC

Address of Premises Owner: 2 Great Falls Plaza, Auburn, ME 04210

Does the issuance of this license directly or indirectly benefit any City employee(s)? Yes No
If yes, list the name(s) of employee(s) and department(s): _____

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Lewiston? Yes No If yes, please list business name(s) and location(s): Fish Bones American Grill
70 Lincoln Street, Lewiston, ME 04240

Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of the law? ____ Yes X No If yes, please explain: _____

CORPORATION APPLICANTS: *Please attach a list of all principal officers, date of birth & town of residence*

Corporation Name: Hospserv, Inc.

Corporation Mailing Address: 340 East Road, Wales, ME 04280

Contact Person: Paul Landry Phone: (207) 576-2599

Do you permit dancing on premises? ____ Yes X No (*If yes, you must first obtain a dance hall permit from the State Fire Marshall's Office*) If yes, do you permit dancing or entertainment after 1:00 AM? ____ Yes ____ No

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? 1/10 Mile

Please describe the type of proposed entertainment:

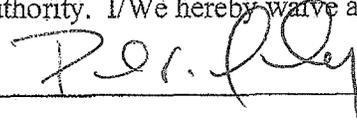
- | | | |
|---|--|---|
| <input type="checkbox"/> dancing | <input type="checkbox"/> stand up comedian | <input checked="" type="checkbox"/> piano player |
| <input type="checkbox"/> music by DJ | <input type="checkbox"/> karaoke | <input type="checkbox"/> other, please list _____ |
| <input checked="" type="checkbox"/> live band/singers | <input type="checkbox"/> magician | <input type="checkbox"/> other, please list _____ |

If new applicant, what is your opening date?: _____

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

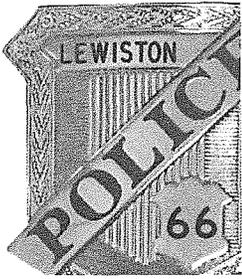
It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We hereby waive any rights to privacy with respect thereto.

Signature:  Title: Vice Pres./Treasurer Date: 10/05/2019

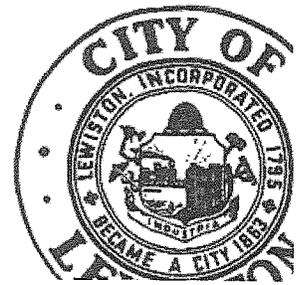
Printed Name: Paul F. Landry

Hearing Date: 11/19/19



POLICE DEPARTMENT

Brian T. O'Malley
Chief of Police



TO: Kelly Brooks, Deputy City Clerk

FR: Lt. David St. Pierre, Support Services

DT: October 03, 2019

RE: Liquor License/Special Amusement Permit – **Fish Bones**

We have reviewed Liquor License/Special Amusement Permit Application and have no objections to the following establishment;

Fish Bones
Bates Mill / Lincoln Street
Lewiston, Maine



171 Park St • Lewiston, Maine • 04240 • Phone 207-513-3137 • Fax 207-795-9007
www.lewistonpd.org



Professionalism Integrity Compassion Dedication Pride Dependability

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 7

SUBJECT: Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas – Lisbon Street, Adams Avenue to Main Street, both Sides

INFORMATION:

The Council has recently held several workshops to consider prohibiting the use of tobacco products, including e-cigarettes, in various locations, including City parks and recreational areas. During those discussions, a request was made to extend these prohibitions to the area of Lisbon Street stretching from Adams Avenue to Main Street. Such a prohibition would recognize that many residents and visitors frequent this area of the City and should not be exposed to second hand smoke. It also recognizes the issues we currently see in this area associated with discarded cigarette butts.

The fine for a violation of this section of the ordinance already exists at \$100 for the first offense, \$200 for the second, and \$300 for the third.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve final passage of the Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas -- Lisbon Street, Adams Avenue to Main Street, both Sides.

Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas.

Whereas, Lewiston is a safe and healthy place to live, work, and recreate; and

Whereas, tobacco use is the foremost preventable cause of premature death in the United States, causing over 400,000 deaths in the United States each year; and

Whereas, the Surgeon General of the United States has stated that there are no safe levels of exposure to secondhand smoke; and

Whereas, tobacco-free policies support tobacco-free lifestyles and encourage tobacco users to quit; and

Whereas, discarding cigarette and cigar butts onto the ground is unsightly, unclean, and potentially hazardous, particularly to young children and wildlife;

Now, therefore, the City of Lewiston Hereby Ordains that Section 50-19 of the Code of Ordinances is amended as follows:

Sec. 50-19. Prohibiting tobacco use in designated ~~hospital areas~~ public rights of way.

~~Smoking and all other~~The use of tobacco products, including vaping and e-cigarette use, -is prohibited on certain designated public rights of way, in the following public rights of way, including public streets and sidewalks, with the exception of the use of such products by occupants of motorized vehicles traveling through the designated area:-. “Tobacco Products” is defined to include all tobacco-derived or containing products including, but not limited to, cigarettes, cigars, spit and smokeless tobacco, dip, chew, snuff, snus, electronic cigarettes, vape products, and other electronic nicotine delivery systems, excluding products specifically approved by the US Food and Drug Administration (FDA) for the purpose of cessation or nicotine replacement therapy. “Smoking” includes carrying or having in one’s possession a lighted or heated cigarette, cigar, or pipe, or a lighted or heated tobacco or plant product intended for human consumption through inhalation, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking deice for the purpose of circumventing the prohibition of smoking in this policy.” The designated prohibited areas are:

(a) ~~(a)~~ Campus Avenue from Sabattus Street to Central Street, both sides.

(b) Lisbon Street From Adams Avenue to Main Street, both sides.

Deletions are ~~struck through~~; additions are underlined.

LEWISTON CITY COUNCIL
MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 8

SUBJECT:

Public Hearing and Final Passage regarding an amendment to the Traffic and Vehicles ordinance to establish a Student Drop-Off and Pick-Up Zone designation.

INFORMATION:

The Police Department is recommending that the City establish a designation in our City Traffic Ordinance for a "Student Drop Off and Pick Up" zone. Passage is recommended.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EA Blkmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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That the proposed amendment to the City Code of Ordinances, Chapter 70 "Traffic and Vehicles", Article IV "Stopping, Standing, and Parking", Section 70-180 "Student Drop Off and Pick Up Only" receive final passage by a roll call vote.

No.
Effective:

AN ORDINANCE PERTAINING TO STUDENT DROP OFF & PICK UP ZONES

THE CITY OF LEWISTON HEREBY ORDAINS:

Chapter 70 of the Code of Ordinances of the City of Lewiston, Maine, is hereby amended as follows:

**CHAPTER 70
TRAFFIC AND VEHICLES
ARTICLE IV. STOPPING, STANDING AND PARKING
DIVISION 1. GENERALLY**

Sec. 70-180. Student Drop Off and Pick Up Only

No person shall stop, stand, park, or leave any vehicle upon any street where an officially designated Student Drop Off and Pick Up zone has been established and appropriately marked, except in cases of emergency.

Secs. 70-181 – 70-185. Reserved.

Deletions are ~~struck through~~; additions are underlined.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET: AGENDA ITEM NO. 9

SUBJECT:

Public Hearing and Final Passage regarding an amendment to the Business Licensing ordinance regarding Adult Use and Medical Marijuana.

INFORMATION:

A few years ago, Maine voters approved legalization of recreational marijuana, now referred to as “adult use” marijuana. The City currently has an ordinance regulating the sale, cultivation, and processing of medical marijuana. This agenda item proposes to repeal the current ordinance language regarding medical marijuana and to replace it with the proposed new language addressing Adult Use and Medical Marijuana.

The Council has held numerous workshops on this topic. Please see the background material for more information on this subject.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/Kmm

REQUESTED ACTION:	1	2	3	4	5	6	7	M
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To conduct a public hearing and approve final passage of the proposal to repeal Article XV entitled “Medical Marijuana – Distribution and Cultivation” in the Business Ordinance and to replace it with the proposed amendment to the City Code of Ordinances, Chapter 22 “Businesses”, Article XV “Adult Use and Medical Marijuana”, Sections 22-420 through 22-444..



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor and City Council

FROM: David Hediger, Director of Planning and Code Enforcement

DATE: October 4, 2019

RE: A text amendment to the Lewiston Code of Ordinances, Article XV, Adult Use and Medical Marijuana and Appendix A of the Zoning and Land Use Code, Articles II, V, and XI for the definition and regulation of Adult Use and Medical Marijuana

On December 4, 2018, the Council adopted language amending the Code of Ordinances, Article XV, Medical Marijuana – Distribution and Cultivation, to remove references to registered dispensaries and clarify that the city has not opted in under state law to authorize registered caregiver retail stores, registered dispensaries, marijuana testing facilities, or marijuana manufacturing facilities. That action resulted in only registered caregiver grow operations (up to 30 mature plants) being allowed as a permitted use in four zoning districts: Highway Business, Office Service, Industrial, and Urban Enterprise. Any registered caregiver retail stores currently existing are now legally nonconforming.

At the December meeting, Councilors made clear their desire to continue the discussion of where and what type of marijuana operations should be allowed in Lewiston. At the Council workshop on February 12, 2019 staff recommended regulating medical marijuana and adult use marijuana similarly. Adult use marijuana and medical marijuana are governed by two separate statutes, the Adult Use Marijuana Act (28-B M.R.S. §§ 101-1504) and the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B). While each statute contains distinct language on local authority to regulate marijuana use and distribution for each particular purpose, staff proposed the two uses be regulated similarly from a local zoning, licensing, and performance standards perspective. On March 12, 2019 staff presented recommendations related to definitions, zoning, performance standards, and licensing requirements. On April 17, 2019 caregivers licensed in Lewiston were invited to a meeting with Planning and Code Enforcement and Lewiston Police to review the recommendations that were provided to the Council. Overall, caregivers seemed to be supportive of the regulations, while providing suggestions for staff's consideration. Additional workshops were held with the Council on May 28th, July 16th, September 10, and October 1st upon which staff provided additional revisions for the Council's consideration.

On August 26, 2019 the Planning Board voted 6-1 to send a favorable recommendation to amend the Code of Ordinances and the Zoning and Land Use Code with respect to the regulation of Adult Use and Medical Marijuana.

Zoning and Land Use Code Amendments

The proposed amendment updates the existing Zoning and Land Use Ordinance to regulate both adult use and medical marijuana. Lewiston’s current regulations are limited to primary caregiver operations and were adopted in 2010. At that time, dispensaries for medical marijuana were not specifically permitted in any zoning district in the City of Lewiston and, in order to be in compliance with the new law at that time, the Zoning and Land Use Code had to be amended to allow for such use. The State has since changed the law with respect to medical marijuana and adult use marijuana, resulting in the need for definition amendments and determinations of where to allow marijuana businesses.

This amendment updates definitions in the Zoning and Land Use Code, referencing the specific state statute definitions contained in the Adult Use Marijuana Act (28-B M.R.S. §§ 101-1504) and the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B). The amendment also focuses on the specific zoning districts in which marijuana business may operate.

Land Use Definitions

Staff is recommending medical marijuana and adult use marijuana business be subject to the same zoning requirements. The following table summarizes the existing use groups of adult use and medical marijuana as regulated by the state and Lewiston’s proposed use group.

Adult Use Marijuana Act Use Groups	Medical Use of Marijuana Act Use Groups	Proposed Lewiston Ordinance Use Groups
Cultivation facilities	Not defined	Marijuana cultivation facility
Manufacturing facilities	Marijuana manufacturing facilities	Marijuana manufacturing facility
Testing facilities	Marijuana testing facilities	Marijuana testing facility
Stores	Caregiver stores	Marijuana store
Nursery cultivation facilities	(blank, not defined)	Marijuana nursery
(blank: not defined)	Dispensaries	Marijuana dispensary

Zoning Districts

Zoning districts must be reviewed for suitability of marijuana uses. Staff has identified the following zoning districts contained in Article XI, Section 22 of the Zoning and Land Use Code as appropriate for the proposed marijuana use groups noted above:

- Districts in which the city currently permits industrial and light industrial uses are to be considered for cultivation, manufacturing, testing, nurseries, and dispensaries: Industrial, Urban Enterprise, Mill, Highway Business and Office Service.
- Marijuana stores are to be considered in those districts that currently permit retail uses: Riverfront, Community Business, Highway Business, Centreville, Urban Enterprise and Mill.
- Downtown Residential or Neighborhood Conservation “B” districts, which currently allow retail uses, will not allow any marijuana stores, since the majority of uses in these districts are residential.

Licensing Provisions

Establishing licensing provisions is really where the City may establish requirements to ensure marijuana business activity is conducted in a safe and fair manner for the health, safety, and welfare of the community. No person shall engage, operate or maintain a Marijuana Business in the city unless such person has first acquired a license in accordance with this Article. A separate license is required for each Marijuana Business, whether located on the same premise, building, or property. Attached are specific licensing requirement to be included in an amended section of Section 22, Business, Article XV of the Code of Ordinances.

Section 22-430 contains 17 performance standards that marijuana businesses must follow to operate in Lewiston. Sections that have been the focus of past discussion with the Council include, but are not limited to:

2. Marijuana businesses operating with City approval prior to December 13, 2018, shall be entitled to continue operation whether such use does or does not conform to the locational requirements of Section 22-430 (3) and (4) of this Article of this Code or applicable zoning ordinances and shall be treated as a nonconforming use pursuant to Article VI, Section 4 of the Zoning and Land Use Code. A nonconforming business may convert to another nonconforming business pursuant to Article VI, Section 4(e) of the Zoning and Land Use Code.
3. No marijuana business shall be sited within seven hundred and fifty (750) feet of the lot lines of pre-existing schools or child care facilities and public parks, playgrounds or recreational facilities owned by the city.
4. The minimum distance between a marijuana store or dispensary and any two other marijuana stores and/or dispensaries in the same or adjoining zoning district shall be 500 feet as measured along the ordinary course of travel between the main entrance of each premises. However, a parcel with a marijuana store operating with City approval prior to December 13, 2018 is allowed to have one additional store located on the same parcel not

subject to the above referenced separation requirements, provided all state and local requirements are met and if applicable, shall be treated as a nonconforming use pursuant to Article VI, Section 4 of the Zoning and Land Use Code.

11. Marijuana businesses are prohibited from having drive-through pick-up facilities. Marijuana businesses are prohibited from providing home delivery services; provided, however, that registered caregivers and medical marijuana assistants may provide home delivery services.
17. Businesses may not be located within 300 feet as measured along the ordinary course of travel between the main entrance of the business and main entrance of a legally established dwelling in a residential zoning district, in existence prior to the establishment of the business.

Exemptions

- Each person of 21 years of age or older who is domiciled at that parcel or tract of land is not subject to the above referenced provisions, whether growing as a primary caregiver for themselves and or for their personal adult use as allowed per state law, as long as cultivation is located within fully enclosed structures and any odor from marijuana plants or other marijuana products remain confined within the premises and not be detectable off-site of premises that are not under the custody or control of the establishment or create a public nuisance at common law.
- Registered caregivers manufacturing out of their residence shall apply for and obtain a permit for a home occupation in accordance with Articles II and V of the Zoning and Land Use Code and shall comply with all applicable standards set forth in this ordinance. Registered Caregivers who manufacture medical marijuana only for themselves and/or members of their household are exempt from this requirement and are not required to obtain a permit or license as it applies to this section of ordinance. Adult use manufacturing out of a residence is prohibited.
 - Registered caregivers manufacturing requirements apply to operators producing edible marijuana products out of their home. This is consistent with how the City currently regulates home food processors. Operators are required to obtain a home occupation permit, which limits employees to those residing on the premises and prohibits stock-in-trade on the property. They are also required to obtain a local special food handler's license and a food processing license from the Maine Department of Agriculture. The City may want to revisit adult use manufacturing operating in a residence once the state adopts rules.

Fee Schedule

The current license application fee in Lewiston is \$550 annually. Given the unforeseen number of existing establishments and the potential for more, as well as the amount of time and resources

involved by various departments in processing and inspecting establishments (i.e. clerks, police, fire, planning/code enforcement), there is a justifiable need to increase the fee; see attached. These fees are consistent with fees adopted by the City of Auburn.

Conclusion

At this time, the Planning Board has provided a favorable recommendation to adopt the proposed Zoning and Land Use and Code of Ordinance amendments. The City Attorney is in the process of reviewing for consistency with state law and to advise with any concerns. Staff will advise of any recommended changes and if they are substantive in nature during the first and second readings for adoption. Otherwise, staff is requesting the Council take action to adopt the proposed ordinance

ARTICLE XV. ADULT USE AND MEDICAL MARIJUANA

Sec. 22-420. Purpose.

The purpose of this chapter is to implement the Marijuana Legalization Act, 28-B M.R.S. §101 et seq. and the Maine Medical Use of Marijuana Act, 22 M.R.S. §2421 et seq., and to protect the public health, safety, and welfare of the residents of and visitors to the City of Lewiston by prescribing the manner in which the cultivation and distribution of marijuana can be conducted in the City. This Article XV is adopted pursuant to the authority granted by 28-B M.R.S.A. § 401 *et seq.*, as may be amended, and 22 M.R.S.A. §2429-D *et seq.*, as may be amended. In addition, this chapter:

Provides for the safe sale and distribution of marijuana to those who qualify to obtain, possess, and use marijuana under the Marijuana Legalization Act and Maine Medical Marijuana Act.

Protects public health and safety through reasonable controls on marijuana cultivation, manufacturing, testing, and distribution operations as they relate to noise, air and water quality, food safety, neighborhood and customer safety, security for these operations and their personnel, and other health and safety concerns.

To impose fees to cover the City's costs of licensing the cultivation, manufacturing, distribution and sale of marijuana and enforcing the regulations outlined in this Article.

Adopts a mechanism for the monitoring compliance with the provisions of this chapter.

Sec. 22-421. Applicability.

This article shall apply to any persons or entities operating or interested in operating a Marijuana Businesses within city.

Sec. 22-422. Definitions.

For purposes of this article, the following definitions apply unless the content clearly implies otherwise:

Adult use marijuana: marijuana cultivated, manufactured, distributed or sold by a marijuana establishment.

Adult use marijuana product: a marijuana product that is manufactured, distributed or sold by a marijuana establishment.

City Department means any or all of the chief of police, the fire chief, the director of planning and code enforcement and their designees who administer the provisions of this chapter.

Cultivation or Cultivate: the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. "Cultivation" or "cultivate" does not include manufacturing, testing or marijuana extraction.

Disqualifying offense means a conviction for a violation of a state or federal law that is (i) a crime punishable by imprisonment for one year or more or (ii) a crime punishable by imprisonment for less than one year if it is violation of the Marijuana Legalization Act, 28-B M.R.S. §101 et seq. or the Maine Medical Use of Marijuana Act. It does not include an offense that consisted of conduct that would have been permitted under this chapter.

Enclosed, locked facility means a closet, room, or other enclosed area within a building, or an enclosed locked facility within a greenhouse, that is equipped with locks or other security devices that permit access only by a licensee.

Food Establishment means a factory, plant, warehouse, or store in which food and food products are manufactured, processed, packed, held for introduction into commerce, or sold and includes a caregiver or a registered dispensary that prepares food containing marijuana for medical use by a qualifying patient. It does not include a caregiver conducting an activity for a qualifying patient who is a member of the caregiver's family as defined in MRS Title 22 Section 2422 5-A.

Harvested Marijuana: the plant material harvested from a mature marijuana plant, except the stalks, leaves and roots. "Harvested marijuana" includes marijuana concentrate and marijuana products.

Immature marijuana plant: a marijuana plant that is not a mature marijuana plant or a seedling.

Manufacture or Manufacturing: the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis.

"Marijuana" means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include industrial hemp as defined in Title 7, section 2231, subsection 1 or a marijuana product.

Marijuana Business: any business involved in the cultivation, processing, testing, sale, or manufacturing of marijuana products for adult or medical use to include: Facilities for Marijuana Cultivation, Marijuana Manufacturing, Marijuana Testing as well as Registered Dispensaries and Marijuana Stores, or Registered Caregivers licensed under this Ordinance.

Marijuana Cultivation facility: a facility licensed under this ordinance to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to Manufacturing Facilities, to Adult Use Marijuana Stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to Marijuana Stores; cultivate, prepare and package medical marijuana at a location that is not the residence of the Registered Caregiver or Qualifying Patient

Marijuana extraction: the process of extracting marijuana concentrate from marijuana using water, lipids, gases, solvents or other chemicals or chemical processes.

Marijuana flower: is the pistillate reproductive organs of a mature marijuana plant, whether processed or unprocessed, including the flowers and buds of the plant. "Marijuana flower" does not include marijuana trim or whole mature marijuana plants.

Marijuana Nursery Cultivation Facility: a facility licensed under this ordinance to cultivate adult marijuana with not more than 1,000 SF of plant canopy pursuant to MRS 28-B Section 501.

Marijuana Manufacturing Facility: a facility licensed under this ordinance to purchase marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities; or, a registered tier 1 or tier 2 manufacturing facility or a person authorized to engage in marijuana extraction under section MRS 22 Section 2423-F.

Marijuana plant: all species of the plant genus cannabis, including, but not limited to, a mother plant, a mature marijuana plant, an immature marijuana plant or a seedling.

Marijuana Store: a facility licensed under this ordinance where qualified individuals may purchase marijuana, immature marijuana plants and seedlings from a Cultivation Facility, purchase marijuana and marijuana products from a Manufacturing Facility and sell marijuana, marijuana products, immature marijuana plants and seedlings to consumers for their own use and not for resale or distribution.

Marijuana Testing Facility: a facility licensed under this ordinance to: develop, research and test adult use marijuana, adult use marijuana products and other substances; or authorized in accordance with MRS 22 Section 2423-A, subsection 10, to analyze contaminants in and the potency and cannabinoid profile of medical marijuana samples and is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the State of Maine.

Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's medical diagnosis or symptoms for which a medical provider has provided the qualifying patient a written certification.

Multifamily dwelling means a building containing three (3) or more dwelling units, such buildings being designed for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units, and which is not a single-family attached dwelling.

Person: an individual or other entity, including a partnership, limited liability company,

corporation or other form of business.

Plant Canopy: the total surface area within the licensed premises of an Adult Use Marijuana Cultivation Facility that is authorized for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of non-contiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed premises of a cultivation facility that are used by the licensee to cultivate immature marijuana plants and seedlings and that are not used by the licensee at any time to cultivate mature marijuana plants.

Qualifying patient: a person who has been a resident of the State for at least 30 days and who possesses a valid written certification regarding medical use of marijuana in accordance with MRS 22 Section 2423-B.

Registered caregiver: a person or an assistant of that person that provides care for a qualifying patient and who is registered by the State of Maine pursuant to MRS 22 Section 24 -A.

Registered Dispensary: a person that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients as that term is defined in MRS22 Section 2422(6), as may be amended.

Testing or test: the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.

Sec. 22-423. License required.

No person shall engage, operate or maintain a Marijuana Business in the city unless such person has first acquired a license in accordance with this Article. A separate license is required for each type of Marijuana Business, whether located on the same premise, building, or property. The following do not require a license:

Each person 21 years of age or older who is growing as a primary caregiver for personal medical use and/or for personal adult use as allowed per state law and is doing so on the premises at which that person is domiciled is not subject to the licensing provisions of this ordinance as long as all cultivation is located within fully enclosed structures and any odor from marijuana plants or other marijuana products remains confined within the premises and is not detectable off-site of the premises that are under the custody or control of the individual or which create a public nuisance at common law. Outdoor cultivation of

marijuana for personal recreational or medical use is prohibited.

Registered Caregivers who manufacture or cultivate medical marijuana only for themselves and/or members of their household are exempt from the requirement to obtain a permit or license as it applies to this section of ordinance. Adult use manufacturing in any structure or property with a residence is prohibited.

Unless otherwise allowed, the cultivation, manufacturing, testing or sale of marijuana from a residence is prohibited, unless it is for personal use.

Sec. 22-424. Food establishment license.

A food establishment license must be obtained prior to preparing goods containing marijuana that are intended for consumption.

Registered caregivers who manufacture prepared goods containing medical use marijuana intended for ingestion, including tinctures, at their residences must apply for and obtain a permit for a home occupation in accordance with Appendix A, Articles II and V of the Code of Ordinances, Zoning and Land Use Code, and must obtain a food establishment license from the City and the Department of Agriculture, Conservation and Forestry (DACF), and shall comply with all applicable standards set forth in this ordinance.

Adult use manufacturing out of a residence is prohibited, unless it is for personal use in accordance with MRS 28-B, Section 1503.

Sec. 22-425. Reserved.

Sec. 22-426. Background checks.

The city clerk shall order background checks on all applicants for a Marijuana Businesses license. Updated background checks shall be conducted annually at the time of license renewal. Background checks shall be conducted in each state where such individuals have resided since the age of 18.

Sec. 22-427. Reserved.

Sec. 22-428. Reserved.

Sec. 22-429. Application requirements.

All applications for Marijuana Business licenses under this article shall be filed with, and in a form satisfactory to, the city clerk. All applicants must be qualified according to the provisions of this Article and shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

If the applicant who wishes to operate a Marijuana Business is a single individual, that person must

sign the license application. If the applicant who wishes to operate a Marijuana Business is more than one individual, each person who has an interest in the business must sign the application.

Each applicant must meet all qualifications set forth in this Article. Each applicant shall be considered a licensee if a license is granted.

The completed application for a Marijuana Business license shall contain, at a minimum, the following information and shall be accompanied by the specified documentation:

- a. If the applicant is an individual, the applicant's legal name and any aliases and proof that the applicant is at least twenty-one (21) years of age.
- b. If the applicant is a partnership, the complete name of the partnership and the names of all partners, whether the partnership is general or limited, along with a copy of the partnership agreement, if any, and proof that all partners are at least twenty-one (21) years of age. Each general partner must sign the application. Each general partner as well as the partnership must meet all qualifications set forth in this Article. Each general partner as well as the partnership shall be considered a licensee if a license is granted.
- c. If the applicant is a corporation, its complete name, the date of its incorporation, evidence that the corporation is in good standing with the State of Maine, the names and capacities of all officers, directors, and principal (owning 10% or more of the shares of the corporation) stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and proof that all officers, directors, and principal stockholders are at least twenty-one (21) years of age. A corporate officer must sign the application. Each of the corporation and corporate officer must meet all qualifications set forth in this Article. Each of the corporation and corporate officer shall be considered a licensee if a license is granted.
- d. If the applicant is a limited liability company (LLC), its complete name, the date of its establishment, evidence that the LLC is in good standing with the State of Maine, the names and capacities of all managers and members, a copy of its operating agreement, if any, the address of its registered office for service of process, and proof that all members and managers are at least twenty-one (21) years of age. A duly authorized manager must sign the application. Each of the limited liability company and manager must meet all qualifications set forth in this Article. Each of the limited liability company and manager shall be considered a licensee if a license is granted.
- e. If the applicant intends to operate the Marijuana Business under a name other than that of

the applicant, the Marijuana Business' name must be stated and the required registration documents must be submitted.

f. If the applicant, an officer, principal shareholder, member, manager or employee has been convicted of criminal activity under State and/or federal law, the specified criminal offense involved must be listed including the date, place, and jurisdiction of each conviction.

g. If the applicant, as an individual, partner, or officer, director, or principal stockholder of a corporation engaged in a Marijuana Business, or the partner of a partnership, or the members or managers of a limited liability company has had a previous license application denied or had such a license suspended or revoked under this ordinance or in any other governmental jurisdiction, the applicant must list the name and location of the Marijuana Business, the reason for which the license was denied, suspended, or revoked, the date of the denial, suspension, or revocation, and the position held in the Marijuana Business.

h. If the applicant holds any other permits/licenses under this ordinance or other similar Marijuana Business license from another governmental jurisdiction, the applicant shall provide the names and locations of such other permitted/licensed businesses.

i. The type of Marijuana Business for which the applicant is seeking a license.

j. The location of the proposed Marijuana Business, including a legal description of the property, street address, and telephone number.

k. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Marijuana Business pursuant to a lease, rental agreement, purchase and sale agreement, ownership, or other arrangement for possession of the premises.

l. The applicant's telephone number, email address, mailing address and residential address.

m. The applicant's driver's license or State of Maine Identification Card and, if applicable, a copy of a valid registered primary caregiver identification card issued by the State of Maine

n. A sketch showing the configuration of the subject premises, including building footprint, interior layout identifying floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.

o. A copy of a City Tax Map depicting the property lines of the premises and the property lines of other properties containing any existing Marijuana Businesses within five hundred (500) feet of the subject property and the property lines of any pre-existing schools or child care facilities and public parks, playgrounds or recreational facilities owned by the city within seven hundred and fifty (750) feet of the subject property, measured in accordance with Section 22-430 (3) and (4).

p. A nonrefundable application fee in accordance with the city's policy manual as established by the city council.

q. Proof that, pursuant to 28-B M.R.S. § 402, the applicant has been issued a conditional license by the State of Maine to operate the Adult Use Marijuana Business.

Three (3) copies of the license application and all supporting documentation must be provided at time of application.

All applications for a Marijuana Business license shall be kept confidential by the City.

Sec. 22-430.

Performance standards for Marijuana Business.

All marijuana businesses shall conform to the following provisions:

1. No cultivation or storage outside of a structure of marijuana, marijuana products, or related supplies is permitted.
2. Marijuana businesses operating with City approval prior to December 13, 2018, shall be entitled to continue operation whether such use does or does not conform to the locational requirements of Section 22-430 (3) and (4) of this Article of this Code or applicable zoning ordinances and shall be treated as a nonconforming use pursuant to Article VI, Section 4 of the Zoning and Land Use Code. A nonconforming business may convert to another nonconforming business pursuant to Article VI, Section 4(e) of the Zoning and Land Use Code.
3. No marijuana business shall be sited within seven hundred and fifty (750) feet of the lot lines of pre-existing schools or child care facilities and public parks, playgrounds or recreational facilities owned by the city. For the purposes of this paragraph, "school" includes a public school, as defined in Title 20-A, section 1, subsection 24, a private school, as defined in Title 20-A, section 1, subsection 22, a public preschool program, as defined in Title 20-A, section 1, subsection 23-A or any other educational facility that serves children from prekindergarten to grade 12. "Public parks, playgrounds or recreational facilities" includes those areas as defined in Section 54-8 of the Lewiston's Code of Ordinances. For purposes of this section, the term "child care facility" means a "child care facility" as that term is defined in 22 M.R.S. § 8301-A (1-A)(B), as may be amended. Setbacks shall be measured along the ordinary course of travel between the main entrance of the business and the closest lot line of pre-existing schools or child care facilities and public parks, playgrounds or recreational facilities owned by the city. If the marijuana business is located within a commercial subdivision or multi-tenant structure (i.e. business park, shopping plaza, etc.), the required setback shall be measured in the same manner. Notwithstanding the foregoing, more than one marijuana businesses may be located on the same parcel, provided all state and local requirements are met. Cultivation, manufacturing, testing, nurseries, and dispensaries operating within the industrial zoning district are exempt from

this setback requirement.

4. Separation of marijuana stores and registered dispensaries. The minimum distance between a marijuana store or dispensary and any two other marijuana stores and/or dispensaries shall be 500 feet as measured along the ordinary course of travel between the main entrance of each premises.
 - (a) Notwithstanding the foregoing, more than one marijuana businesses may be located on the same parcel, provided all state and local requirements are met.
 - (b) A parcel with a marijuana store operating with City approval prior to December 13, 2018 is allowed to have one additional store located on the same parcel not subject to the above referenced separation requirements, provided all state and local requirements are met and if applicable, shall be treated as a nonconforming use pursuant to Article VI, Section 4 of the Zoning and Land Use Code.
5. All activities of marijuana businesses, including, without limitation, cultivating, growing, manufacturing, processing, displaying, selling and storage, shall be conducted indoors. Marijuana businesses are not permitted to conduct outdoor sales or services of any kind. Any common areas, including, but not limited to storage areas and building facilities, shared with another marijuana business must be clearly identified as such in the license application.
6. Odor management. For all marijuana businesses, the odor of marijuana must not be detectable offsite, i.e., must not be detected at premises that are not under the custody or control of the establishment. To prevent and control marijuana odors, an odor control plan describing the odor(s) originating or anticipated to originate at the premises and the control technologies to be used to prevent such odor(s) from leaving the premises shall be submitted as part of the license application.
7. Marijuana businesses shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the operation.
8. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana business must be provided and operating at all times.
9. Sufficient and appropriate security measures to deter the theft of marijuana and prevent unauthorized entrance into areas containing marijuana must be provided at all times. Security measures shall include, at a minimum, the following:
 - (a) security surveillance cameras installed and operating 24 hours a day, 7 days a week to monitor all entrances, along with interior and exterior of the premises to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
 - (b) door and window intrusion alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working order;
 - (c) a locking safe or its functional equivalent permanently affixed to the premises that is suitable for storage of all adult use marijuana products, medical marijuana products and cash stored overnight on the premises;

- (d) exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of the Code of Ordinances; and
 - (e) deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).
10. Sale of edible products. No food products shall be sold, prepared, produced or assembled by a marijuana business except in compliance with all operating and other requirements of state and local law and regulations including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.
 11. Drive-through and home delivery. Marijuana businesses are prohibited from having drive-through pick-up facilities. Marijuana businesses are prohibited from providing home delivery services; provided, however, that registered caregivers and medical marijuana assistants may provide home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.
 12. Manufacture of marijuana. The extraction of marijuana using inherently dangerous substances is prohibited unless (a) the person has sought and obtained authorization to do so with the State of Maine, and (b) such activity is located in a zoning district where a Marijuana Manufacturing Facility is an allowed use.
 13. Signs: Notwithstanding the requirements of the Article XII, Section 16 of the Zoning and Land Use Code, all signs used by and all marketing and advertising conducted by or on behalf of a marijuana business may not involve advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal to persons under 21 years of age. The signs, marketing, or advertising are prohibited from making any health or physical benefit claims. All signage shall meet the City's sign ordinance requirements and may use an image or images of the marijuana plant or plants, or parts thereof, as long such image or images do not exceed 20% of the sign face. Pictorial representations of other marijuana products, by-products, or paraphernalia associated with the use or distribution of retail marijuana is prohibited.
 14. Other laws remain applicable. A marijuana establishment shall meet all operating and other requirements of State and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing adult use marijuana and/or marijuana establishments, the stricter law or regulation shall control.
 15. Businesses must satisfy all applicable State of Maine and city code requirements such as, but not limited to, electrical, plumbing, building, ventilation, energy conservation, life safety, and mechanical in addition to the environmental performance standards with respect to odors and other environmental considerations as per Appendix A, Article XII, Section 19.
 16. The cultivation of marijuana within or on the property of a multifamily dwelling is prohibited;
 17. Businesses may not be located within 300 feet as measured along the ordinary course of travel between the main entrance of the business and main entrance of a legally established

dwelling in a residential zoning district, in existence prior to the establishment of the business.

18. Marijuana businesses may only operate where permitted pursuant to the Lewiston Code of Ordinances, Appendix A, Zoning and Land Use Code, Article XI, District Regulations.

Sec. 22-431. Reserved

Sec. 22-432. Reserved.

Sec. 22-433. Inspection of marijuana businesses

A marijuana business is subject to inspection as follows:

1. Submission of a license application for a marijuana business shall constitute permission for entry and inspection.
2. A marijuana business shall allow the City Department to carry out an inspection in accordance with this chapter at any reasonable time.
3. During an inspection, the City Department may identify violations of this chapter or other provisions of the Code or State Law. The marijuana business may receive written notice by certified mail of the nature of the violations. If so, the marijuana business must notify, in writing, the representative of the City Department identified in such notice within ten (10) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
4. Failure to cooperate with required inspections and to respond to notices of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the marijuana business, subject to potential license revocation by the city administrator.

Sec. 22-434. Denial of application.

The city clerk may deny an application for a license based on the applicant's failure to comply with the application requirements set out in these rules, including the applicant's failure to provide the required information; and/or a determination that the information provided was materially inaccurate or incomplete.

Sec. 22-435. Disqualifying conviction.

The City shall not approve a license for a marijuana business if (i) the applicant or applicants in the case of individual applicants; (ii) the applicant or any general partner in the case of an application by a partnership; (iii) the applicant or any officer or principal shareholder in the case of an application by a corporation; and (iv) the applicant or any manager in the case of an application by a limited liability company, has been convicted of a disqualifying offense in Maine or another jurisdiction, specifically a conviction, within the past 10 years, for a violation of a state or federal law that is a crime punishable by imprisonment for one year or more; misdemeanor convictions

(or local ordinance violations) involving a controlled substance, dishonesty, theft, or fraud within the past 5 years; submitting an application that contains false information; failure to demonstrate the ability to maintain adequate premises liability and casualty insurance; failure to meet other criteria established by the State; and tax delinquency issues at the local, state, or federal level.

The city clerk or the City Department shall temporarily suspend the license for a marijuana business for any violations of the provisions contained within this chapter.

Sec. 22-436. Revocation of license.

Grounds for revocation of a license of a marijuana business by the city administrator include the following actions of a licensee:

1. Conviction of the licensee of selling, furnishing, or giving marijuana to a person who is not allowed to possess marijuana in accordance with these rules and the applicable state statutes.
2. Conviction of a disqualifying drug offense by the licensee.
3. Conviction of dispensing, delivering, or otherwise transferring marijuana to a person other than a registered patient who has designated the registered primary caregiver to cultivate marijuana.
4. Failure to cooperate with required inspections.
5. Failure to timely rectify any Notice of Violations.
6. Violations of any laws, rules, or ordinances that govern the operation of a marijuana business.
7. Committing, permitting, aiding or abetting any illegal practices in the operation of a marijuana business;
8. Conduct or practices that are detrimental to the safety and welfare of patient or/customers;
9. Providing information that is materially inaccurate or incomplete; and
10. Revocation or suspension of any state license or permit related to the Marijuana Business with which the licensee is associated

Sec. 22-437. Reserved.

Sec. 22-438. License administration for a marijuana business.

The city clerk and the City Department may impose conditions on the approval of any license application under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:

- (a) That the applicant provide documentation to the city clerk of the receipt of all approvals required from any federal or state agency or department pursuant to federal or state law prior to operations.

(b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.

Sec. 22-439. Reserved.

Sec. 22-440. Reserved.

Sec. 22-441. Reserved.

Sec. 22-442. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

(1) Temporary suspension. The city clerk and the City Department are authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.

(2) The city administrator may suspend or revoke a license for a marijuana business in accordance with the provisions of section 22-436 of this article.

(3) Civil penalties. A violator may be required to pay the penalties imposed by section 1-8 of this Code or 30-A M.R.S.A. (4452 et seq. as amended). A court judgment in the city's favor may result in a court order that the owner and/or operator of said Marijuana Business abate any violations, pay a penalty in accordance with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees incurred by the city. Notwithstanding the above, the chief of police may initiate criminal proceedings relative to individuals engaged in the unlawful distribution, use and cultivation of marijuana.

Sec. 22-443. Confidentiality.

All applications and supporting information submitted by primary caregivers under this ordinance, and the identity of registered primary caregivers and registered patients, shall be confidential pursuant to the Act, 22 M.R.S.A. §2425(8), and the Maine Freedom of Access law, 1 M.R.S.A. §402(3)(F). (Ord. No. 10-15, 1-6-11)

Sec. 22-444. Reserved

LEWISTON CITY COUNCIL
MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET: AGENDA ITEM NO. 10

SUBJECT:

Public Hearing and Final Passage regarding an amendment to the Zoning and Land Use Code regarding Adult Use and Medical Marijuana.

INFORMATION:

This agenda item is connected to the previous agenda item regarding this same topic.

This item pertains to amendments to the Zoning and Land Use Code regarding the definition and regulation of adult use and medical marijuana.

The Council has held numerous workshops on this topic. Please see the background material for more information on this subject.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve final passage for amendments to the City Code of Ordinances, Appendix A. "Zoning and Land Use Code", Article II. "Definitions", Article V. "Administration and Enforcement" and Article XI. "District Regulations".

AN ORDINANCE PERTAINING TO MARIJUANA BUSINESSES

THE CITY OF LEWISTON HEREBY ORDAINS:

Appendix A of the Code of Ordinances of the City of Lewiston, Maine, is hereby amended as follows:

APPENDIX A
ZONING AND LAND USE CODE

ARTICLE II. DEFINITIONS

Sec. 2. Definitions

Cultivation or Cultivate: the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale.

Home occupation means an occupation conducted in a dwelling unit or a structure accessory thereto, provided that all of the following criteria are met:

- (1) No person other than a member of the family residing on the premises shall be engaged in such occupation; and
- (2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the total floor area of the dwelling unit and accessory structures used in the home occupation shall be used in the conduct of the home occupation; and
- (3) There shall be no change in the outside appearance of the building or premises, or any visible evidence of the conduct of such home occupation other than one (1) sign, except as hereinafter permitted; and
- (4) No traffic shall be generated by such home occupations in greater volumes than would normally be expected in the neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required yard; and
- (5) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the home occupation is conducted in a detached one-family dwelling, or outside the dwelling unit if conducted in any other form of dwelling. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in a radio or television receiver off the premises, or causes fluctuations in line voltage off the premises; and
- (6) There shall be no stock in trade regularly maintained or any new commodity sold on the premises; and
- (7) The following are specifically excluded as home occupations: Convalescent or

nursing home, tourist home, animal hospital, restaurants, doctors' offices, dentists' offices, real estate offices, registered primary caregivers, beauty shops and barber shops, except those that are owner-occupied, one (1) chair, appointment-only shops that meet all the other home occupation criteria.

Manufacture or Manufacturing: the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis.

Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination. means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not.

Marijuana Business: any business involved in the cultivation, processing, testing, sale, or manufacturing of marijuana products for adult or medical use to include: Facilities for Marijuana Cultivation, Marijuana Manufacturing, Marijuana Testing as well as Registered Dispensaries and Marijuana Stores, or Registered Caregivers licensed under this Ordinance.

Marijuana Cultivation facility: a facility licensed under this ordinance to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to Manufacturing Facilities, to Adult Use Marijuana Stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to Marijuana Stores; cultivate, prepare and package medical marijuana at a location that is not the residence of the Registered Caregiver or Qualifying Patient

Marijuana Nursery Cultivation Facility: a facility licensed under this ordinance to cultivate adult marijuana with not more than 1,000 SF of plant canopy pursuant to MRS 28-B Section 501.

Marijuana Manufacturing Facility: a facility licensed under this ordinance to purchase marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities; or, a registered tier 1 or tier 2 manufacturing facility or a person authorized to engage in marijuana extraction under section MRS 22 Section 2423-F.

Marijuana Store: a facility licensed under this ordinance where qualified individuals may purchase marijuana, immature marijuana plants and seedlings from a Cultivation Facility, purchase marijuana and marijuana products from a Manufacturing Facility and sell marijuana, marijuana products, immature marijuana plants and seedlings to consumers.

Marijuana Testing Facility: a facility licensed under this ordinance to: develop, research and test adult use marijuana, adult use marijuana products and other substances; or authorized in accordance with MRS 22 Section 2423-A, subsection 10, to analyze contaminants in and the potency and cannabinoid profile of medical marijuana samples and is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the State of Maine.

Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's medical diagnosis or symptoms for which a medical provider has provided the qualifying patient a written certification.

~~Registered primary caregiver or primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense. a person or an assistant of that person that provides care for a qualifying patient and who is registered by the State of Maine pursuant to MRS 22 Section 2425-A.~~

~~Registered dispensary or dispensary means a not for profit entity registered pursuant to State Law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients. an entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients as that term is defined in MRS22 Section 2422(6), as may be amended.~~

~~Registered patient means a patient who has a registry identification card issued by the State of Maine.~~

ARTICLE V. ADMINISTRATION AND ENFORCEMENT

Sec. 3. General Provisions.

- (y) ~~Registered primary caregivers.~~ Adult use and medical marijuana. Notwithstanding Article IX, District Regulations, the following provisions apply to registered ~~primary~~ caregivers as defined in Article II, Section 2 and personal adult use:
- (1) Each person 21 years of age or older who is cultivating as a caregiver or for adult use as allowed per state law other than for the personal use ~~Registered primary caregivers engaged in the cultivation of medical marijuana for two to five registered patients shall not cultivate medical marijuana on or within any property containing more than two dwelling units.~~

- (2) ~~Registered primary caregivers not engaged in the cultivation of medical marijuana and registered primary caregivers engaged in the cultivation of medical marijuana for one registered patient~~ Each person 21 years of age or older who is cultivating as a caregiver for their personal medical use and/or for their personal adult use as allowed per state are not subject to sections 5 and 6 of this Article and are permitted throughout the City.
- (3) Each person 21 years of age or older who is cultivating as a caregiver or for adult use as allowed per state law other than for the personal use ~~Registered primary caregivers engaged in the cultivation of medical marijuana for two to five registered patients~~ are permitted in accordance with Article XI and subject to licensing as per Chapter 22, Article XV of the Code of Ordinances of the City of Lewiston.

ARTICLE XI. DISTRICT REGULATIONS

Sec. 22. Land Use Requirements

(c) *Land Use Table* – use appearing in the table are part of this Code and set forth the use allowed in all districts. (see attached)

Land Use Table Notes

(27) ~~Only one allowed in the city.~~ Must comply with Lewiston Code of Ordinances, Chapter 22, Article XV.

Reason For Proposed Amendment

The proposed amendment updates the existing Zoning and Land Use Ordinance to regulate both adult use and medical marijuana. Lewiston’s current regulations are limited to primary caregiver operations and were adopted in 2010. At that time, dispensaries for medical marijuana were not specifically permitted in any zoning district in the City of Lewiston, and in order to be in compliance with the new law at that time, the Zoning and Land Use Code had to be amended to allow for such use. The State has since changed the law with respect to medical marijuana and adult use marijuana, resulting in the need for definition amendments and determinations of where to allow marijuana businesses.

This amendment updates definitions in the Zoning and Land Use Code, referencing the specific state statute definitions contained in the Adult Use Marijuana Act (28-B M.R.S. §§ 101-1504) and the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B). The amendment also focuses on the zoning districts in which marijuana business may operate.

- Districts in which the city currently permits industrial and light industrial uses will allow as permitted uses marijuana cultivation, manufacturing, testing, nurseries, and registered dispensaries: Industrial, Urban Enterprise, Mill, Highway Business and Office Service.
- Marijuana stores shall be allowed in those districts that currently permit retail uses: Riverfront, Community Business, Highway Business, Centreville, Urban Enterprise and Mill.
- Downtown Residential and Neighborhood Conservation “B” districts, which currently allow retail uses, will not allow any marijuana stores, since the majority of uses in those districts are residential.

All marijuana business will be subject to local licensing requirements contained in Lewiston Code of Ordinances, Chapter 22, Article XV. Medical marijuana and adult use marijuana establishments will be subject to the same local licensing and zoning requirements.

Conformance With The Comprehensive Plan

- Page 116: “Continue to promote Lewiston and enhance the City’s competitive advantage in order to attract high-quality companies, entrepreneurs, and knowledge-based businesses to the area.”
- Page 164: “Lewiston must build on its growing momentum to actively invite new investment and create the critical mass of economic energy needed to launch the City into a new era of growth and productivity.” “Encourage infill and redevelopment within the downtown, existing service area, and designated growth area.”

Water dependent uses, e.g. docks and marinas					P												P	C				
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet																		C				
Recreation																						
Campgrounds					C														C			
Public or private facilities for nonintensive outdoor recreation	C	C	C	C	P	C	C	C	C								P	P				
Commercial outdoor recreation and drive-in theaters					P						C	C		C				P(32)				
Fitness and recreational sports centers as listed under NAICS Code 713940					P			P			P	P	P	P	P	P	P					

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 11

SUBJECT:

Public Hearing and Final Passage for Land Use Code Amendments regarding Nursery Schools in additional zoning districts.

INFORMATION:

This proposed amendment addresses the issue of Nursery Schools and increasing the allowable zoning districts to include Low Density Residential, Medium Density Residential and Suburban Residential. The Planning Board voted at their October 8 meeting to send a favorable recommendation (3-2) to the City Council regarding this amendment however the motion did not pass due to lack of minimum number of majority votes. As such, this item will require a minimum of five votes by the City Council to pass. Please see the agenda material for additional background on this request.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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That the proposed amendment to Appendix A, Article II, "Definitions" and Article XI, "District Regulations", of the City Zoning and Land Use Code, concerning changes to the definition and classification of Nursery Schools, receive final passage by a roll call vote.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor and City Council

FROM: Douglas Greene, AICP, RLA; Deputy Director/City Planner

DATE: October 7, 2019

RE: Nursery School Text Amendment Summary

The Staff is providing a summary of Nursery School text amendments.

Background and Purpose- Back in the spring of 2019, Mrs. Michelle Roberts, who lives at 235 Pond Road, and operates a small family daycare with 12 children, met with Staff to discuss her desire to open a small Nursery School. 235 Pond Road is located in the Neighborhood Conservation "A" (NCA) district, and Staff informed her that Nursery Schools are considered to be an Academic Institution land use type and are not permitted in the NCA district.

The Zoning and Land Use Code defines Academic Institutions in Article XI, District Regulations, Section 22, Land Use Requirements as, "*Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures*".

Mrs. Roberts submitted a petition to amend the Zoning and Land Use Code to make Nursery Schools a new land use category (in all districts) that would be more closely aligned with Child Care Facilities and include a definition with additional standards specific to the NCA district.

Mrs. Robert's Nursery School text amendment application was submitted and had the following features:

- Nursery Schools were made a specific use group (in all zoning districts) to be similar to Child Care Facilities in the land use chart. Nursery Schools would no longer be considered as an academic institution in the land use chart.
- A new definition for Nursery Schools was added that included seven criteria; four directly from the State's definition of Nursery Schools, and three additional criteria, specific to Nursery Schools in the NCA district. Those three criteria for Nursery Schools in the NCA district were, a.) limit the number of students to no more than 12 students per session, b.) be restricted to properties a minimum of 1 acre in size and c.) require the Nursery School to be accessory to a single-family residence.
- As a new category in the land use chart, Nursery Schools would be a permitted use in the Riverfront (RF), Office Residential (OR), Downtown Residential (DR), Institutional Office (IO), Community Business (CB), Highway Business (HB), Centreville (CV), Office Service (OS), Industrial (I), Urban Enterprise (UE) and Mill (Mill) districts.

- Nursery Schools would be a conditional use in the Rural Agriculture (RA), Low-Density Residential (LD), Suburban Residential (SR), Medium Density Residential (MR), Neighborhood Conservation “B” (NCB) and NCA districts.

The staff agreed that Nursery Schools are similar to existing, permitted Child Care Facilities and felt the proposed text amendment was reasonable as long as neighborhoods were protected from negative impacts by requiring a conditional use approval. (see attachment 4 for the complete ordinance language)

The main features of a conditional use approval are:

- Notifications are sent to all property owners within 300 feet.
- A conditional use application submitted to the Planning Board must meet the following standards. (the complete conditional use ordinance is attached)
 1. Neither the proposed use nor the proposed site where the use will be located is of such a character that the use will have a significant adverse impact upon the value or quiet possession of surrounding properties greater than would normally occur from such a use in the zoning district.
 2. Vehicular and pedestrian access to, into and within the site will be safe and will not be overburdened or create hazards because they are inadequate.
 3. Municipal or other facilities serving the proposed use will not be overburdened or create hazards because they are inadequate.
 4. The soils on the proposed site shall have adequate capacity and stability to support all loadings.
 5. The scale and design of the proposed structures concerning materials, scale and massing, shall be compatible with existing structures within 500 feet of the site in areas where the existing structures are of a similar scale and architectural treatment.

Nursery School Text Amendment Approval Process-

- The Planning Board held a public hearing for the text amendment to allow Nursery Schools in the NCA district at their June 10, 2019 meeting and passed a motion 6-0, to send a favorable recommendation to the City Council.
- The City Council approved the text amendment to allow Nursery Schools in the NCA district on July 16, 2019, by a vote of 5-1.
- At the same July 16th meeting, the City Council also approved a motion (6-0) to have the Planning Board consider a second text amendment for Nursery Schools to include Suburban Residential (SR), Low-Density Residential (LDR), and Medium-Density Residential (MDR) districts in the definition of Nursery Schools and to not be “*Accessory to public schools, religious facilities, multifamily or mixed residential developments, and mobile home parks.*”
- The Planning Board held a public meeting on August 12, 2019, to consider a second text amendment for Nursery Schools as recommended by the City Council on July 16th. The Planning Board voted 3-2 to send a favorable recommendation to the City Council. That motion failed by not having a four-vote majority.
- The City Council discussed the second Nursery School text amendment at a workshop on September 10, 2019, and is scheduled to have a first reading on October 15, 2019.

Attachments:

1. Planning Board recommendation to City Council from August 12, 2019.
2. Nursery School Ordinance (8/12/19)
3. Amended Land Use Chart (8/12/19)
4. Conditional Use Ordinance



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor and City Council

FROM: Douglas Greene, AICP, City Planner

DATE: October 8, 2019

RE: Planning Board Recommendation: Text Amendment for Nursery Schools in 3 Low-Density Residential Districts

The Planning Board took the following action at their meeting held on August 12, 2019:

MOTION: by Norman Anctil, pursuant to Article VII (Planning Board- Powers and Duties), Section 4 and Article XVII (Amendment and Other Legal Provisions), Section 5 of the Zoning and Land Use Code to send a favorable recommendation to the City Council for a text amendment to Article II, Definitions, to include Low Density Residential (LDR), Medium Density Residential (MDR) and Suburban Residential (SR) districts in the definition of Nursery Schools and to remove note (22) from Article XI, District Regulations, Section 22, Land Use Table for the LDR, MDR and SR districts. Second, by Kristine Kittridge.

VOTED: 3-2 in favor (Motion Failed Due to Lack of Majority Votes) In Opposition: Benjamin Martin and Lucy Bisson

Purpose of the Text Amendment-

Acting on instructions from the City Council, the Planning Board held a public meeting on August 12, 2019, to discuss amending the Nursery School ordinance that was adopted by the City Council on July 16, 2019. The purpose of the text amendment was to include LDR, MDR and SR in the definition of Nursery Schools and to remove note 22 from the Land Use Table for the LDR, MDR, and SR districts to match the NCA district land use requirements for Nursery Schools. Note 22 requires a use (Nursery Schools) to be "Accessory to public schools, religious facilities, multifamily or mixed residential developments or mobile home parks."

Summary of August 12, 2019, Planning Meeting-

During the August 12 Planning Board public hearing, opponents argued that 12 students per session, two times a day, was double the trips generated from a small daycare facility which would create traffic problems and in general, be

Attachment 1

detrimental to low-density residential neighborhoods. Supporters felt small scale Nursery Schools are a good addition and fit in neighborhoods.

The Planning Board had a quorum of 5 members at the meeting. Three Board members supported the text amendment that treats nursery schools in the LDR, MDR, and SR districts the same as in the NCA district and that required conditional use approval in those districts, which would provide notice to and protect neighborhoods from possible negative impacts. The two Planning Board members opposing the motion expressed concern that the traffic from Nursery Schools in low-density neighborhoods would create negative impacts.

Attachment 2

08.12.2019

AN ORDINANCE PERTAINING TO NURSERY SCHOOLS

THE CITY OF LEWISTON HEREBY ORDAINS:

Appendix A of the Code of Ordinances of the City of Lewiston, Maine, is hereby amended as follows:

APPENDIX A ZONING AND LAND USE CODE ARTICLE II. DEFINITIONS

Sec. 2 Definitions

Nursery School means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three (3) or more children, who are between the ages of thirty-three (33) months and under eight (8) years of age, provided that:

1. No session conducted for the children is longer than three and one half (3 ½) hours in length;
2. No more than two (2) sessions are conducted per day;
3. Each child in attendance at the nursery school attends only one session per day;
4. No hot meal is served to the children.
5. Nursery schools in the Neighborhood Conservation "A" (NCA), Low Density Residential (LDR), Suburban Residential (SR) and Medium Density Residential (MDR) Districts shall be limited to no more than 12 children per session.
6. Nursery schools in the Neighborhood Conservation "A" (NCA), Low Density Residential (LDR), Suburban Residential (SR) and Medium Density Residential (MDR) Districts shall be limited to properties containing a minimum of one (1) acre in size.
7. Nursery schools in the Neighborhood Conservation "A" (NCA), Low Density Residential (LDR), Suburban Residential (SR) and Medium Density Residential (MDR) Districts shall be accessory to a single-family residence.

ARTICLE XI. DISTRICT REGULATIONS

Sec. 22. Land Use Requirements, (c) Land Use Table (See Land Use Chart, attachment 3)

REASONS FOR THE PROPOSED AMENDMENT

On July 16, 2019, the City Council approved a text amendment that defines Nursery Schools and allows them as a conditional use in the Neighborhood Conservation "A" (NCA) district subject to conditions contained in the definition. This text amendment also moved Nursery Schools out of the *Academic Institution* Land Use Category and aligns it more closely with Child Care Facilities in the Land Use Chart found in Article XI, Section 22 Land Use Requirements.

Attachment 2

The City Council also approved a motion at the July 16th meeting, instructing the Planning Staff to draft a text amendment for Nursery Schools that would include Low Density Residential (LDR), Medium Density Residential (MDR) and Suburban Residential (SR) districts to the definition of Nursery Schools along with the same conditions that apply to the Neighborhood Conservation “A” (NCA) district uses. Also part of this text amendment would be to remove a special note (22) in the Land Use Chart for the LDR, MDR and SR that require a Nursery Schools to be “*Accessory to public schools, religious facilities, multifamily or mixed residential developments and mobile home parks.*” This change is found in the attached Land Use Chart (attachment 3).

The purpose of the original text amendment was to define Nursery Schools and to allow them as a conditional use in the Neighborhood Conservation “A” (NCA) district. Nursery Schools were not specifically mentioned in Article XI, Section 22 Land Use Requirements and Land Use Chart. The Planning and Code Enforcement Office currently interprets and places Nursery Schools in the Academic Institution Land Use category. “*Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures*”. (Article XI, Section 22 Land Use Requirements)

CONFORMANCE WITH 2017 COMPREHENSIVE PLAN

The 2017 Legacy Lewiston Comprehensive Plan is somewhat silent with regards to child care facilities and early childhood education. The applicant’s cover letter mentions how Lewiston is changing and challenges each citizen to participate and take on a role no matter how large or small. She also describes how the city’s limited financial resources delays the implementation of the Comprehensive Plan’s goals. The people of Lewiston can help to the implementation process with their time, sweat, passion and perseverance. We are not coming to you asking for money, we are using our own resources to add something positive to the city of Lewiston and to the education for the youth of the city, the next generation. In addition, the Comprehensive Plan also mentions small businesses on page 168.

“Promote Grassroots Initiatives

Smaller, incremental, and uniquely Lewiston initiatives are just as important to economic growth as large-scale investments. Lewiston has a significant population of young adults, an age group has untapped potential and will likely be a driving force behind future grassroots planning and business initiatives.”

Text Amendment to Remove Note 22 from Nursery Schools in the LDR, MDR and SR Districts

Land Use Table: All Zoning Districts 05.05.16	Rural Agriculture (RA)	Low Density Residential (LDR)	Suburban Residential (SR)	Medium Density Residential (MDR)	Riverfront (RF)	Neighborhood Conservation (NC)	Neighborhood Conservation "B" (NCB)	Office Residential (OR)	Downtown Residential (DR)	Institutional Office (IO)	Community Business (CB)	Highway Business (HB)	Centerville (CV)	Office Service (OS)	Industrial (I)	Urban Enterprise (UE)	Mill (M)	Resource Conservation (RC) (18)	Groundwater Conservation Overlay (GC)	No Name Pend Conservation Overlay (NNP)(29)	Mobile Home Park Overlay (MH)		
Accessories use or structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					
Commercial-Service																							
Veterinary facilities excluding kennels and humane societies								P		P	P	P											
Veterinary facilities including kennels and humane societies	C															P							
Nursery School	C	C (22)	C (22)	C (22)	P	C	C	P	P	P	P	P	P	P	P	P	P						
Small day care facilities	C	P(22)	P(22)	P(22)	P	P(22)	P	P	P	P	P	P	P	P	P	P	P						
Day care centers accessory to public schools, religious facilities, business and professional offices including research, experimental, testing laboratories, engineering, research, experimental, management and related services		C(22)	C(22)	C(22)	P(9)	C(22)	C(31)	P(9)	P(9)	P	P(9)	P	P(9)	P	P	P	P						
Restaurants					P(1)				P(1)	P(5)	P(26)	P(26)	P(1)	P	P(6)	P	P(1)						
Drinking places					P						C	C	P		P(6)								
Adult business establishments																							
Hotels, motels, inns									C	P(4)	P	P	P	P									
Movie theaters except drive-in theaters									P		P	P	P	P									
Places of indoor assembly, amusement or culture											P	P	P	P									
Art and crafts studios							C	P	P	C	P	P	P	P									
Personal Services								P	P	P	P	P	P	P		P(6)	P						
Retail stores						P					P	P	P	P		P(6)	P						
Neighborhood retail stores						C(21)																	
Lumber and building materials dealer							P				C	P											
Gasoline service stations											P	P											
Gasoline service stations which are a part of and subordinate to a new and used car dealers											P	P											
Recreational vehicle, mobile home dealers												P										P(17)	
Equipment dealers and equipment repair												P											
Automotive services including repair											P(9)	P											
Registered dispensary(27)												C		C	C	C						C(9)	
Registered primary caregivers engaged in the cultivations of medical marijuana for two to five registered patients.												P		P	P	P							
Tattoo Establishments											C	C											
Industrial																							
Light industrial uses												P(9)	P(9,38)	P	P	P	P						
Industrial uses													P(16)		P	C	C						
Building and construction contractors												P(6)		P(6)	P(6,7)	P(6,7)	P(6,7)						
Fuel oil dealers and related facilities															P	P(6,7)							
Wholesale sales, warehousing and distribution facilities and self-storage facilities												P		P	P	P	P						
Self storage facilities														P			P						
Commercial solid waste disposal facilities																	C						
Junkyards and auto graveyards																	C						
Recycling and reprocessing facilities																	C					P(9)	
Private industrial/commercial developments(23)											P	P		C	P	P						P	
Transportation																							
Airports or heliports	C																						
Commercial parking facilities					P		C		C(3)	C	C	P	P									P	
Transit and ground transportation facilities					P				C													P	
Transportation facilities												P		C	P	P						P(10)	
Public and Utility																							
Pumping stations, standpipes or other water supply uses involving facilities located on or above the ground surface and towers for municipal use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P						
Power transmission lines, substations, telephone exchanges, microwave towers or other public utility or communications use	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C						
Municipal buildings and facilities	C	C	C	C	P	C	C	C	P	C	P	P	P	P	P	P	P					C	
Preservation of historic areas; emergency and fire protection activities; bridges and public roadways																							P
Dams																							C

Attachment 3

Note 22: Accessory to public schools, religious facilities, multifamily or mixed residential developments and mobile home parks.

Text Amendment to Remove Note 22 from Nursery Schools in the LDR, MDR and SR Districts

Land Use Table: All Zoning Districts 05.05.16	Rural Agricultural (RA)	Low Density Residential (LDR)	Suburban Residential (SR)	Medium Density Residential (MDR)	Riverfront (RF)	Neighborhood Conservation "A" (NCA)	Neighborhood Conservation "B" (NCB)	Office Residential (OR)	Downtown Residential (DR)	Institutional Office (IO)	Community Business (CB)	Highway Business (HB)	Centerville (CV) ²⁰	Office Service (OS)	Industrial (I)	Urban Enterprise (UE)	MHI (M)	Resource Conservation (RC) (16)	Groundwater conservation overlay district (GC) ²⁰	No Name Pond Conservation Overlay (NNP) ²⁹	Mobile Home Park Overlay (MH) ²⁵
Institutional																					
Religious facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P				
Cemeteries	P	P	P	P		P	P														
Congregate care/assisted living facilities, institutions for the handicapped, nursing or convalescent homes, group care facilities				C	P		C	P	P	P	P	P	P	P		P	P				
Hospitals, medical clinics					P		C	P	C	P	P	P	P	P		P	P				
Museums, libraries, and non-profit art galleries and theaters					P				P	P			P				P				
Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or				C(13)	P		C(13)	C	P	P(12)(24)	P	P	P	P	P	P	P				
Civic and social organizations							C	P		C			P								
Public community meeting and civic function buildings including auditoriums					P				P	P							P				
Residential																					
Single-family detached dwellings on individual residential lots	P(8)	P	P	P		P	P(2)	P	P(11)	P(2)											
Mobile homes on individual residential lots	P(8)			P(35)																	
Two-family dwellings				P		P(37)	P	P	P(11)			P(14)				P	P				
Multifamily dwellings in accordance with the standards of Article XIII				P(34)	P(11)		P	P	P(11)	P											
Single-Family attached dwelling in accordance with the standards of Article XIII	C			P(34)	P(11)		P	P	P(11)	P											
Mixed single-family residential developments in accordance with the standards of Article XIII	C	P		P			P														
Mixed residential developments in accordance with the standards of Article XIII		P		P			P	P													
Mixed use structures					P(11)		P	P	P(11)	P	P	P	P			P	P				
Lodging houses							P	P	P(11)												
Home occupations	P	P	P	P		P	P	P	P	P	P	P	P	P		C					
Bed and breakfast establishments as a home occupation	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P				
In-law apartments in accordance with the standards of Article XII	P	P	P	P		P	P	P	P				P								
Single family cluster development	P	P	P	P																	
Family day care home	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Shelters							C														
Dormitories												P									
Natural Resource																					
Agriculture	P(8)																				P
Farm Stands	P																				
Forest management and timber harvesting activities in accordance with the standards of Article XIII	P	P	P	P		P	P	P			P	P		P	P	P					P
Earth material removal	C													C	C						
Community gardens ²⁰	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Water dependent uses, e.g. docks and marinas					P												P				C
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet																					
Recreation																					
Campgrounds	C																				C
Public or private facilities for nonintensive outdoor recreation	C	C	C	C	P	C	C	C	C								P				P
Commercial outdoor recreation and drive-in theaters					P						C	C		C							P(32)
Fitness and recreational sports centers as listed under NAICS Code 713940					P			P			P	P	P	P	P	P	P				

Note 22: Accessory to public schools, religious facilities, multifamily or mixed residential developments and mobile home parks.

**APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES**

Sec. 1. Conditional use permit.

- (a) A building, structure, or parcel of land may be employed for a conditional use if the use is specifically listed as a conditional use in the regulations governing the zoning district in which the use is proposed and, except as provided in subsection (b) hereof, a conditional use permit is approved by the board of appeals.
- (b) A building, structure or parcel of land may be employed for a conditional use if the use is specifically listed as a conditional use in the regulations governing the zoning district in which the use is proposed and, when the proposed development is a major development as defined in article XIII, subsection 3(a)(2), if a conditional use permit is approved by the planning board.

(Ord. No. 89-3, 4-7-89)

Sec. 2. Application.

Applications for conditional use permits shall be submitted to the office of the director of code enforcement. A nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be on forms provided by the city for that purpose and shall contain the following information and documentation:

- (1) The applicant's name and address and his interest in the subject property;
- (2) The owner's name and address, if different than the applicant;
- (3) The address and map and lot number, as shown in the records of the office of the assessor, of the subject property;
- (4) The particular provision of this Code authorizing the proposed conditional use;
- (5) The zoning classification and present use of the subject property;
- (6) A general description of the proposed conditional use;
- (7) A drawing, which is substantially to scale, of the site, showing existing and proposed buildings, roads, drives, parking areas and utilities, the actual relationship of these facilities to each other and the boundaries of the parcel and the location of buildings or abutting lots which are within 50 feet of the property line of the site. Where development approval is required by article XIII of this Code, the drawing shall meet the requirements of article XIII, subsection 3(h)(3) of that article.

→ **Sec. 3. Standards for conditional use permits.**

A conditional use permit shall be granted by the board of appeals or planning board unless the board finds that the granting of the permit would violate one or more of the following standards:

- (1) Neither the proposed use nor the proposed site upon which the use will be located is of such a character that the use will have significant adverse impact upon the

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

value or quiet possession of surrounding properties greater than would normally occur from such a use in the zoning district. The board may not find that this standard is satisfied unless it finds that:

- a. The size of the proposed use is comparable to surrounding uses; and
 - b. The amount and type of traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces are comparable to surrounding uses; and
 - c. The generation of noise, dust, odor, vibration, glare, smoke, litter and other nuisances is comparable to surrounding uses; and
 - d. The impact of the use on the quality and quantity of groundwater available to abutting properties is comparable to surrounding uses; and
 - e. Unusual physical characteristics of the site, including size of the lot, shape of the lot, topography, and soils, do not aggravate adverse impacts upon surrounding properties.
- (2) Vehicular and pedestrian access to, into and within the site will be safe and will not be overburdened or create hazards because they are inadequate. The board may not find that this standard is satisfied unless it finds that:
- a. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development.
 1. Adequate capacity means that:
 - (i) Intersections on major access routes to the site within one-half mile of any entrance road will function after development at a minimum at Level of Service C; or
 - (ii) If they are functioning at a Level of Service D or lower prior to the development, the project will not reduce the current level of service.
 2. The board of appeals or planning board may approve a conditional use permit for an application not meeting this requirement if the applicant demonstrates that:
 - (i) A public agency has committed funds to construct the improvements necessary to bring the level of access to said standard, or
 - (ii) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to said standard and will guarantee the completion of the improvements within one year of approval of the permit.
 - b. The topography of the site shall permit the construction of all driveways, entrances or proposed streets to meet the standards of the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

- c. Facilities are present to assure the safety of pedestrians passing by or through the site.
- (3) Municipal or other facilities serving the proposed use will not be overburdened or create hazards because they are inadequate. The board may not find that this standard is satisfied unless it finds that:
 - a. The capacity of sewerage and water supply systems is adequate to accommodate the proposed use;
 - b. The capacity of the storm drainage system is adequate to accommodate the proposed use; and
 - c. The ability of the fire department to provide necessary protection services to the site and development is adequate.
- (4) The soils on the proposed site shall have adequate capacity and stability to support all loadings, including fill, developed by the proposed use and the use will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water to the extent that a dangerous or unhealthy condition may result on the site or upon the land of abutters or the environment. In considering whether this standard is satisfied, the board shall take into account the elevation above sea level of the site and surrounding properties, its relation to flood plains, the slope and vegetation of the land and their effects on drainage.
- (5) The scale and design of the proposed structures with respect to materials, scale and massing shall be compatible with existing structures within 500 feet of the site in areas where the existing structures are of a similar scale and architectural treatment.

(Ord. No. 89-3, 4-7-89; Ord. No. 01-23, 2-7-02; Ord. No. 07-02, 3-22-07)

Sec. 4. Additional standards in shoreland areas.

For conditional use permit applications in shoreland areas, the board of appeals or planning board shall grant the application only if it finds that the proposed use:

- (1) Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
- (2) Will conserve shoreland vegetation;
- (3) Will conserve visual points of access to waters as viewed from public facilities;
- (4) Will conserve actual points of public access to waters;
- (5) Will conserve natural beauty; and
- (6) Will avoid problems associated with floodplain development or use such as erosion, increased risk of flood damage to upstream properties or increased flood damage.

(Ord. No. 89-3, 4-7-89)

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

Sec. 5. Limitations on conditional use permits.

No conditional use permit shall be valid for a period longer than six months from the date of issue, or such other time, up to two years, as was fixed when the permit was granted, unless the conditional use has been commenced or construction has actually begun within that period and is thereafter diligently pursued to completion. However, one or more extensions of said time, each not to exceed one year, may be granted by the board of appeals or planning board if the facts which supported the granting of the permit have not materially changed. A conditional use permit shall be deemed to authorize only the particular use for which it was issued and such permit shall automatically expire and cease to be of any force or effect if such use is, for any reason, discontinued for a period of 12 consecutive months. In addition, a conditional use permit authorizes only the activity expressly described in the application. Any additions to buildings or structures, construction of new buildings or structures, or other enlargement, expansion or intensification of the use shall require the issuance of a new conditional use permit.

(Ord. No. 89-3, 4-7-89)

Sec. 6. Miscellaneous provisions.

The provisions relating to appeals contained in article IX, subsections 2(b)--(f) and sections 5, 6, 8 and 11 are also applicable to the administration of conditional use permit applications.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 12

SUBJECT: Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas – Central Maine Medical Center.

INFORMATION:

Representatives of Central Maine Healthcare have requested that the City designate certain rights of way adjacent to their properties as no smoking areas. The City recently enacted such limitations on a portion of Lisbon Street and has had such an area in place for some time in association with St. Mary’s Hospital. The initial request would have encompassed a significant area beyond the core hospital complex to include sections of right of way on Lowell, Biddle, and Bates Streets as well as both sides of Main Street adjacent to the hospital’s main complex.

The City Council discussed this request at a recent workshop where the consensus of the Council was to consider a more limited area immediately adjacent to the hospital including High and Hammond Streets and the hospital side of Main Street. A map illustrating the area proposed to be regulated is attached, as is the letter of request.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

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To approve the Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas – Central Maine Medical Center.

Ordinance, Amending Section 50-19 of the Code of Ordinances – Offenses and Miscellaneous Provisions – Prohibiting the Use of Tobacco Products in Designated Areas – Central Maine Medical Center.

Whereas, Lewiston is a safe and healthy place to live, work, and recreate; and

Whereas, tobacco use is the foremost preventable cause of premature death in the United States, causing over 400,000 deaths in the United States each year; and

Whereas, the Surgeon General of the United States has stated that there are no safe levels of exposure to secondhand smoke; and

Whereas, tobacco-free policies support tobacco-free lifestyles and encourage tobacco users to quit; and

Whereas, discarding cigarette and cigar butts onto the ground is unsightly, unclean, and potentially hazardous, particularly to young children and wildlife;

Now, therefore, the City of Lewiston Hereby Ordains that Section 50-19 of the Code of Ordinances is amended as follows:

Sec. 50-19. Prohibiting tobacco use in designated public rights of way.

Smoking and all other use of tobacco products, including vaping and e-cigarette use, is prohibited on certain designated public rights of way, including public streets and sidewalks, with the exception of the use of such products by occupants of motorized vehicles traveling through the designated area. “Tobacco Products” is defined to include all tobacco-derived or containing products including, but not limited to, cigarettes, cigars, spit and smokeless tobacco, dip, chew, snuff, snus, electronic cigarettes, vape products, and other electronic nicotine delivery systems, excluding products specifically approved by the US Food and Drug Administration (FDA) for the purpose of cessation or nicotine replacement therapy. “Smoking” includes carrying or having in one’s possession a lighted or heated cigarette, cigar, or pipe, or a lighted or heated tobacco or plant product intended for human consumption through inhalation, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this policy.” The designated prohibited areas are:

- (a) Campus Avenue from Sabattus Street to Central Street, both sides.
- ~~(b)~~ Lisbon Street From Adams Avenue to Main Street, both sides.
- (c) Main Street from Hammond Street to High Street, west side.
- (d) High Street from Main Street to Hammond Street, both sides.
- ~~(b)~~ (e) Hammond Street from High Street to Main Street, both sides.

Deletions are ~~struck through~~; additions are underlined.



Date: October 1, 2019

To: Honorable Mayor and Members of the City Council

From: Central Maine Healthcare

RE: Prohibiting tobacco use on public rights of way surrounding hospital properties

Central Maine Healthcare (CMH) intends to promote and maintain a safe healthcare environment for all patients, employees, volunteers, and visitors. CMH recognizes that:

- a) Tobacco use, smoking and environmental tobacco smoke pose serious health and safety risks and undermine medical treatment.
- b) Tobacco-free policies aid in community, employee, and patient tobacco cessation efforts.

Therefore, all CMH campuses are 100% tobacco-free. Prohibiting all tobacco use, including vaping and e-cigarette use, on public rights of way surrounding Central Maine Medical Center (CMMC) properties would further support CMMC's effort to maintain a safe and healthy environment free from the harmful effects of secondhand smoke. The following public rights of way border or pass directly through CMMC properties:

1. High Street, both sides
2. Hammond Street, both sides
3. Main Street from Hammond Street to High Street, on the hospital side
4. Lowell Street from Middle Street to Bates Street, both sides
5. Middle Street from Lowell Street to Main Street, on the MCHP side
6. Bates Street from Lowell Street to Oak Street, Trolley building side
7. Sidewalks in front of 287 Main Street, on Main and Sabattus Streets

Therefore, CMH would like to propose that these public rights of way prohibit tobacco use, including vaping and e-cigarette use, to protect all patients, employees, volunteers, and visitors on campus.

Thank you for your consideration,

Dr. David Tupponce

President, Central Maine Medical Center

Proposed No Smoking Sidewalks in the area of CMMC



Legend:
Proposed Sidewalk-No Smoking


LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 13

SUBJECT: Ordinance, Amending Chapter 2, Article III, Division 12, 13, and 14 of the Code of Ordinances – Department of Public Works.

INFORMATION:

The Code of Ordinances establishes the City's various departments and their functions. The portion of the Code dealing with the organization of Public Works, our Utilities, and our Recreation Division has not been revised in many years and is seriously outdated, reflecting as it does the prior situation where these functions were in separate City departments. Public Works Director, Dale Doughty, has revised this ordinance to more closely reflect how the Department is actually organized and to clearly create an overall departmental management team to ensure that the diverse functions of the Department are closely coordinated.

The attached ordinance amendment includes both the current code language to be repealed and the new language to be adopted.

This proposal was reviewed during a recent Council workshop.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EA/BLK/mm

REQUESTED ACTION:

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To approve the **Ordinance**, Amending Chapter 2, Article III, Division 12, 13, and 14 of the Code of Ordinances – Department of Public Works.



COUNCIL RESOLVE

Ordinance, Amending Chapter 2, Article III, Division 12, 13, and 14 of the Code of Ordinances – Department of Public Works.

Whereas, the City's Administrative Code establishes the City's departmental structure and assigns various duties to each department; and

Whereas, over the years, the City has undergone several reorganizations which have reduced what was once three separate departments into a single Department of Public Works; and

Whereas, these adjustments have not been reflected in the City's Code; and

Whereas, the current Director of Public Works has worked to further clarify and refine the Department's organizational structure;

Now, therefore, the City of Lewiston hereby Ordains that

Chapter 2, Article III, Divisions 12, 13, and 14 of the Code of Ordinances are hereby repealed in their entirety and replaced with a new Division 12 as follows:

~~DIVISION 12. DEPARTMENT OF PUBLIC SERVICES~~

~~Sec. 2-400. Created; divisions.~~

~~The department of public services is hereby created. The department shall be divided into six divisions: The division of engineering, the division of water and sanitary sewer utilities, division of electrical, division of capital construction, the division of public buildings and the division of business and administration. (Ord. No. 03-05, 7-3-03)~~

~~Sec. 2-401.~~

~~Duties of director of public services. The director of public services shall be responsible for all matters relating to the engineering, electrical, public buildings, capital projects team, business office and water and sanitary sewer utilities of the city. (Ord. No. 03-05, 7-3-03)~~

~~Sec. 2-402. Divisions.~~

~~(1) A division of engineering which shall be supervised by the city engineer, who shall be a registered professional engineer licensed by the state. He shall be responsible to plan, design, coordinate and supervise engineering services, including construction oversight/inspection, for the department of public services and for such other departments, divisions or public agencies as may from time to time be required. He shall coordinate~~

[Type text]

~~development of the capital plan and undertake capital planning for the department of public services and the department of public works. He shall perform other supervisory duties as may be delegated by the city administrator and director of public services.~~

- ~~(2) A division of water and sanitary sewer utilities, which shall plan, coordinate and control the activities related to the operation and maintenance, and repair of water and sanitary sewers utilities including water quality, source of supply, pumping stations, treatment, reservoirs, transmission and distribution mains, collection system and assist with utility finances.~~
- ~~(3) A division of electrical which shall coordinate and control the activities related to the operation and maintenance of all street lights, traffic signals, pumping stations, chemical feed facilities, SCADA, electrical inspection and other electrical issues of the city. It shall also be responsible to manage the electrical generation component of the division.~~
- ~~(4) A division of capital construction which shall undertake the construction of major capital construction projects.~~
- ~~(5) A division of public buildings which shall coordinate and control the activities related to the operation, maintenance, capital planning and construction of all public buildings, excluding those under the jurisdiction of the departments of education.~~
- ~~(6) A division of business and administration which shall coordinate and control the activities related to the operation and maintenance of all accounts receivable, utility billing and collections, recordkeeping, accounts payable, inventory management, budget support, personnel support and issuance of permits for the department. This division shall also provide these same services to the department of public works.~~

~~DIVISION 13. DEPARTMENT OF PUBLIC WORKS~~

~~Sec. 2-425. Created:~~

~~The department of public works is hereby created. The department shall be divided into four divisions: The division of highways, the division of solid waste, the division of landscaping and tree work, and the division of municipal garage. (Ord. No. 03-05, 7-3-03)~~

~~Sec. 2-426. Duties of director of public works:~~

~~The director of public works shall be responsible for all matters relating to maintenance and operation of city infrastructure including highways, storm drainage, landscaping and urban forest, solid waste services and facility, and transportation and construction equipment. (Ord. No. 03-05, 7-3-03)~~

~~Sec. 2-427. Divisions:~~

~~The department of public works shall be divided under the supervision of the director of public works into the following divisions:~~

[Type text]

- ~~(1) A division of highways, which shall coordinate and control the activities related to the operation and maintenance of roads, streets and public ways, walks, storm drainage, bridges, street sweeping, and snow and ice control.~~
- ~~(2) A division of solid waste management, which shall coordinate and control the activities related to the operation and maintenance of waste collection, processing, recycling and disposal.~~
- ~~(3) A division of landscaping and tree work, which shall coordinate and control the activities related to the operation and maintenance of landscaping of city grounds and maintenance of trees and the urban forest.~~
- ~~(4) A division of municipal garage, which shall coordinate and control the activities related to the operation and maintenance of transportation and construction equipment owned by city departments, divisions and agencies. It shall also assist in the acquisition of new or used public works automotive and construction equipment. (Ord. No. 03-05, 7-3-03) Secs. 2-428-2-434. Reserved.~~

~~DIVISION 14. DEPARTMENT OF RECREATION AND PARKS~~

~~Sec. 2-435. Created:~~

~~The department of recreation and parks is hereby created. (Ord. No. 03-05, 7-3-03)~~

~~Sec. 2-436. Duties of director of recreation and parks:~~

~~The director of recreation and parks shall plan, promote, organize and supervise a comprehensive municipal recreation program and administer such program in the interest of the entire community, and shall:~~

- ~~(1) Supervise the recreational use of playgrounds, playfields, recreation centers, swimming pools, ball diamonds and such other recreation areas and facilities as may be made available to carry out the city's recreational program.~~
- ~~(2) Conduct and supervise any form of recreational, cultural or social activity that will employ the leisure time of the citizens in a wholesome and constructive manner.~~
- ~~(3) Program and be responsible for the total operation and management of the Memorial Armory facilities.~~
- ~~(4) Supervise and maintain all city athletic fields and playgrounds, under the jurisdiction of the department of recreation. (Ord. No. 03-05, 7-3-03)~~

~~Sec. 2-437. Division of recreation:~~

~~Under the supervision of the director of recreation and parks, the division of recreation shall promote the development of a viable community by expanding recreational opportunities for all citizens of the city. (Ord. No. 03-05, 7-3-03)~~

[Type text]

~~Sec. 2-438. Division of public parks and cemeteries.~~

~~A division of public parks and cemeteries, which shall coordinate and control the activities related to the operation and maintenance of:~~

- ~~(1) Public parks, athletic fields and playgrounds excluding those under the jurisdiction of the department of education;~~
- ~~(2) All cemeteries under the jurisdiction of the city. (Ord. No. 03-05, 7-3-03)~~

DIVISION 12. DEPARTMENT OF PUBLIC WORKS

Sec. 2-400. The Department of Public Works is hereby established.

The Department shall be divided into nine divisions: Administration; Engineering and Asset Management; Water, Sanitary Sewer and Stormwater Utilities; Electrical Infrastructure; Highways and Open Spaces; Public Buildings; Municipal Garage; Recreation; and Solid Waste

Sec. 2-401. Duties of Director of Public Works. The Director shall be responsible for all matters relating to planning, constructing, maintaining and operating the city's physical public infrastructure assets. These assets include public buildings; streets and highways; electrical devices; recreational and athletic facilities; public lands; water, sewer and storm water collection and distribution systems; solid waste collection and facilities; municipal garage and recreation programs. The Public Works Director serves as a City representative on a number of boards such as the Lewiston Auburn Water Pollution Control Authority, Lake Auburn Watershed Protection Commission and the Androscoggin Transportation Resource Center Policy Committee.

Sec. 2-402. Divisions.

- (1) The Director leads the division of administration, which includes the City Engineer, Deputy for Maintenance and Operations, the Deputy for Utilities, and is supported by the Department's Administrative Assistant. These four (4) positions lead and provide management, administrative, human resource and budgetary support to the department's other divisions. Under the Deputy for Maintenance and Operations, payroll and dispatch services are housed in this division. The Administration Division works with the City Administrator and City Council to provide strategic direction to the Department.
- (2) The following Divisions shall be managed by the City Engineer, who shall be a registered professional engineer licensed in the State of Maine:
 - a. Division of Engineering and Asset Management. The City Engineer shall coordinate and supervise engineering services, including asset management, capital planning, and design and construction oversight for the Department of Public Works and for such other departments or public agencies as may from time to time be required. The City Engineer shall coordinate development of the capital plan for the department. The Engineer shall manage and supervise the technicians and engineers within the division.

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- b. Division of Public Buildings. The Buildings Division shall be responsible for the management, maintenance, capital planning, and design and construction oversight of city buildings. The City Engineer shall manage and supervise the Buildings Operations Manager and provide management direction for all aspects of cost effective building management that provides for comfortable, sanitary and safe space for city employees and the public.

(3) The following Divisions shall be managed by the Deputy for Utilities:

- a. Division of Water, Sanitary Sewer and Stormwater Utilities: The Utilities Division shall be responsible for the maintenance and operation of potable water distribution and sanitary and stormwater collection systems. This Deputy shall manage and supervise the Utilities Operations Manager and provide management direction for all aspects for the maintenance and operation of these utilities. The Utilities Division shall work closely with the Highways and Open Space Division, sharing labor seasonally. This Deputy, with assistance from the City Engineer, shall be responsible for the regulatory compliance function related to these utilities. This Deputy shall co-supervise, along with the Auburn Water and Sewer District Superintendent, operations of the joint intake and treatment facilities at Lake Auburn.
- b. Division of Electrical Infrastructure. The Electrical Infrastructure Division shall be responsible for the maintenance and efficient operation of all electrical and electronic infrastructure including but not limited to streetlights, traffic control devices, pump stations, electronic controls/monitors, city communication conduits, and electrical generation systems. This Deputy shall manage and supervise the Electrical Operations Managers and provide management direction for all aspects of the maintenance and operation of these devices and systems. This Deputy, with assistance from the City Engineer, shall be responsible for coordination with other stakeholder agencies such as the Maine Department of Transportation and Androscoggin Transportation Resource Center.

(4) The following Divisions shall be managed by the Deputy for Maintenance and Operations:

- a. Division of Highways and Open Spaces. The Highways and Open Spaces Division shall be responsible for the maintenance and efficient operation of streets, highways, sidewalks, open spaces, city trees and non-electronic traffic control devices. This Deputy shall manage and supervise the Highway Operations Managers and provide management direction for all aspects for the maintenance and operation of these systems. The Highways and Open Spaces Division shall coordinate all snow and ice fighting activities across the Department. It shall share human resources with other divisions, seasonally as needed.

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- b. Division of Solid Waste. The Solid Waste Division shall be responsible for the collection, management, recycling and disposal of municipal solid waste and other incidental waste streams as provided by city code of ordinances. This Deputy shall manage and supervise the Solid Waste Operations Manager and provide management direction for all aspects of cost effective waste handling, contracting and disposal. This Deputy shall be responsible for regulatory compliance related to waste, facilities and landfill management.

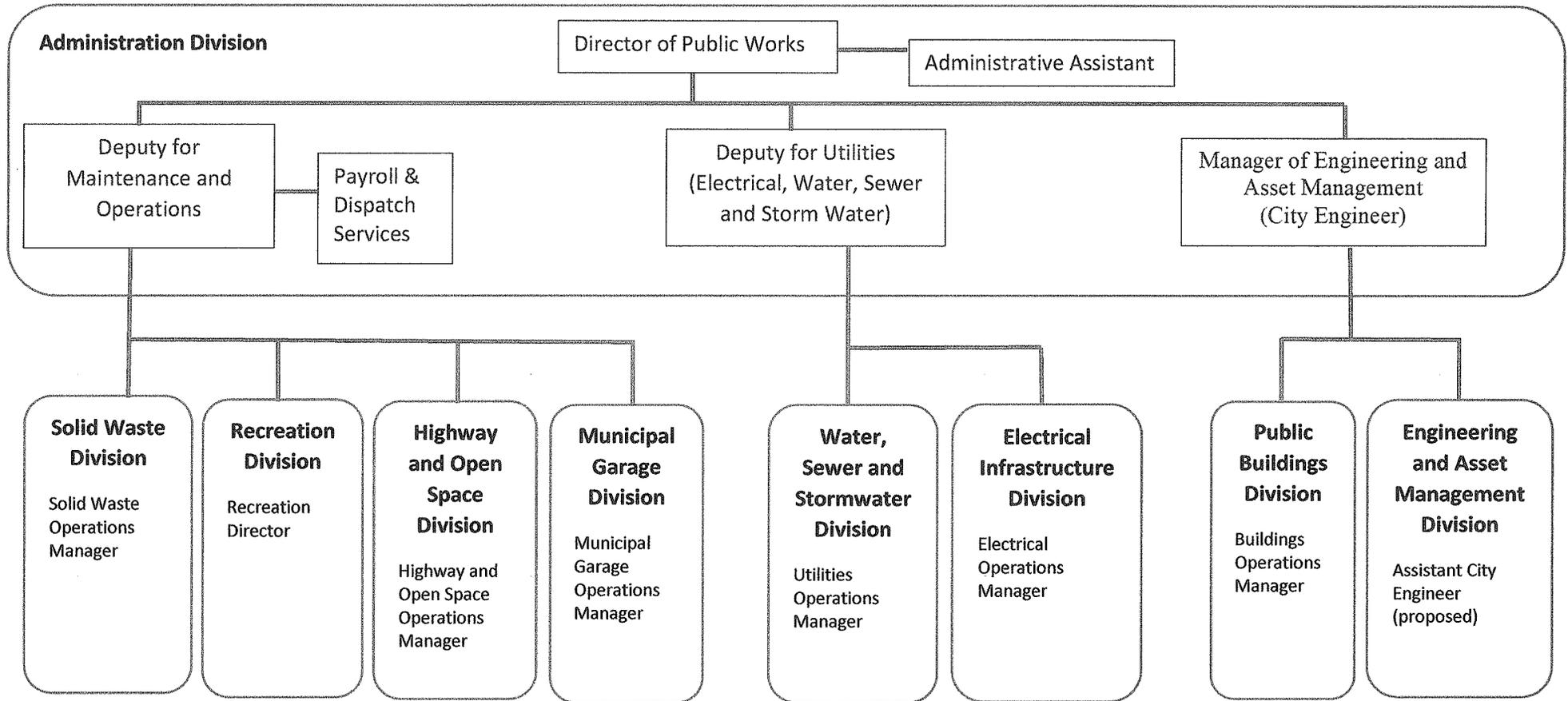
- c. Division of Municipal Garage. The Municipal Garage Division shall be responsible for the acquisition, maintenance, repair, and rental of all light vehicles and heavy equipment operated by the Department of Public Works. This Deputy shall manage and supervise the Municipal Garage Operations Manager and provide management direction for all aspects of cost effective light vehicle and heavy equipment use. The Municipal Garage Operations Manager will provide services and expertise to other departments as needed. The municipal garage also acquires other consumables, such as motor fuel. This Deputy shall be responsible for regulatory compliance related to the handling of fuels, oils, oily waste and hazardous materials produced in the garage.

- d. Division of Recreation. The Recreation Division shall be responsible for the planning, promotion, organization and supervision of a comprehensive municipal recreation program and administering such program in the interest of the entire community. This Deputy shall manage and supervise a Director of Recreation. The Director of Recreation shall: supervise the recreational use of playgrounds, playfields, recreation centers, swimming pools, ball diamonds and such other recreation areas and facilities as may be made available by the City; conduct and supervise any form of recreational, cultural or social activity that will employ the leisure time of the citizens in a wholesome and constructive manner; program and be responsible for the total operation and management of the Memorial Armory facilities; and supervise all city athletic fields and playgrounds under the jurisdiction of the Recreation Division.

Be it further ordained, that

The City Clerk is authorized to adjust the numbering of remaining divisions and sections in Article 2, Section III of the Code to retain the necessary consistency in the numbering system.

Divisions of the Department of Public Works City of Lewiston



LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 14

SUBJECT:

Request to approve First Passage for proposed amendments to existing contract rezoning for properties at 10, 35 and 37 Avon Street and to refer the proposal to the Planning Board for their review and recommendation.

INFORMATION:

The City Council has been requested to initiate a proposal to amend the current contract zoning for the properties at 10, 35 and 37 Avon Street and to send the proposal to the Planning Board their required review, and recommendation. The requested amendment includes a proposal to change the density standard for 10 Avon Street and to reduce from 1,180 sq. feet to 1,000 sq. feet and the specific density caps for all three properties be removed. This change will allow consolidation of all residential units on 10 Avon Street.

Procedurally, the City Council is being asked to introduce this ordinance and refer it to the Planning board for its recommendation. The Board would then hold a public hearing and provide its recommendation. We anticipate that recommendation would be available for the Council's December 3rd meeting, at which time the Council will also hold a public hearing and consider passage of the ordinance.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

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To approve First Passage of the proposal to amend the contract rezoning for the properties at 10, 35 and 37 Avon Street and to refer to the Planning Board for its review and consideration the proposal for an amendment the contract rezoning for these three properties.

CHARLES C. SOLTAN
Managing Member
charles.soltan@soltanbass.com

JAMES BASS
Member
james.bass@soltanbass.com

November 5, 2019

Hon. Kristen S. Cloutier
Mayor
City of Lewiston
27 Pine Street
Lewiston, ME 04240-7201

RE: Modification of Existing Contract Zone for 10, 35, and 37 Avon Street

Dear Mayor Cloutier:

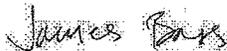
On behalf of Saxon Partners, LLC ("Saxon"), I submit the enclosed request to modify the existing contract zone for 10, 35, and 37 Avon Street (the "Property") located in Lewiston, Maine. In the application, Saxon respectfully requests that the density standard for 10 Avon Street be reduced from 1,180 square feet to 1,000 square feet and the specific density caps for 10, 35, and 37 Avon Street be lifted. This will allow consolidation of all residential units on 10 Avon Street.

This is Saxon's second contract rezone application concerning the Property. The first was approved on April 16, 2019, became effective on May 16, 2019, and is filed in the Androscoggin County Registry of Deeds, Book 10157, Pages 40 – 68. This request simply modifies two provisions in the previously approved rezoning.

The Property has been owned by Lewiston Waterfront Development, LLC and the majority of it originally housed Pineland Lumber for most of the twentieth century. Lewiston Waterfront Development, LLC has executed and extended a Purchase & Sale Agreement with Saxon.

Saxon respectfully requests support for its modification request. Along with members of the Saxon team, I will be present at the upcoming meetings to present this information and answer any questions posed by the Planning Board or City Council.

Sincerely,



James Bass, Esq.
Soltan Bass, LLC

THE CITY OF LEWISTON HEREBY ORDAINS

Saxon Partners, LLC (“Saxon”) requests to modify the existing contract zone for 10, 35, and 37 Avon Street (the “Property”) as recorded in the Androscoggin County Registry of Deeds, Book 10157, Page 40 – 68. Within the Property, all underlying standards, as they may be amended from time to time, continue to apply, except for the following:

- Space and Bulk Table; Book 10157, Page 46
 - Reduce the minimum net lot area per dwelling unit with public water from 1,180sf to 1,000sf; and
- Space and Bulk Table footnotes; Book 10157, Page 48
 - Remove footnote “c” (“The density for 10 Avon Street shall not exceed 210 dwelling units and the density for 35 and 37 Avon Street shall not exceed 35 dwelling units”).

REASONS FOR THE PROPOSED AMENDMENT

The reason for the proposed amendment is to allow consolidation of all units on 10 Avon Street. A conceptual site plan of the project, last revised and dated August 16, 2019, as proposed, is attached as Exhibit A. Saxon’s original Purchase and Sale Agreement, dated April 20, 2018, is attached as Exhibit B. An extension of the Purchase and Sale Agreement, dated October 29, 2019, extends the original Permitting Period deadline from October 19, 2019 to May 31, 2020 and is attached as Exhibit C.

Background

Saxon previously submitted a contract rezone application that was approved on April 16, 2019 and became effective on May 16, 2019 (see Exhibit D). In that application, City Council approved Saxon’s request to rezone the Property at 10, 35, and 37 Avon Street from the Resource Conservation, Urban Enterprise, and Neighborhood Conservation “B” Districts to the Centreville (CV) District and to lift certain incompatible land use requirements.

In that application, Saxon envisioned developing a modern residential housing complex built on the vacant Pineland Lumber property located at 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.71 acres), and a neighboring property at 35 and 37 Avon Street, shown on Tax Map 206 as Lots 27 and 28 (1.17 acres).

Under that plan, Saxon proposed two four-story buildings on 10 Avon Street that each contained 105 residential units and one three-story building on 35 and 37 Avon Street that housed 35 residential units. In total, the plan included 245 units spread over two lots.

Due to that configuration, Saxon’s initially requested a density requirement for 10 Avon Street that could accommodate up to 210 residential units. Due to the size of the lot (5.71 acres), this resulted in a density base of 1,180sf per dwelling unit.

However, over the last few months as Saxon has fine-tuned and further developed this project, it became apparent that greater efficiencies and a better design could be addressed if all units were colocated on 10 Avon Street and not split between the two lots.

Under Saxon's updated plan, the two buildings on 10 Avon Street have been connected and slightly enlarged, the 35 unit building on 35 and 37 Avon Street has been replaced with parking, and those units planned for that lot previously have been consolidated on 10 Avon Street. The overall number of units (245) has remained the same.

Benefits to Lewiston

Injects Significant Investment into Local Economy	<ul style="list-style-type: none"> • During the construction period, the development will inject millions into the greater Lewiston/Auburn region.
Employment	<ul style="list-style-type: none"> • The project will most likely be staffed with 4 to 5 full and part-time employees.
Supports Local Vendors	<ul style="list-style-type: none"> • The project will need and use local vendors to help maintain the Property.
Key Demographic Located Downtown	<ul style="list-style-type: none"> • The development will have up to 245 market rate units composed of studios and one-bedroom apartments. These units are likely to appeal to singles and couples who will work and enjoy Downtown Lewiston's restaurants and nightlife.
Replace Vacant, Underused Area	<ul style="list-style-type: none"> • Revitalize a blighted property along the Androscoggin River with much needed housing that supports Lewiston's downtown businesses.
Improve Local Infrastructure	<ul style="list-style-type: none"> • Provide the City of Lewiston an easement on the north end of 10 Avon Street that is sufficient for the installation of a second water main feed from Lake Auburn. • Provide the City of Lewiston an easement on the west side of 10 Avon Street that the City can use to install an extension of the Riverside Greenway Trail (if the City can continue the trail on abutting properties).

Need for the Proposed Contract Zone Amendment

To allow all residents to be colocated on 10 Avon Street, Saxon respectfully requests that the density standard for 10 Avon Street be slightly lowered from 1,180 sq/ft to 1,000 sq/ft. Below is the relevant section of the proposed Space and Bulk Table incorporating this request.

Dimensional Requirements (13)	Centreville (CV)	Current density for 10 Avon St. (CV District)	Requested density for 10 Avon St. (CV District)
Min. net lot area per d.u. with public sewer			
Single family detached			
Single family attached			
Two-family dwellings			
Mixed single family residential development (14)			
Mixed residential development (14)			
Multi-family dwellings		1,180	1,000
Mixed use structures		1,180	1,000
All permitted residential uses	None		

Additionally, Saxon requests that the density caps be lifted for 10, 35, and 37 Avon Street. These are noted in footnote “c” in the existing contract zone’s Space and Bulk Table as recorded in the Androscoggin County Registry of Deeds, Book 10157, Page 48 (“The density for 10 Avon Street shall not exceed 210 dwelling units and the density for 35 and 37 Avon Street shall not exceed 35 dwelling units”). These caps were specifically fashioned around the previous plan’s residential split but with all units now proposed to be colocated, the 10 Avon Street cap would prevent this project.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

The proposed request is in conformance with the City’s Comprehensive Plan, as demonstrated by the following excerpts from the 2017 Legacy Lewiston Comprehensive Plan:

- In the section laying out the City’s new framework for growth: *“With an aging downtown housing stock, the community lacks high-quality housing choices within the walkable downtown core, making it difficult for singles, young professionals, and retirees to find attractive and affordable places to live.”* (Conservation and Growth Map, p. 120).
- Regarding the need to increase the City’s housing choices: *“The Riverfront Island Master Plan estimates that Lewiston will require up to 600 new housing units by 2020...To better meet current and emerging needs, future development should focus on providing new, high-quality, multi-family residences and other housing types as opposed to the current trend of building single-family homes in areas not currently served by water and sewer.”* (Strengthen Neighborhoods & Expand Housing Choice, p. 172).
- The City needs to provide more employee housing:
With Androscoggin County looking to welcome 2,000 new jobs by 2020 according to the Riverfront Island Master Plan, Lewiston is bound to see growth among its prominent employers. With an already low vacancy rate citywide, large corporations based in

Lewiston might begin to overwhelm the local housing stock, though vacancy rates are higher in the downtown. A broad mix of high-quality new housing and short-term rentals, particularly for hospital employees, should be provided within proximity to these anticipated jobs." (Strengthen Neighborhoods & Expand Housing Choice, p. 179, emphasis mine).

There is nothing in the City's Comprehensive Plan that is inconsistent with the proposed amendment from Saxon.

Thus, the project will be consistent with existing and permitted uses in the CV zoning district.

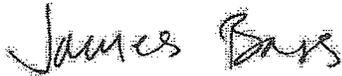
PROPOSED WRITTEN CONTRACT

Saxon requests that the City enter into the contract attached hereto as Exhibit E by which, in consideration of the contract zone amendment, certain conditions or restrictions not imposed on other similarly zoned properties will be imposed.

Saxon hereby submits this proposal as of the 5th day of November 2019.



Signature



Printed Name

PURCHASE AND SALE AGREEMENT

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree as follows, with this document being referred to herein as the "Agreement":

1. PARTIES

SELLER: Lewiston Waterfront Development, LLC
c/o Fred Thurston @ Conifer Industries
Route 231 P.O. Box 500 New Gloucester, Maine 04260

with a copy to: John Doyon
Malone Commercial Broker
5 Moulton Street
Portland, ME 04101

And

Craig Rancourt
13 Crescent Street
Biddeford, Maine 04005

BUYER: Saxon Partners, LLC, a Massachusetts limited liability company,
or its nominee or assignee
Attention: Donald S. Smith, Manager
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3304
Fax: 781-875-3044
E-mail: dsmith@saxon-partners.com

with a copy to: David L. Arons, Esq.
Saxon Partners LLC
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3317
Fax: 781-875-3044
E-mail: darons@saxon-partners.com

2. PROPERTY. Those certain three lots or parcels of real estate in Lewiston, Maine, containing approximately 6.4 acres and identified as follows: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.47 acres, more or less); 35 Avon Street, shown on Tax Map 206 as Lot 28 (.18 acres, more or less); and 37 Avon Street, shown on Tax Map 206 as Lot 27 (.7 acres, more or less), together with the buildings and improvements thereon, if any and all rights, easements and other appurtenances thereto, and all rights in all permits and other benefits relating to the Property. (the "Property"). The Property is shown approximately on Exhibit A.

3. **PURCHASE PRICE.** [REDACTED] The Purchase Price, subject to any pro-rations or adjustments as provided below, shall be payable at the Closing by certified bank check or wire transfer.

4. **EFFECTIVE DATE.** The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".

5. **DEPOSITS.** Within five (5) business days of the Effective Date, Buyer shall deposit in escrow with SVN Urbansk Group ("Escrow Agent"), the amount of: [REDACTED] ("Initial Deposit"). If Buyer elects to proceed to the Permitting Period, then Buyer shall increase the Deposit by depositing in escrow with Escrow Agent an additional [REDACTED]. The Initial Deposit and all subsequent deposits hereinafter shall be collectively referred to as the "Deposit". The entire Deposit shall be credited against the Purchase Price at the Closing and shall be refundable except as specifically set forth in this Agreement. Interest, if any, on the Deposit shall follow the Deposit. Escrow Agent, however, shall not be required to use an interest-bearing account.

6. **DUE DILIGENCE AND PERMITTING PERIODS.** Buyer shall have the Due Diligence Period and the Permitting Periods (each set forth below) during which Buyer, at Buyer's sole expense, shall have the right to conduct such due diligence as Buyer deems appropriate including, without limitation, review of title, survey, current environmental reports, utilities, topography, archeological and historical, reports and other due diligence items. Buyer shall have the right to enter onto the Property for the conduct of due diligence including, without limitation, inspection, testing, survey, engineering and permitting. Seller shall reasonably cooperate with Buyer's due diligence efforts (including the release of pertinent documents to the Buyer and Buyer's attorneys, engineers and surveyors, and consultants), provided that such cooperation shall not cause Seller to incur any expenditure (unless Buyer reimburses Seller for any such expenses). Buyer understands and agrees that any on-site inspections of the Property shall be conducted upon at least twenty-four (24) hours prior written e-mail notice to Seller and, at Seller's option, in the presence of Seller or its representative, provided such Seller right shall not result in a delay in Buyer's conduct of its due diligence. Inspections shall be conducted so as not to interfere unreasonably with use of the Property by Seller or its tenants, if any. After Buyer's inspections are completed, Buyer shall restore the Property, at Buyer's sole cost and expense, substantially to its condition immediately prior to any impact due to Buyer's inspections. Prior to Buyer or any such other party entering the Property in the exercise of the access rights hereunder, Buyer shall deliver to Seller a certificate of commercial public liability insurance naming Seller as an additional insured, and evidencing coverage with commercially reasonable limits. Buyer agrees to indemnify against and hold Seller harmless from any claim, liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries to the extent arising out of or resulting from the inspection of the Property by Buyer or its agents or representatives, provided that the foregoing shall not be applicable to the discovery of existing conditions by Buyer. Notwithstanding anything to the contrary in this Agreement, Buyer's obligation to indemnify and hold harmless Seller and the other obligations of Buyer under this Section 6 shall survive any termination of this Agreement for a period of six (6) months.

(i) **Due Diligence Period:** The Due Diligence Period shall be a period of six (6) months from the Effective Date. Within five (5) business days after the Effective Date, Seller shall provide

Buyer with copies of all relevant due diligence information in its possession including any permits, environmental reports, geotechnical information, archeological and historical reports, plans, and the most recent title/survey information. The entire Deposit (plus accrued interest, if any) will be returned to Buyer if Buyer, at any time and in Buyer's sole discretion, is not satisfied with the results of Buyer's due diligence.

On or before the end of the Due Diligence Period, Buyer may elect to continue to the Initial Permitting Period by giving written notice to Seller, provided that if Buyer fails to give notice of Buyer's election to continue to the Initial Permitting Period by the end of the Due Diligence Period, then Buyer's right to elect to terminate or to continue to the Initial Permitting Period shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Buyer agrees to within six (6) months of the Effective Date submit an application to the Planning Board for construction of a multi-family development including at least 150 apartment units. The Buyer's obligation to apply to the Planning Board shall not otherwise supersede the Buyer's rights under the Due Diligence Period and the Permitting Period as set forth in this Section 6.

(ii) *Permitting Period:* Buyer shall have up to twelve (12) months after the end of the Due Diligence Period, which amounts to eighteen (18) months from the Effective Date, at Buyer's sole expense, to apply for permits and obtain zoning relief for the Property for the construction of a multi-family development including at least 150 apartment units, and to defend against the appeal from the issuance of any permits and grant of zoning relief. If Buyer elects to terminate this Agreement on or before the end of the Permitting Period, then the entire Deposit plus accrued interest (if any) will be returned to the Buyer. After the completion of six (6) full months of the Permitting Period, [REDACTED] of the Deposit shall become non-refundable per month on the first day of each subsequent month of the Permitting Period (hereinafter collectively referred to as the "Released Funds") and shall remain as part of the Deposit held by the Escrow Agent. The Released Funds will be non-refundable but will in all circumstances be applicable to the Purchase Price. Notwithstanding the foregoing, in the event that the Buyer elects to terminate on account of a Seller default under this Agreement, the Released Funds shall be fully refundable together with the remainder of the Deposit.

(iii) *Extension:* If at the end of the initial Permitting Period (eighteen (18) months from the Effective Date), there are pending applications or appeal periods that have not expired or appeals have not been resolved, or there are other pending legal actions relating to the Property, then Buyer shall have the right to extend the Permitting Period for a period ending thirty (30) days after the final resolution of the last of the foregoing matters provided Buyer is seeking to address the matter(s) in question (including the exhaustion of all appeals). Buyer shall notify Seller of the election to extend on or before the expiration of the initial Permitting Period provided that if Buyer fails to give notice of Buyer's election to terminate or to continue with the Extension of the Permitting Period by the conclusion of the initial twelve (12) month Permitting Period, then Buyer's right to elect to continue to the Extension shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Buyer reserves the right, at any time during the initial Permitting Period and any Extension of the Permitting Period to terminate this Agreement and all of the Deposit(s) plus interest, if any, shall be returned to Buyer.

If Buyer terminates this Agreement, Buyer will forward to Seller copies of any relevant reports or studies on the Property performed for Buyer, such copies to be provided without any representations or warranties from Buyer, and without liability to Buyer, and shall be subject to any terms, conditions and limitations required by the issuer of the applicable reports or studies.

During the Permitting Periods and Extension Periods (if any) Buyer Shall Pay the amount of \$1,333 per month for Seller to apply to the Real Estate Taxes for the Subject property. In the event of a Seller default, the Seller shall within seven calendar days refund to the Buyer all amounts paid by the Buyer for real estate tax payments.

7. TITLE COMPLIANCE. It is understood and agreed by the parties that the Property shall not be in conformity with title provisions of the Agreement unless:

(1) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said Property;

(2) The Property shall abut a public way that is duly laid out or accepted as such by the municipality where the Property is located; and

(3) Purchaser's survey or plot plan indicates that no structure or improvement situated upon the Property violates the zoning ordinances or by-laws of the municipality in which the Property is located.

8. CLOSING. Seller shall deliver the Property free and clear of all tenants and encumbrances, and with good record and marketable title, with the state of the title satisfactory to the company providing title insurance to the Buyer at Closing, and Buyer shall deliver the balance of the Purchase Price due at the Closing which shall occur at the offices of the Escrow Agent (or such other location as is designated by Buyer at least seven (7) days prior to the Closing) at 11:00 am on the first business day that is sixty (60) days after the date on which Buyer has obtained all permits and approvals that Buyer determines are required to proceed, and all appeal periods having been exhausted, to the extent there has been an appeal, with the appeal(s) having been resolved to the satisfaction of Buyer in Buyer's sole discretion. Notwithstanding the foregoing, Buyer and Seller may mutually agree on an earlier Closing by written agreement in the sole discretion of each party. At Buyer's election, the Closing shall take place by the submission (via courier, other delivery system or with respect to funds, wire transfer) in advance of or on the date of the Closing of all documents and funds to Buyer's title company, which will conduct the Closing.

9. DEED. The Property shall be conveyed by a good and sufficient quitclaim deed ("Deed") with quitclaim covenants, which Deed shall convey good and clear record and marketable title to the Property, with the state of title satisfactory to the company providing title insurance to the Buyer, free from all liens and encumbrances, except for easements of record as of the close of the

Due Diligence Period to which the Buyer has not objected in the Title Objections Notice described below (except to the extent Seller has agreed to terminate such easement(s)), the Property to be in compliance at transfer with all applicable laws, ordinances and regulations relating thereto. If Buyer has any objections to title ("Title Objections Notice"), Buyer shall provide Seller with written notice regarding the Title Objections during the Due Diligence Period, and the Seller shall be obligated to cure the Title Objections prior to the Closing as a condition of the Buyer's obligation to purchase the Property. Seller shall not allow any changes in title after the title run-down date stated in the Buyer's submission of the Title Objections Notice, except to cure any of the Title Objections prior to the Closing; otherwise, in the absence of such Title Objections, Buyer shall accept and Seller shall deliver title to the Property at Closing in the condition in which title is in on the close of the Due Diligence Period, subject only to Seller's duty to discharge: (A) all mortgages, deeds of trust, and all other monetary and liens and encumbrances of record; and (B), any other matters of record that Seller has agreed to terminate.

10. **WITHHOLDING TAX.** Seller hereby is notified that Buyer will withhold two and one-half percent (2.5%) of the purchase price for transfer to the State of Maine Tax Assessor pursuant to 36 M.R.S.A. §5250-A unless (a) Seller furnishes a certificate to Buyer at the Closing, as hereinafter defined, stating, under penalty of perjury, that as of the date of the Closing, Seller is a resident of the State of Maine, or (b) Seller furnishes a certificate from the State of Maine Tax Assessor to Buyer at the Closing stating that no taxes are due on the gain from the transfer of the Property or that Seller has provided adequate security to the State of Maine Tax Assessor to cover the tax liability resulting from said transfer.

11. **CLOSING DOCUMENTS.** At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's attorneys or title company may reasonably require to complete the transaction contemplated herein:

(a) **Transfer Documents.** The Deed, a Maine Real Estate Transfer Tax Declaration of Value, and one or more assignments, as determined by Buyer, of all of Seller's right, title and interest in all permits, approvals, improvements and other property of Buyer relating to the Property;

(b) **Title Affidavits.** Such customary certificates, affidavits or indemnity agreements as the title insurance company issuing a policies of title insurance on the Property to Buyer and Buyer's lender shall require in order to issue such policies and to omit therefrom all standard exceptions including those relating to unfiled mechanic's, materialmen's or similar liens and for parties in possession;

(c) **Nonforeign Person Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to §1445 of the Internal Revenue Code;

(d) **Maine Resident Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to 36 M.R.S.A. §5250-A;

(e) **Underground Oil Storage Tank and Hazardous Waste Certification.** A written notice certifying either (i) that to Seller's knowledge there is no underground oil storage facility located on the Property, (ii), no deposits of hazardous waste substances or oil products stored or discharged on the Property (as defined under the law of the State of Maine and under applicable federal law) or (iii) pursuant to 38 M.R.S.A. §563(6), if there is an underground oil storage tank facility on the Property, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection;

(f) **Authority of Seller and Buyer.** A certificate of good standing from the Maine Secretary of State and other documentation evidencing Seller's authority to enter into and complete the transaction contemplated by this Agreement as may be reasonably requested by Buyer's attorney and Buyer shall provide the same authority documents to Seller as may be reasonably requested by Seller's counsel; and.

(g) **Tax documents.** An IRS 1099S form and any other tax reporting forms required by State of Maine and federal government.

12. POSSESSION AND CONDITION OF PROPERTY. Full possession of the Property free of all tenants and occupants is to be delivered at the Closing; the Property to be then in the same condition as it is on the Effective Date (except to the extent Seller has agreed to make any changes to the Property), reasonable wear and tear excepted.

13. EXTENSION TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or, if at the time of the Closing the Property does not conform with the terms and conditions hereof, then Seller shall use due diligence and commercially reasonable efforts to remove any defects in title (including liens and encumbrances) or to deliver possession as provided herein, or to make the Property conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty (30) days, or such longer period as shall be determined by Buyer.

14. FAILURE TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If at the expiration of such extended time(s) Seller shall have failed to remove any defects in title (including liens and encumbrances), deliver possession, or make the Property conform, as the case may be, all as herein agreed, then, at Buyer's option and subject to Buyer's other rights in this Agreement, the entire Deposit (including any portion thereof that would otherwise be non-refundable) promptly shall be refunded to Buyer, all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto.

15. BUYER'S ELECTION TO ACCEPT TITLE AND CONDITION. In addition to such other remedies available to Buyer under this Agreement, Buyer shall have the election, at either the original or during or at the end of any extended time for performance, to accept such title to the Property in its then condition as Seller can deliver and to pay therefor the Purchase Price without deduction, in which case, Seller shall convey such title or deliver the Property in such

condition, except that, in the event of such conveyance in accordance with the provisions of this clause, the Property shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Property to its former condition, and at Buyer's express election, pay over or assign to Buyer, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, or which would have been recoverable had Seller maintained commercially reasonable insurance on the Property, less any amounts reasonably expended by Seller for any partial restoration.

16. **ACCEPTANCE OF DEED.** The acceptance of the Deed and other transfer documents by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms and conditions hereof, to be performed after the delivery of said documents or to otherwise survive the Closing hereunder.

17. **USE OF PURCHASE MONEY TO CLEAR TITLE.** To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed and other transfer documents, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said Deed and other transfer documents.

18. **RISK OF LOSS.** Until delivery of possession of the Property from Seller to Buyer, risk or loss or damage to Property by fire, storm, accident, other casualty or otherwise shall be on Seller.

19. **ADJUSTMENTS.** Water and sewer use charges, if any, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned, as of the Closing, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by Buyer at the time of delivery of the Deed and other transfer documents. At Buyer's election, the Property shall be removed from any current use tax assessment program such as, by way of example, open space or tree growth classification, at or prior to the Closing, in which case any penalties or other fees resulting therefrom shall be paid by Seller at or prior to the Closing. Real estate transfer taxes due on the sale will be paid by Seller and Buyer in equal amounts in accordance with Maine law.

20. **ADJUSTMENT OF UNASSESSED AND ABATED TAXES.** If the amount of said real estate taxes and any other municipal assessments referred to in the preceding Paragraph is not known at the time of the Closing, they shall be apportioned on the basis of the real estate taxes assessed for the immediately preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

21. **DEFAULT/DAMAGES.** If Seller fails to fulfill Seller's obligations hereunder, and such failure continues for fifteen (15) days after Seller's receipt of written notice from Buyer, Buyer may elect to receive a refund of the entire Deposit (including any portion thereof that would otherwise be non-refundable) and to pursue all available remedies, pursuant to this Agreement, at law and in equity, including, without limitation, specific performance and reasonable attorneys' fees. If Buyer fails to fulfill Buyer's obligations hereunder, and such failure continues for fifteen (15) days after Buyer's receipt of written notice from Seller, then Seller shall retain the Deposit as

liquidated damages as Seller's sole and exclusive remedy at law or in equity for Buyer's default without further recourse to Buyer and Buyer shall be relieved of all obligations hereunder.

22. ASSIGNMENT/DESIGNATION OF NOMINEE. The rights and obligations of Buyer under this Agreement may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. The Buyer may also designate a nominee to take title to the Property.

23. MISCELLANEOUS.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

(b) All paragraph headings in this Agreement are for convenience of reference only and are of no independent legal significance.

(c) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(d) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement.

(e) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument. This Agreement may be transmitted between the parties by facsimile machine and/or by email and signatures appearing on faxed or emailed instruments shall be treated as original signatures. Both a faxed or emailed version of this Agreement containing either original, faxed or emailed signatures of all parties, and multiple counterparts of the same Agreement each containing separate original, faxed or emailed signatures of the parties, shall be binding on them.

(f) If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) It is expressly understood and agreed that time is of the essence in respect of this Agreement.

(h) This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

(i) Each party shall be responsible for its own legal, advisory and miscellaneous expenses associated with the completion of this transaction.

24. BROKERAGE COMMISSION. Buyer and Seller represent and warrant to each other that they have not dealt with any brokers regarding this transaction other than John Doyon of Malone Commercial ("Seller's Broker") and Tony Armstrong, SVN Urbanek Group (Buyer's Broker"). At Closing, Seller shall be responsible to pay a brokerage commission by a separate agreement between the Seller's Broker and Seller, and a brokerage commission by a separate agreement between the Buyer's Broker and Seller. The commission shall be due if and only the Deed is delivered and recorded, full consideration paid to the Seller, and not otherwise.

25. REPRESENTATIONS. Seller represents and warrants to Buyer that

(a) Seller is the owner in fee simple of the Property (subject to Seller's Mortgage, if any, and matters of record as of the Effective Date), and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Seller has good and marketable title to the Property, and there are no lawsuits or other proceedings currently pending, contemplated, or threatened by or against the Seller or the Property that would affect the ownership, future development, ability to finance or enjoyment of any of the Property, or which would result in delays in the Buyer's proposed development of the Property for the construction of a multi-family project with at least 125 units;

(c) Seller has received no notice of any eminent domain proceedings or any other adverse event affecting the Property, nor of any special or betterment assessments contemplated against the Property, nor of any actions that would hinder or delay the development of the Property, and Seller has no knowledge of any of the foregoing;

(d) Seller (including Seller's employees, agents, contractors, representatives, and invitees) has not generated, released, stored, disposed of, dumped, flushed or in any way introduced on to the Property oil, hazardous material, hazardous waste or hazardous substances (hereinafter collectively called "Hazardous Substances") as those terms are defined by any applicable federal, state or local law, rule or regulation (hereinafter referred to as "Applicable Environmental Laws"), and Seller has not received notice and is not otherwise aware of any incident which would have required the filing of notice or notification pursuant to any Applicable Environmental Laws applicable to the Property;

(e) Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act") and at the Closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary;

(f) There are no violations of any governmental laws, ordinances, rules, regulations or orders concerning the Property that relate to environmental, hazardous waste, safety, health, zoning, conservation, wellands, or zoning matters;

(g) No person or entity has any right of first refusal or option to acquire the Property;

(h) There are no parties in possession or with any possessory rights, including licenses, with respect to the Property;

(i) There are not any non-monetary private restrictions affecting the Property that would hinder the development of the Property for the construction of multi-family housing with at least 125 units;

(j) As a material inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby makes to Buyer the representations and warranties contained in this Section;

(k) Seller has full right, power, authority and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by such Seller pursuant to this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and each such other agreement, document and instrument require no consent, authorization, permission or filing with or from any other person, entity or agency, violate no contract, agreement, order, judgment or the like that is binding upon such Seller, and have been duly authorized by all necessary action of such Seller, and no other action on the part of Seller is required in connection therewith.

(l) This Agreement and each agreement, document and instrument executed and delivered by Seller pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of Seller enforceable in accordance with their terms.

(m) Seller represents that all federal, state, local and other taxes will be paid through the Closing, except for those taxes for which Buyer assumes responsibility under the Agreement.

(n) Seller represents that all documentation provided to the Buyer, is to the best of the Seller's knowledge, true, accurate and complete.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true, both as of the date hereof and as of the Closing, and Seller shall take all actions as are required to make the foregoing representations true.

26. CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE. Buyer shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:

(a) Seller shall have timely performed its obligations under this Agreement in all material respects.

(b) As of the Closing Date, Seller's representations and warranties shall be true, correct and complete in all material respects.

(c) Seller has satisfied each of the conditions and obligations imposed on the Seller as set forth in this Purchase and Sale Agreement.

(d) The Property, consisting of land, shall be in the same condition as it is now, and specifically not subject to erosion, fire, flooding, sinkholes, or any other changes in the condition of the Property (on or below the surface).

(e) No suit shall be pending before any court, agency, regulatory or other body in which it will be or is sought to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

27. ASSUMPTION OF LIABILITIES. Buyer assumes none of Seller's liabilities, including, without limitation, (i) any obligations payable to officers, shareholders, members, affiliated companies or other parties related to Seller, and (ii) any liability of Seller for any employee benefit plans or contributions to said plans. Buyer shall also have no obligation to offer employment to employees of Seller.

28. SELLER INDEMNIFICATION. Seller shall agree to defend, indemnify and hold Buyer harmless from and against any damages, liabilities, losses and expenses (including reasonable attorney's fees) of any kind or nature whatsoever which may be sustained or suffered by Buyer based upon a breach of any representation, or covenant made by or obligation of Seller in this Agreement by reason of any claim, action or proceeding asserted or instituted or growing out of any matter covered by such representations, or covenants.

29. REMOVAL FROM MARKET. Upon the Effective Date of this Agreement and for the duration of this Agreement, Seller agrees to take the Property off the market and further agrees not to deal with any other prospective buyer.

30. NOTICES. All notices required or permitted to be given hereunder (except notices indicating the time for access to the Property, which may be verbal or by email) shall be in writing and sent by certified or registered mail, or by overnight courier, postage prepaid, or hand delivered or by facsimile transmission, addressed to the parties set forth below or to such other address or addresses as the parties may designate from time to time by notice provided in accordance with this provision. Any such notices shall be effective upon receipt or rejection of delivery by the party to which the notice is directed. Copies of all notices shall be sent the counsel for each party.

Seller:
To the address first set forth above or
with respect to emails to: _____

Buyer:
To the address first set forth above or
with respect to emails to:
Donald Smith: dsmith@saxon-partners.com

and with respect to verbal notices to:

and with respect to verbal notices to:

Donald Smith: (781) 875-3304

To Counsel:

Seller's Counsel:

Craig J. Rancourt
13 Crescent St
Bridgewater, MA 01905
craig@rancourtllc.com
207-292-6949

Buyer's Counsel:

David L. Arons, Attorney at Law
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
(781) 875-3317
daron@saxon-partners.com

In witness whereof, the parties have executed this Purchase and Sale Agreement under seal as of the date written below.

SELLER:

Lewiston Waterfront Development, LLC
a Maine corporation

BUYER:

Saxon Partners, LLC,
a Massachusetts limited liability company

	
Name: <i>Craig J. Rancourt POA</i>	Name: <i>Donald L. Smith</i>
Title: <i>Authorized Agent for Lewiston Waterfront Development LLC</i>	Title: <i>Managing Director</i>
Date: <i>April 20, 2018</i>	Date: <i>April 18, 2018</i>

(The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".)

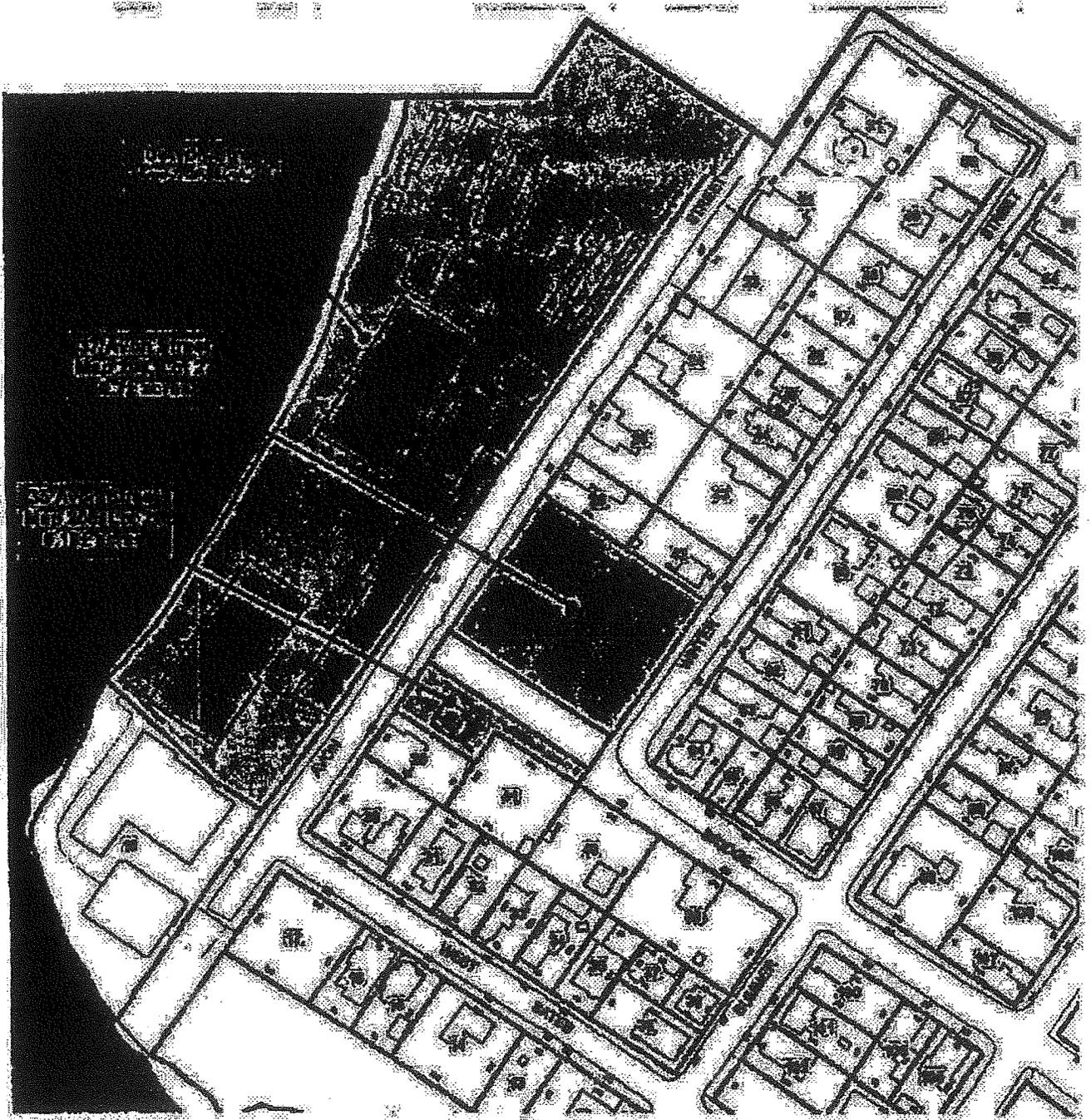
EXHIBIT A

Exhibit B

TAX MAP

Source: City of Lewiston Tax Map 206, April 1, 2012.

Note: This is only a portion of tax map 206 with labels and shading added.
Copy of Map 206 is available electronically on request.



David L. Arons, Attorney at Law
Saxon Partners LLC
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3317
E-mail: darons@saxon-partners.com

October 29, 2019

Via e-mail to craig@rancourtflaw.com

Craig J. Rancourt, Esq., as
Attorney for Lewiston Waterfront Development LLC
13 Crescent Street
Biddeford, Maine 04005

Re: Sale of those certain three lots or parcels of real estate in Lewiston, Maine, containing approximately 6.4 acres and identified as follows: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.47 acres, more or less); 35 Avon Street, shown on Tax Map 206 as Lot 28 (.18 acres, more or less); and 37 Avon Street, shown on Tax Map 206 as Lot 27 (.7 acres, more or less) (collectively, the "Property"), by Lewiston Waterfront Development LLC, as Seller, to Saxon Partners, LLC, as Buyer, pursuant to the Purchase and Sale Agreement with an "Effective Date" of April 20, 2018 (the "Agreement"); Extension Letter constituting the "First Amendment to Agreement"

Dear Attorney Rancourt:

This confirms that the Seller and Buyer have agreed as follows:

- (1) To amend Section 6(ii) [Permitting Period] of the Agreement to extend the original initial Permitting Period deadline from October 19, 2019 to Friday, May 31, 2020. There shall be no further extensions of the Permitting Period absent a written agreement by the two parties or their respective attorneys.
- (2) To amend Section 6(iii)[Extension] of the Agreement to provide that on October 30, 2019 the Buyer will make a one-time payment of [REDACTED] directly to the Seller by wire transfer (the "Additional Payment"), which amount will be deemed non-refundable but shall in all circumstances be applicable to the Purchase Price. The Additional Payment shall not be paid out of the Deposit. Notwithstanding the foregoing, in the event that the Buyer elects to terminate the Agreement on account of a Seller Default under the Agreement, as amended, the Additional Payment shall be fully refundable together with the Deposit (including, without limitation, the Released Funds).
- (3) To amend Section 6(ii) [Permitting Period] of the Agreement to provide that during the amended Permitting Period (continuing through May 31, 2020), there no longer will be [REDACTED] per month of the Deposit being deemed non-refundable (referred to in Section 6(ii) as "Released Funds").

CJR

Letter to Attorney Percourt

(4) In the event that the Buyer elects to terminate the Agreement during the Permitting Period, and there is no default by the Seller, the Seller shall be entitled to retain the Additional Payment [redacted] plus the [redacted] in monthly payments (the "Released Funds") that the Seller received during the Permitting Period, collectively amounting to [redacted] in total. In addition, upon such a termination, the Escrow Agent shall be required to refund to the Buyer the remainder of the Deposit, amounting to [redacted]

(5) To amend Section 8 [Closing] of the Agreement so that the Closing shall be on Monday, July 1, 2020.

(6) The Buyer agrees to use due diligence during the Permitting Period, as extended, to secure all necessary permits and approvals and agrees to keep the Seller advised of status.

(7) The Buyer will continue to make monthly real estate tax payments of \$1,333.00 while the Agreement remains pending.

(8) All other terms of the Purchase and Sale Agreement shall remain in full force and effect.

Please counter-sign below to confirm the Seller's agreement to the above-referenced terms and conditions, and then e-mail me a scanned copy of the same. The counter-signed letter shall constitute the First Amendment to Agreement. Thank you for your cooperation.

Very truly yours,

David L. Arons, as Attorney for
Saxon Partners, LLC, Buyer

THE SELLER AGREES TO AND ACCEPTS THE ABOVE TERMS:



Craig J. Percourt, as Attorney for
Lewiston Waterfront Development LLC, Seller

Date: 10/30/19



AN ORDINANCE PERTAINING TO ZONING BOUNDARIES

THE CITY OF LEWISTON HEREBY ORDAINS: OFFICIAL COPY

Appendix A of the Code of Ordinances of the City of Lewiston, Maine is hereby amended as follows:

NOT AN OFFICIAL COPY APPENDIX A OFFICIAL COPY ZONING AND LAND USE CODE

ARTICLE IV. ESTABLISHMENT OF DISTRICTS

Sec. 1. Zoning Map

The City of Lewiston hereby ordains that the Official Zoning Map of the City of Lewiston be amended by establishing a contract zone for the property at 10, 35 and 37 Avon Street as recorded in the Androscoggin Registry of Deeds Book 8979 Page 146 as described in Exhibit "A" and depicted on Exhibit "C", both of which are attached hereto as follows, to wit: said property be contractually rezoned from the Resource Conservation (RC), Urban Enterprise (UE), and Neighborhood Conservation "B" (NCB) Districts to the Centreville (CV) District and the lot use limitation in Art. V, Sec. 3(1), the minimum lot size requirement in Art. XII, Sec. 2(e)(2), and the additional development standards in Art. XIII, Sec. 8 not apply.

REASONS FOR THE PROPOSED AMENDMENT

The reason for the proposed amendment is to allow the development of a modern residential complex built on the vacant Pineland Lumber property. That property consists of three parcels of real estate: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.71 acres) and 35 and 37 Avon Street, shown on Tax Map 206 as Lots 27 and 28 (1.17 acres). (The land between 35 and 37 Avon Street was once an extension of Bridge Street but that portion of Bridge Street was vacated by the City of Lewiston on May 21, 1974 (see Exhibit B). It is owned by Lewiston Waterfront Development, LLC, the current owners of 10, 35 and 37 Avon Street). Because the property once housed Pineland Lumber's operations, it currently consists of both multiple large, vacant buildings and expansive areas of impervious surfaces.

The development proposed by Saxon Partners, LLC (Saxon) would include three residential buildings containing a total of 245 apartments. Saxon intends to construct two four-story buildings on 10 Avon Street, each containing 105 residential units, and one three-story building on 35 and 37 Avon Street housing 35 residential units.

Saxon has been active in real estate development for over twenty years, with a particular focus on retail and residential properties in the northeast. Saxon recently initiated a program of developing apartment buildings specifically targeting employees of major hospitals by providing efficient housing units in close proximity to their workplace. The program is currently being rolled out in a number of markets, with apartments designed for sites near hospitals in six different states.

approximately 193 acres. This is clearly impractical for a development like this and Saxon asks that this lot size requirement be lifted.

A N
O F F I C I A L O F F I C I A L
C O P Y C O P Y

The third and last incompatible requirement that Saxon requests be lifted involves the group of additional development standards in Art. XIII, Sec. 8. These standards incorporate specific mandates per dwelling unit such as private outdoor space, minimum storage space, and open space requirements that are ill-suited for modern, efficient, multifamily dwellings. These requirements are well-intentioned—and Saxon’s plan incorporates many of their design features such as indoor recreation facilities and outdoor barbeque areas—but their application would prohibit this development. As such, Saxon respectfully requests the additional developments standards not apply.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

The City Council of the City of Lewiston hereby determines that the change to the Zoning Map is in conformance with the Comprehensive Plan for the following reasons:

- In the section laying out the City’s new framework for growth: *“With an aging downtown housing stock, the community lacks high-quality housing choices within the walkable downtown core, making it difficult for singles, young professionals, and retirees to find attractive and affordable places to live.”* (Conservation and Growth Map, p. 120).
- Regarding the need to increase the City’s housing choices: *“The Riverfront Island Master Plan estimates that Lewiston will require up to 600 new housing units by 2020... To better meet current and emerging needs, future development should focus on providing new, high-quality, multi-family residences and other housing types as opposed to the current trend of building single-family homes in areas not currently served by water and sewer.”* (Strengthen Neighborhoods & Expand Housing Choice, p. 172).
- The City needs to provide more employee housing:
With Androscoggin County looking to welcome 2,000 new jobs by 2020 according to the Riverfront Island Master Plan, Lewiston is bound to see growth among its prominent employers. With an already low vacancy rate citywide, large corporations based in Lewiston might begin to overwhelm the local housing stock, though vacancy rates are higher in the downtown. A broad mix of high-quality new housing and short-term rentals, particularly for hospital employees, should be provided within proximity to these anticipated jobs.” (Strengthen Neighborhoods & Expand Housing Choice, p. 179, emphasis mine).

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CONTRACT REZONING AGREEMENT

The proponent requests that the official zoning map for the City be amended by removing the subject property from the RG, UE, and NCB districts and contract rezoning the subject premises CV district and lifting incompatible land and use requirements as described in this application and subject to the limitation more fully described below.

In compliance with the provisions of the Code, Art. XVII, Sec. 5(g), the proponent hereby proposes the following conditions:

- a. Land Use Table: Allowed uses of the property shall include those uses as listed below and subject to the conditions contained herein:

Land Use Table: All Zoning Districts 06.05.16	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV) (2)	Requested Contract Zone (CV)
Accessory use or structure	P	P	P	P
Veterinary facilities excluding kennels and humane societies				
Veterinary facilities including kennels and humane societies	P			
Small day care facilities	P	P		
Day care centers	P		P	
Day care centers accessory to public schools, religious facilities, multifamily or mixed res. developments, and mobile home parks		C(22)		
Business and professional offices including research, experimental, testing laboratories, engineering, research, management and related services	P	C(31)	P(9)	P(9)(*)
Restaurants	P		P(1)	P(1)(*)
Drinking places			P	P(*)
Adult business establishments				
Hotels, motels, inns	P		P	
Movie theaters except drive-in theaters	P		P	
Places of indoor assembly, amusement or culture	P		P	P(*)
Art and crafts studios	P	C	P	P(*)
Personal Services	P	P	P	P(*)
Retail stores	P		P	P(*)
Neighborhood retail stores		P		P(*)
Lumber and building materials dealer	P			
Gasoline service stations	P			
Gasoline service stations which are a part of and subordinate to a retail use				
New and used car dealers	P(17)			
Recreational vehicle, mobile home dealers	P			
Equipment dealers and equipment repair	P			
Automotive services including repair	P			
Registered dispensary(27)	C			

Land Use Table: All Zoning Districts 06.06.18	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV) ⁽²⁾	Requested Contract Zone (CV)
Registered primary caregivers engaged in the cultivation of medical marijuana for two to five registered patients.	P	COPY		
Tattoo Establishments				
Light industrial uses	P	NOT	P(8,38)	
Industrial uses	C	AN	P(18)	
Building and construction contractors	P(6,7)			
Fuel oil dealers and related facilities	P(8,7)	OFFICIAL		
Wholesale sales, warehousing and distribution facilities and self-storage facilities	P	COPY		
Self storage facilities	P			
Commercial solid waste disposal facilities				
Junkyards and auto graveyards				
Recycling and reprocessing facilities	C			
Private industrial/commercial developments(23)	P			
Airports or heliports				
Commercial parking facilities	P	C	P	
Transit and ground transportation facilities			P	
Transportation facilities	P			
Pumping stations, standpipes or other water supply uses involving facilities located on or above the ground surface and towers for municipal use	P	P	P	
Power transmission lines, substations, telephone exchanges, microwave towers or other public utility or communications use	C	C	C	
Municipal buildings and facilities	P	C	P	
Preservation of historic areas; emergency and fire protection activities; bridges and public roadways				
Dams				
Religious facilities	P	P	P	
Cemeteries		P		
Congregate care/assisted living facilities, institutions for the handicapped, nursing or convalescent homes, group care facilities	P	C	P	
Hospitals, medical clinics,	P	C	P	
Museums, libraries, and non-profit art galleries and theaters			P	
Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures,	P	C(13)	P	
Civic and social organizations		C	P	
Public community meeting and civic function buildings including auditoriums			P	
Single-family detached dwellings on individual residential lots		P(2)		
Mobile homes on individual residential lots				
Two-family dwellings		P		
Multifamily dwellings in accordance with the standards of Article XIII	P	P	P	P
Single-Family attached dwelling in accordance with the standards of Article XIII		P		
Mixed single-family residential developments in accordance with the standards of Article XII		P		
Mixed residential developments in accordance with the standards of Article XIII		P		
Mixed use structures	P	P	P	P

Land Use Table: All Zoning Districts 05.05.15	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV) ⁽⁹⁾	Requested Contract Zone (CV)
Lodging houses				
Home occupations				
Bed and breakfast establishments as a home occupation	P	P	P	
In-law apartments in accordance with the standards of Article XII			P	
Single family cluster development				
Family day care home			P	
Shelters				
Dormitories				
Uses dependent on Natural Resources				
Agriculture				
Farm Stands				
Forest management and timber harvesting activities in accordance with the standards of Article XIII	P	P		
Earth material removal				
Community gardens ⁽²⁰⁾	P	P	P	P
Water dependent uses, e.g. docks and marinas				P
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet				
Uses dependent on Recreation				
Campgrounds				
Public or private facilities for nonintensive outdoor recreation		C		P ^(*)
Commercial outdoor recreation and drive-in theaters				
Fitness and recreational sports centers as listed under NAICS Code 713940	P		P	P ^(*)

Applicable Land Use Table Footnotes:

- (1) Excludes drive-in restaurants.
- (9) Must be fully enclosed with no exterior storage.
- (15) Buildings, structures and uses accessory to permitted or conditional uses are allowed in all districts.
- (33) The performance standards of Article XII shall apply, unless otherwise specified.
- (*) Permitted in mixed use structures only.
- (^) Permitted as accessory use.

b. Space and Bulk Table: Allowed space and bulk standards on the property shall include those standards as listed below and subject to the conditions contained herein:

Dimensional Requirements (13)	Urban Enterprise (UE)	Neighborhood Conservation "B" (NCB)	Centreville (CV)	Requested Contract Zone (CV)
Minimum lot size with public sewer				
Single family detached (24)				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	5,000 sf			5,000 sf

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NOT Dimensional Requirements (13) OFFICIAL	Urban Enterprise (UE)	NOT Neighborhood Conservation "B" (NCB) OFFICIAL	Centreville (CV)	Requested Contract Zone (CV)
Mixed use structures				5,000 sf
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	5,000 sf	None	None	
Minimum lot size without public sewer (2) 24 ft				
Single family detached, mobile homes on individual lots (24)				
Single family attached				
Two-family dwellings				
Single family cluster development (1)				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	20,000 sf			
Mixed use structures				
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses	20,000 sf			
Minimum lot size without public sewer				
Single family detached				
Single family attached				
Two-family dwellings				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	1,500			1,180
Mixed use structures	1,500			1,180
All permitted residential uses		(26)	None	
Minimum lot size without public sewer				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings	1,500 sf			
Mixed use structures	1,500 sf			
All permitted residential uses				
Minimum lot size without public sewer				
Single family detached, mobile homes				
Single family attached				
Two-family dwellings				
Single family cluster development (with multiple vehicular accesses)				
Mixed single family residential development (with multiple vehicular access)				
Mixed residential development (with multiple vehicular accesses) (14)				
Multifamily dwellings (with multiple vehicular accesses)				100 ft
Mixed use structures				100 ft
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	100 ft	50 ft	25 ft	
Minimum front setback				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				25 ft for principal structures, 100 ft for accessory structures

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Dimensional Requirements (13) NOT OFFICIAL COPY	Urban Enterprise (UE) OFFICIAL	Neighborhood Conservation "B" (NCB) NOT OFFICIAL	Centerville (CV)	Requested Contract Zone (CV)
Mixed use structures				25ft for principal structures, none for accessory structures
Agriculture				
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	25ft (22)	10ft (21,22)	none (22)	
Minimum front yard setback				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				None
Mixed use structures				None
Religious facilities				
Veterinary facilities				
Other uses				
All permitted uses	10 ft	10 ft (21,22)	none (22)	
Minimum side and rear setback				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				10 ft
Religious facilities				
Mixed use structures				10 ft
Veterinary facilities				
Farm structures for keeping of animals				
Other uses				
All permitted uses	20 ft	5 ft	none	
Minimum side and rear yard				
Single family detached, mobile homes on individual lots				
Single family attached				
Two-family dwellings				
Single family cluster development				
Mixed single family residential development (14)				
Mixed residential development (14)				
Multifamily dwellings				None
Mixed use structures				None
Religious facilities				
Veterinary facilities				
Farm structures for keeping of animals				
Other uses				
All permitted uses	10 ft (10,16)	5 ft (16, 21)	None	
Maximum height				
Agriculture				
Other permitted uses				
Hospital, nursing homes and medical offices				
Religious facilities				
Maximum lot coverage	0.60	0.65	1.00	0.60
Maximum impervious coverage	0.80	0.65	1.00	0.80

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Applicable Space and Bulk Table Footnotes: N O T
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(13) F E L I C I T A I (i.e. relaxation of standards) of setbacks, yards, maximum
C O P Y C O P Y lot coverage ratios, maximum impervious surface ratios, minimum open
space ratios, and maximum building height as contained in the district
space and bulk standard may be granted by the board of appeals, planning
board, staff review committee and the code enforcement officer pursuant
O F F T O A R T I C L E S V , V I I , V I I I , I X , a n d X I I I o f t h i s C o d e .
C O P Y C O P Y

- c. The density for 10 Avon Street shall not exceed 210 dwelling units and the density for 35 and 37 Avon Street shall not exceed 35 dwelling units.
- d. The lot use limitation in Art. V, Sec. 3(1) shall not apply. Two or more principal residential structures on one lot are permitted in accordance with Art. XIII, Sec. 8.
- e. The minimum lot size requirement in Art. XII, Sec. 2(e)(2) shall not apply.
- f. The additional standards for multi-unit residential development contained in Art. XIII, Sec. 8 shall not apply.
- g. Violations of any of the conditions herein will constitute a violation of the Code
- h. The conditions described herein shall bind the proponent, its successors and assigns, any person in possession or occupant of the subject premises, or any portion thereof, and shall inure to the benefit of and be enforceable by the City.
- i. The proponent shall, at their own expense, record in the Androscoggin County Registry of Deeds a copy of the conditions within thirty (30) days following final approval of this proposal by the City. Such form of recording is to be in a form satisfactory to the City.
- j. The conditions described herein shall run with the subject premises.
- k. In addition to other remedies to which the City may be entitled under applicable provisions of statute or ordinance, if any party in possession of use of the subject premises fails or refuses to comply with any of the conditions imposed, any rezoning approved by the City in accordance with the conditions shall be of no force or effect. In that event, any use of the subject premises and any building or structures developed pursuant to the rezoning shall be immediately abated and brought into compliance with all applicable provisions of the Code with the same effect as if the rezoning had never occurred.
- l. If any of the conditions are found by a court of competent jurisdiction to be invalid, such determination shall not invalidate any of the other conditions.
- m. Any rezoning approved by the City contractually shall be of no force or effect if the proponent fails or refuses to comply with conditions imposed.

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n. Any allowed proposed use, addition, or expansion of the property deemed applicable to Article XIII, Section 2 of the Zoning and Land Use Code shall be subject to the applicable sections of Article XIII of the Zoning and Land Use Code, Development Review and Standards. Y C O P Y

o. By submitting this proposal, the proponent agrees in writing to the conditions described herein.

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C O P Y

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The Proponent of this request hereby respectively submits this Proposal as of the 13 day of ~~February~~ ^{January} 2019.

~~NOT AN OFFICIAL COPY~~ ~~NOT AN OFFICIAL COPY~~

Proponent: Saxon Partners, LLC
~~NOT AN OFFICIAL COPY~~
Donald S. Smith, Notary Public
Androscoggin, SS Plymouth County
Lewiston, Maine Massachusetts

~~NOT AN OFFICIAL COPY~~
February 13, 2019

Personally appeared the above named Donald S. Smith and acknowledged their foregoing to be free and deed.

Notary Public
Commission Expires: David L. Arons
DAVID L ARONS ESQ



DAVID L. ARONS, ESQ
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 8, 2021

The Owner of 10, 35 and 37 Avon Street acknowledges and supports this request.

Property Owner: Lewiston Waterfront Development, LLC

Frederick Thurston
~~MEMBER~~
FRANKLIN
Androscoggin, SS
Lewiston, Maine
EUSTIS

February 9, 2019

Personally appeared the above named Frederick Thurston and acknowledged their foregoing to be free and deed.

Attorney at Law Barbara Craig J. Rancourt
Notary Public
Commission Expires: MIA Craig J. Rancourt Bar # 868

PURCHASE AND SALE AGREEMENT

NOT NOT
A N A N

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree as follows, with this document being referred to herein as the "Agreement":

1. **PARTIES.** NOT NOT
A N A N

SELLER: F F Lewiston Waterfront Development, LLC I A L
c/o Fred Thurston @ Conifer Industries P Y
Route 231 P.O. Box 300 New Gloucester, Maine 04260

with a copy to: John Doyon
Malone Commercial Broker
5 Moulton Street
Portland, ME 04101

And

Craig Rancourt
13 Crescent Street
Biddeford, Maine 04005

BUYER: Saxon Partners, LLC, a Massachusetts limited liability company,
or its nominee or assignee
Attention: Donald S. Smith, Manager
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3304
Fax: 781-875-3044
E-mail: dsmith@saxon-partners.com

with a copy to: David L. Arons, Esq.
Saxon Partners LLC
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
Phone: 781-875-3317
Fax: 781-875-3044
E-mail: darons@saxon-partners.com

2. **PROPERTY.** Those certain three lots or parcels of real estate in Lewiston, Maine, containing approximately 6.4 acres and identified as follows: 10 Avon Street, shown on Tax Map 206 as Lot 19 (5.47 acres, more or less); 35 Avon Street, shown on Tax Map 206 as Lot 28 (.18 acres, more or less); and 37 Avon Street, shown on Tax Map 206 as Lot 27 (.7 acres, more or less), together with the buildings and improvements thereon, if any and all rights, easements and other appurtenances thereto, and all rights in all permits and other benefits relating to the Property. (the "Property"). The Property is shown approximately on Exhibit A.

Exhibit A

N O T N O T
A N A N

3. **PURCHASE PRICE.** [REDACTED] The Purchase Price, subject to any pro-rations or adjustments as provided below, shall be payable at the Closing by certified bank check or wire transfer.

4. **EFFECTIVE DATE.** The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".

O F F I C I A L O F F I C I A L

5. **DEPOSITS.** Within five (5) business days of the Effective Date, Buyer shall deposit in escrow with SVN Urbanek Group ("Escrow Agent"), the amount of: [REDACTED] ("Initial Deposit"). If Buyer elects to proceed to the Permitting Period, then Buyer shall increase the Deposit by depositing in escrow with Escrow Agent an additional [REDACTED]. The Initial Deposit and all subsequent deposits hereinafter shall be collectively referred to as the "Deposit". The entire Deposit shall be credited against the Purchase Price at the Closing and shall be refundable except as specifically set forth in this Agreement. Interest, if any, on the Deposit shall follow the Deposit. Escrow Agent, however, shall not be required to use an interest-bearing account.

6. **DUE DILIGENCE AND PERMITTING PERIODS.** Buyer shall have the Due Diligence Period and the Permitting Periods (each set forth below) during which Buyer, at Buyer's sole expense, shall have the right to conduct such due diligence as Buyer deems appropriate including, without limitation, review of title, survey, current environmental reports, utilities, topography, archeological and historical, reports and other due diligence items. Buyer shall have the right to enter onto the Property for the conduct of due diligence including, without limitation, inspection, testing, survey, engineering and permitting. Seller shall reasonably cooperate with Buyer's due diligence efforts (including the release of pertinent documents to the Buyer and Buyer's attorneys, engineers and surveyors, and consultants), provided that such cooperation shall not cause Seller to incur any expenditure (unless Buyer reimburses Seller for any such expenses). Buyer understands and agrees that any on-site inspections of the Property shall be conducted upon at least twenty-four (24) hours prior written e-mail notice to Seller and, at Seller's option, in the presence of Seller or its representative, provided such Seller right shall not result in a delay in Buyer's conduct of its due diligence. Inspections shall be conducted so as not to interfere unreasonably with use of the Property by Seller or its tenants, if any. After Buyer's inspections are completed, Buyer shall restore the Property, at Buyer's sole cost and expense, substantially to its condition immediately prior to any impact due to Buyer's inspections. Prior to Buyer or any such other party entering the Property in the exercise of the access rights hereunder, Buyer shall deliver to Seller a certificate of commercial public liability insurance naming Seller as an additional insured, and evidencing coverage with commercially reasonable limits. Buyer agrees to indemnify against and hold Seller harmless from any claim, liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries to the extent arising out of or resulting from the inspection of the Property by Buyer or its agents or representatives, provided that the foregoing shall not be applicable to the discovery of existing conditions by Buyer. Notwithstanding anything to the contrary in this Agreement, Buyer's obligation to indemnify and hold harmless Seller and the other obligations of Buyer under this Section 6 shall survive any termination of this Agreement for a period of six (6) months.

(i) **Due Diligence Period:** The Due Diligence Period shall be a period of six (6) months from the Effective Date. Within five (5) business days after the Effective Date, Seller shall provide

Exhibit A

N O T N O T

Buyer with copies of all relevant ^{A N} due diligence information in its ^{A N} possession including any permits, environmental reports, geotechnical information, archeological and historical reports, plans, and the most recent title ^{A N} insurance information. The entire Deposit (plus accrued interest, if any) will be returned to Buyer if Buyer, at any time and in Buyer's sole discretion, is not satisfied with the results of Buyer's ^{A N} due diligence.

N O T

On or before the end of the ^{A N} Due Diligence Period, Buyer may elect to continue to the ^{A N} Initial Permitting Period by giving written notice to Seller, provided that if Buyer fails to give notice of Buyer's election to continue to the Initial Permitting Period by the end of the Due Diligence Period, then Buyer's right to elect to terminate or to continue to the Initial Permitting Period shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Buyer agrees to within six (6) months of the Effective Date submit an application to the Planning Board for construction of a multi-family development including at least 150 apartment units. The Buyer's obligation to apply to the Planning Board shall not otherwise supersede the Buyer's rights under the Due Diligence Period and the Permitting Period as set forth in this Section 6.

(ii) *Permitting Period:* Buyer shall have up to twelve (12) months after the end of the Due Diligence Period, which amounts to eighteen (18) months from the Effective Date, at Buyer's sole expense, to apply for permits and obtain zoning relief for the Property for the construction of a multi-family development including at least 150 apartment units, and to defend against the appeal from the issuance of any permits and grant of zoning relief. If Buyer elects to terminate this Agreement on or before the end of the Permitting Period, then the entire Deposit plus accrued interest (if any) will be returned to the Buyer. After the completion of six (6) full months of the Permitting Period, [redacted] of the Deposit shall become non-refundable per month on the first day of each subsequent month of the Permitting Period (hereinafter collectively referred to as the "Released Funds") and shall remain as part of the Deposit held by the Escrow Agent. The Released Funds will be non-refundable but will in all circumstances be applicable to the Purchase Price. Notwithstanding the foregoing, in the event that the Buyer elects to terminate on account of a Seller default under this Agreement, the Released Funds shall be fully refundable together with the remainder of the Deposit.

(iii) *Extension:* If at the end of the initial Permitting Period (eighteen (18) months from the Effective Date), there are pending applications or appeal periods that have not expired or appeals have not been resolved, or there are other pending legal actions relating to the Property, then Buyer shall have the right to extend the Permitting Period for a period ending (thirty (30) days after the final resolution of the last of the foregoing matters provided Buyer is seeking to address the matter(s) in question (including the exhaustion of all appeals). Buyer shall notify Seller of the election to extend on or before the expiration of the initial Permitting Period provided that if Buyer fails to give notice of Buyer's election to terminate or to continue with the Extension of the Permitting Period by the conclusion of the initial twelve (12) month Permitting Period, then Buyer's right to elect to continue to the Extension shall continue for three (3) business days after Buyer's receipt of notice from Seller that Buyer's election had not been received by the initial due date therefor.

Exhibit A

N O T N O T

Due Diligence Period to which the Buyer has not objected in the Title Objections Notice described below (except to the extent Seller has agreed to terminate such easement(s)), the Property to be in compliance with all applicable laws, ordinances and regulations relating thereto if Buyer has any objections to title ("Title Objections Notice"), Buyer shall provide Seller with written notice regarding the Title Objections during the Due Diligence Period, and the Seller shall be obligated to cure the Title Objections prior to the Closing as a condition of the Buyer's obligation to purchase the Property. Seller shall not allow any changes in title after the title run-down date stated in the Buyer's submission of the Title Objections Notice, except to cure any of the Title Objections prior to the Closing; otherwise, in the absence of such Title Objections, Buyer shall accept and Seller shall deliver title to the Property at Closing in the condition in which title is in on the close of the Due Diligence Period, subject only to Seller's duty to discharge: (A) all mortgages, deeds of trust, and all other monetary and liens and encumbrances of record; and (B), any other matters of record that Seller has agreed to terminate.

10. WITHHOLDING TAX. Seller hereby is notified that Buyer will withhold two and one-half percent (2.5%) of the purchase price for transfer to the State of Maine Tax Assessor pursuant to 36 M.R.S.A. §5250-A unless (a) Seller furnishes a certificate to Buyer at the Closing, as hereinafter defined, stating, under penalty of perjury, that as of the date of the Closing, Seller is a resident of the State of Maine, or (b) Seller furnishes a certificate from the State of Maine Tax Assessor to Buyer at the Closing stating that no taxes are due on the gain from the transfer of the Property or that Seller has provided adequate security to the State of Maine Tax Assessor to cover the tax liability resulting from said transfer.

11. CLOSING DOCUMENTS. At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's attorneys or title company may reasonably require to complete the transaction contemplated herein:

(a) **Transfer Documents.** The Deed, a Maine Real Estate Transfer Tax Declaration of Value, and one or more assignments, as determined by Buyer, of all of Seller's right, title and interest in all permits, approvals, improvements and other property of Buyer relating to the Property;

(b) **Title Affidavits.** Such customary certificates, affidavits or indemnity agreements as the title insurance company issuing a policies of title insurance on the Property to Buyer and Buyer's lender shall require in order to issue such policies and to omit therefrom all standard exceptions including those relating to unfiled mechanic's, materialmen's or similar liens and for parties in possession;

(c) **Nonforeign Person Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to §1445 of the Internal Revenue Code;

(d) **Maine Resident Affidavit.** If applicable, such affidavits and certificates as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to 36 M.R.S.A. §5250-A;

Exhibit A

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(e) Underground Oil Storage Tank and Hazardous Waste Certification. A written notice certifying either (i) that to Seller's knowledge there is no underground oil storage facility located on the Property, (ii), no deposits of hazardous waste substances or oil products stored or discharged on the Property (as defined under the law of the State of Maine and under applicable federal law) or (iii) pursuant to 38 M.R.S.A. §563(6), if there is an underground oil storage tank facility on the Property, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection;

(f) Authority of Seller and Buyer. A certificate of good standing from the Maine Secretary of State and other documentation evidencing Seller's authority to enter into and complete the transaction contemplated by this Agreement as may be reasonably requested by Buyer's attorney and Buyer shall provide the same authority documents to Seller as may be reasonably requested by Seller's counsel; and.

(g) Tax documents. An IRS 1099S form and any other tax reporting forms required by State of Maine and federal government.

12. POSSESSION AND CONDITION OF PROPERTY. Full possession of the Property free of all tenants and occupants is to be delivered at the Closing; the Property to be then in the same condition as it is on the Effective Date (except to the extent Seller has agreed to make any changes to the Property), reasonable wear and tear excepted.

13. EXTENSION TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or, if at the time of the Closing the Property does not conform with the terms and conditions hereof, then Seller shall use due diligence and commercially reasonable efforts to remove any defects in title (including liens and encumbrances) or to deliver possession as provided herein, or to make the Property conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty (30) days, or such longer period as shall be determined by Buyer.

14. FAILURE TO PERFECT TITLE OR MAKE PROPERTY CONFORM. If at the expiration of such extended time(s) Seller shall have failed to remove any defects in title (including liens and encumbrances), deliver possession, or make the Property conform, as the case may be, all as herein agreed, then, at Buyer's option and subject to Buyer's other rights in this Agreement, the entire Deposit (including any portion thereof that would otherwise be non-refundable) promptly shall be refunded to Buyer, all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto.

15. BUYER'S ELECTION TO ACCEPT TITLE AND CONDITION. In addition to such other remedies available to Buyer under this Agreement, Buyer shall have the election, at either the original or during or at the end of any extended time for performance, to accept such title to the Property in its then condition as Seller can deliver and to pay therefor the Purchase Price without deduction, in which case, Seller shall convey such title or deliver the Property in such

Exhibit A

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condition, except that, in the event of such conveyance in accordance with the provisions of this clause, the Property shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Property to its former condition, and at Buyer's express election, pay over or assign to Buyer, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, or which would have been recoverable had Seller maintained commercially reasonable insurance on the Property, less any amounts reasonably expended by Seller for any partial restoration.

16. ACCEPTANCE OF DEED. The acceptance of the Deed and other transfer documents by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms and conditions hereof, to be performed after the delivery of said documents or to otherwise survive the Closing hereunder.

17. USE OF PURCHASE MONEY TO CLEAR TITLE. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed and other transfer documents, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said Deed and other transfer documents.

18. RISK OF LOSS. Until delivery of possession of the Property from Seller to Buyer, risk or loss or damage to Property by fire, storm, accident, other casualty or otherwise shall be on Seller.

19. ADJUSTMENTS. Water and sewer use charges, if any, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned, as of the Closing, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by Buyer at the time of delivery of the Deed and other transfer documents. At Buyer's election, the Property shall be removed from any current use tax assessment program such as, by way of example, open space or tree growth classification, at or prior to the Closing, in which case any penalties or other fees resulting therefrom shall be paid by Seller at or prior to the Closing. Real estate transfer taxes due on the sale will be paid by Seller and Buyer in equal amounts in accordance with Maine law.

20. ADJUSTMENT OF UNASSESSED AND ABATED TAXES. If the amount of said real estate taxes and any other municipal assessments referred to in the preceding Paragraph is not known at the time of the Closing, they shall be apportioned on the basis of the real estate taxes assessed for the immediately preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

21. DEFAULT/DAMAGES. If Seller fails to fulfill Seller's obligations hereunder, and such failure continues for fifteen (15) days after Seller's receipt of written notice from Buyer, Buyer may elect to receive a refund of the entire Deposit (including any portion thereof that would otherwise be non-refundable) and to pursue all available remedies, pursuant to this Agreement, at law and in equity, including, without limitation, specific performance and reasonable attorneys' fees. If Buyer fails to fulfill Buyer's obligations hereunder, and such failure continues for fifteen (15) days after Buyer's receipt of written notice from Seller, then Seller shall retain the Deposit as

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liquidated damages as Seller's sole and exclusive remedy at law or in equity for Buyer's default without further recourse to Buyer and Buyer shall be relieved of all obligations hereunder.

22. ASSIGNMENT/DESIGNATION OF NOMINEE. The rights and obligations of Buyer under this Agreement may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. The Buyer may also designate a nominee to take title to the Property.

O F F I C I A L O F F I C I A L
C O P Y C O P Y

23. MISCELLANEOUS.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

(b) All paragraph headings in this Agreement are for convenience of reference only and are of no independent legal significance.

(c) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(d) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement.

(e) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument. This Agreement may be transmitted between the parties by facsimile machine and/or by email and signatures appearing on faxed or emailed instruments shall be treated as original signatures. Both a faxed or emailed version of this Agreement containing either original, faxed or emailed signatures of all parties, and multiple counterparts of the same Agreement each containing separate original, faxed or emailed signatures of the parties, shall be binding on them.

(f) If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) It is expressly understood and agreed that time is of the essence in respect of this Agreement.

Exhibit A

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(b) This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

C O P Y C O P Y

(l) Each party shall be responsible for its own legal, advisory and miscellaneous expenses associated with the completion of this transaction.

24. BROKERAGE COMMISSION. Buyer and Seller represent and warrant to each other that they have not dealt with any brokers regarding this transaction other than John Doyon of Malone Commercial ("Seller's Broker") and Tony Armstrong, SVN Urbanek Group (Buyer's Broker). At Closing, Seller shall be responsible to pay a brokerage commission by a separate agreement between the Seller's Broker and Seller, and a brokerage commission by a separate agreement between the Buyer's Broker and Seller. The commission shall be due if and only the Deed is delivered and recorded, full consideration paid to the Seller, and not otherwise.

25. REPRESENTATIONS. Seller represents and warrants to Buyer that

(a) Seller is the owner in fee simple of the Property (subject to Seller's Mortgage, if any, and matters of record as of the Effective Date), and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Seller has good and marketable title to the Property, and there are no lawsuits or other proceedings currently pending, contemplated, or threatened by or against the Seller or the Property that would affect the ownership, future development, ability to finance or enjoyment of any of the Property, or which would result in delays in the Buyer's proposed development of the Property for the construction of a multi-family project with at least 125 units;

(c) Seller has received no notice of any eminent domain proceedings or any other adverse event affecting the Property, nor of any special or betterment assessments contemplated against the Property, nor of any actions that would hinder or delay the development of the Property, and Seller has no knowledge of any of the foregoing;

(d) Seller (including Seller's employees, agents, contractors, representatives, and invitees) has not generated, released, stored, disposed of, dumped, flushed or in any way introduced on to the Property oil, hazardous material, hazardous waste or hazardous substances (hereinafter collectively called "Hazardous Substances") as these terms are defined by any applicable federal, state or local law, rule or regulation (hereinafter referred to as "Applicable Environmental Laws"), and Seller has not received notice and is not otherwise aware of any incident which would have required the filing of notice or notification pursuant to any Applicable Environmental Laws applicable to the Property;

(e) Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act") and at the Closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary;

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(f) There are no violations of any governmental laws, ordinances, rules, regulations or orders concerning the Property that relate to environmental, hazardous waste, safety, health, zoning, conservation, wetlands, or zoning matters;

(g) No person or entity has any right of first refusal or option to acquire the Property;

(h) There are no parties in possession or with any possessory rights, including licenses, with respect to the Property;

(i) There are not any non-monetary private restrictions affecting the Property that would hinder the development of the Property for the construction of multi-family housing with at least 125 units;

(j) As a material inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby makes to Buyer the representations and warranties contained in this Section;

(k) Seller has full right, power, authority and capacity to enter into this Agreement and each agreement, document and instrument to be executed and delivered by such Seller pursuant to this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and each such other agreement, document and instrument require no consent, authorization, permission or filing with or from any other person, entity or agency, violate no contract, agreement, order, judgment or the like that is binding upon such Seller, and have been duly authorized by all necessary action of such Seller, and no other action on the part of Seller is required in connection therewith.

(l) This Agreement and each agreement, document and instrument executed and delivered by Seller pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of Seller enforceable in accordance with their terms.

(m) Seller represents that all federal, state, local and other taxes will be paid through the Closing, except for those taxes for which Buyer assumes responsibility under the Agreement.

(n) Seller represents that all documentation provided to the Buyer, is to the best of the Seller's knowledge, true, accurate and complete.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true, both as of the date hereof and as of the Closing, and Seller shall take all actions as are required to make the foregoing representations true.

26. CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE. Buyer shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:

(a) Seller shall have timely performed its obligations under this Agreement in all material respects.

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(b) ^{O F F I C I A L} As of the Closing Date, Seller's ^{O F F I C I A L} representations and warranties shall be true, correct and complete in all material respects. ^{C O P Y}

(c) Seller has satisfied each of the conditions and obligations imposed on the Seller as set forth in this Purchase and Sale Agreement. ^{A N}

(d) ^{O F F I C I A L} The Property, consisting of land, shall be in the same condition as it is now, and specifically not subject to erosion, fire, flooding, sinkholes, or any other changes in the condition of the Property (on or below the surface). ^{C O P Y}

(e) No suit shall be pending before any court, agency, regulatory or other body in which it will be or is sought to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

27. ASSUMPTION OF LIABILITIES. Buyer assumes none of Seller's liabilities, including, without limitation, (i) any obligations payable to officers, shareholders, members, affiliated companies or other parties related to Seller, and (ii) any liability of Seller for any employee benefit plans or contributions to said plans. Buyer shall also have no obligation to offer employment to employees of Seller.

28. SELLER INDEMNIFICATION. Seller shall agree to defend, indemnify and hold Buyer harmless from and against any damages, liabilities, losses and expenses (including reasonable attorney's fees) of any kind or nature whatsoever which may be sustained or suffered by Buyer based upon a breach of any representation, or covenant made by or obligation of Seller in this Agreement by reason of any claim, action or proceeding asserted or instituted or growing out of any matter covered by such representations, or covenants.

29. REMOVAL FROM MARKET. Upon the Effective Date of this Agreement and for the duration of this Agreement, Seller agrees to take the Property off the market and further agrees not to deal with any other prospective buyer.

30. NOTICES. All notices required or permitted to be given hereunder (except notices indicating the time for access to the Property, which may be verbal or by email) shall be in writing and sent by certified or registered mail, or by overnight courier, postage prepaid, or hand delivered or by facsimile transmission, addressed to the parties set forth below or to such other address or addresses as the parties may designate from time to time by notice provided in accordance with this provision. Any such notices shall be effective upon receipt or rejection of delivery by the party to which the notice is directed. Copies of all notices shall be send the counsel for each party.

Seller:
To the address first set forth above or
with respect to emails to: _____

Buyer:
To the address first set forth above or
with respect to emails to:
Donald Smith: dsmith@saxon-partners.com

and with respect to verbal notices to:

and with respect to verbal notices to:

Exhibit A

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COPY
Donald Smith: (781) 875-3304

To Counsel:

NOT
Seller's Counsel: AN
CRAIG J. RANCOUR
13 Crescent St
Bridgewater MA 01905
craig@rancourtlaw.com
207-282-6949

NOT
Buyer's Counsel:
David L. Arons, Attorney at Law
25 Recreation Park Drive, Suite 204
Hingham, MA 02043
(781) 875-3317
daron@axon-partners.com

In witness whereof, the parties have executed this Purchase and Sale Agreement under seal as of the date written below.

SELLER:

BUYER:

Lewiston Waterfront Development, LLC
a Maine corporation

Saxon Partners, LLC,
a Massachusetts limited liability company

Craig J. Rancour
Name: Craig J. Rancour POA
Title: Authorized Agent for
Lewiston Waterfront Development
LLC
Date: April 20, 2018

Donald Smith
Name: Donald Smith
Title: Manager
Date: April 18, 2018

(The last date upon which both Parties have executed, dated and distributed this Agreement, shall be defined as the "Effective Date".)

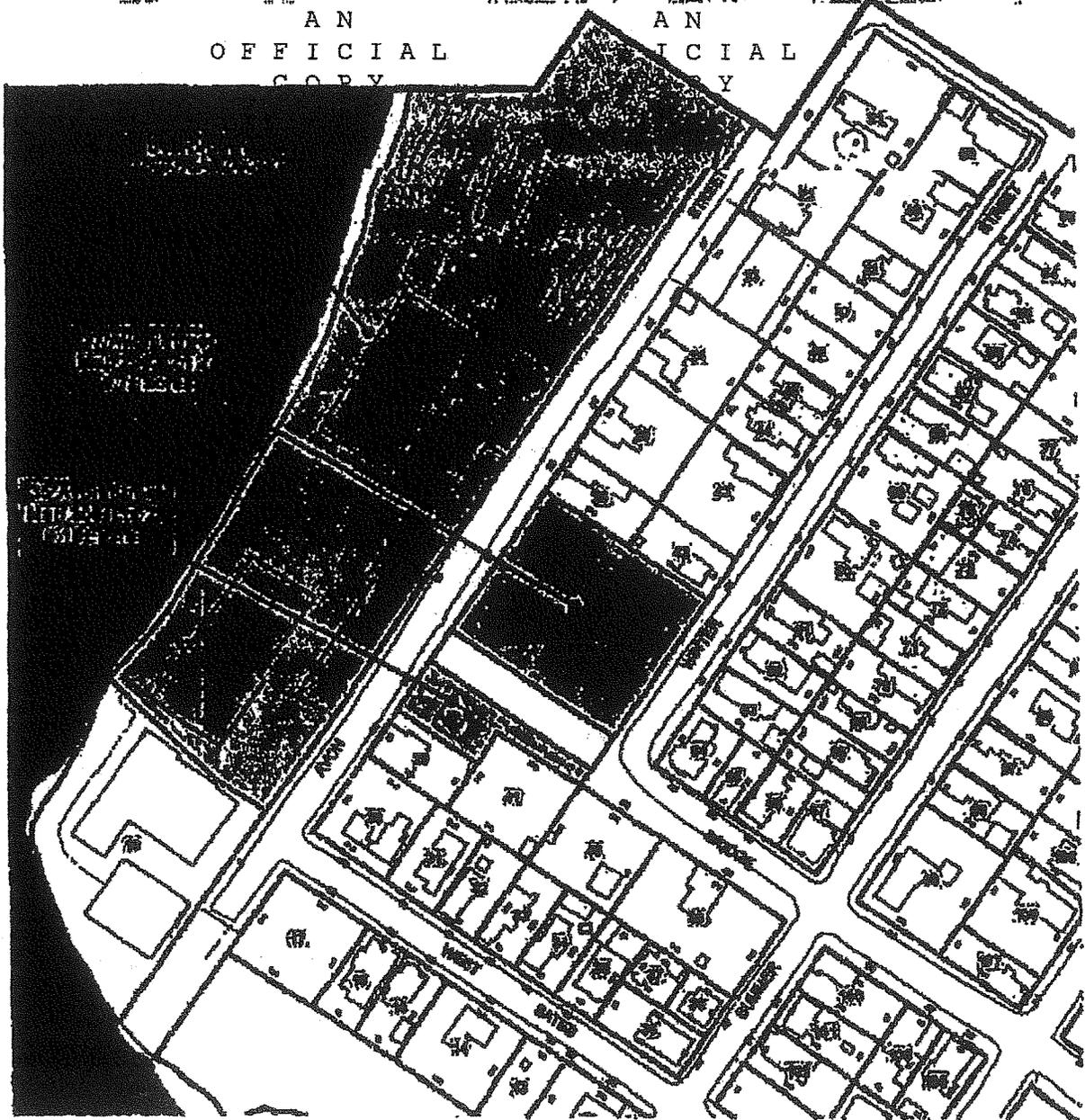
EXHIBIT A

TAX MAP

Source: City of Lewiston Tax Map 206, April 1, 2012.

Note: This is only a portion of tax map 206 with labels and shading added.
Copy of Map 206 is available electronically on request.

NOT AN OFFICIAL COPY



Poor Copy At Time Of Recording
Will Not Reproduce Clearly

Exhibit B

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2. Your ^{A N}petitioner avers that the above described streets do not have the status of accepted and located public ways. While some are shown on the Plans above referred to, they have never been accepted nor used as streets since they ^{C O P Y} have never been laid out on the surface of the earth.

3. Your petitioner avers that the above described land may be subject to rights of ^{A N}use or easements in favor of certain ^{A N}owners of lots shown on the aforesaid Plan.

^{A N} WHEREFORE your petitioner prays that the Board of Mayor and Aldermen may vacate in whole the proposed location of the streets described in paragraph one of this ^{C O P Y} petition in accordance with the provisions of Title 23, Chapter 303, Section 3012 of M.R.S.A. 1964. Your petitioner further prays that said Board of Mayor and Aldermen shall cause written notice of the filing of within petition and their intentions to be posted for seven days in two public places in said City of Lewiston and in the vicinity of the Land above described.

Your petitioner stands ready to pay all damages occasioned by the vacating of said proposed streets.

Dated at Lewiston, Maine this 28th day of March, 1974.

PINELAND LUMBER COMPANY

By Kenneth G. Imack
President

ORDER VACATING CERTAIN PROPOSED AND PLATTED BUT UNACCEPTED STREETS

A N A N

It appearing that proper notice on the petition of Pineland Lumber Company ordering a public hearing at the proposed locations on the 20th day of May 1974, at 10:05 o'clock in the forenoon, attested by the City Clerk was posted at two public places in the City of Lewiston and in the vicinity of the ways, in accordance with Maine Revised Statutes Annotated, and acts amendatory thereof, at least seven days before the time fixed for said hearing as set forth in said Order of Notice, and after full hearing of all the parties concerned, it is hereby determined:

A N A N

O F F I C I A L O F F I C I A L
1. That Pineland Lumber Company is the owner in fee simple
absolute of the after-described property. O P Y

2. That public convenience and necessity no longer require the location of certain proposed streets or parts of the same as shown on a plan entitled "Plan of Lots in Lewiston owned by C.C. Wilson" and recorded in the Androscoggin County Registry of Deeds in Book of Plans, Volume 2, Page 31, as hereinafter described, and therefore, in accordance with the law in such cases made and provided, the municipal officers do hereby vote, decree, order and determine that those proposed streets or parts of the same as hereinafter described and referred to, are hereby discontinued and vacated and are no longer proposed public ways for the convenience of the public and; it is further ordered and declared that no damages are allowed:

Bridge Street or Bridge Street Extension

Beginning at the most southerly corner of lot 110 as shown on the aforesaid plan and thence the line runs in a northwesterly direction along the southwesterly lines of lots 110, 111 and 112 as shown on said plan a distance of two hundred (200) feet to the intersection of Bridge Street Extension with the southeasterly line of Avon Street; thence the line continues across Avon Street a distance of fifty (50) feet to the most southerly corner of lot 141 as shown on said plan; thence the line runs in a northwesterly direction along the southwesterly line of lot 141 and lot 142 a distance of one hundred fifty (150) feet to the most westerly corner of lot 142 as shown on said plan; thence the line continues to run in a northwesterly direction along an extension of the last course a distance of approximately fifty (50) feet to the Androscoggin River; thence the line runs in a southwesterly direction along the river a distance of forty (40) feet, more or less, to a point; thence the line runs in a southeasterly direction parallel with and forty (40) feet distant southeasterly from the southwesterly lines of lots 142, lot 141, lot 112, lot 111 and lot 110 to the intersection of the southwesterly line of Bridge Street with the northwesterly line of Winter Street as shown on said plan; thence the line runs in a north-easterly direction across Bridge Street to the most southerly corner of lot 110 and the point of beginning, excepting therefrom any portion of the above premises included within Avon Street.

Water Street

Beginning at the aforesaid most westerly corner of lot 142 as shown on said plan and thence the line runs in a northerly direction along the westerly lines of lots 142, 143, 144, 145 and lot 146 as shown on said plan a distance of two hundred forty (240) feet to an angle in the westerly line of lot 146; thence the line runs in a northeasterly direction along the balance of the northwesterly line of lot 146 and along the northwesterly lines of lots 147 through 156 as shown on said plan a distance of five hundred thirty (530) feet to the intersection of the southeasterly line of Water Street with the southwesterly line of Rolland Street as shown on said plan; thence the

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Exhibit B

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line runs in a northwesterly direction along an extension of the north-
easterly line of lot 156 a distance of Fifty (50) Feet to a point;
thence the line runs in a southwesterly direction parallel with the
northwesterly lines of said lots 146 through 156 inclusive to the
Androscoggin River; thence the line runs in a southwesterly direction
along the Androscoggin River to a point intersected by the northeasterly
line of Bridge Street described above; thence the line runs in a south-
easterly direction by the above described northeasterly line of Bridge
Street to the point of beginning.

A N A N
Dated at Lewiston, Maine, this 21st day of May, 1974
C O P Y C O P Y

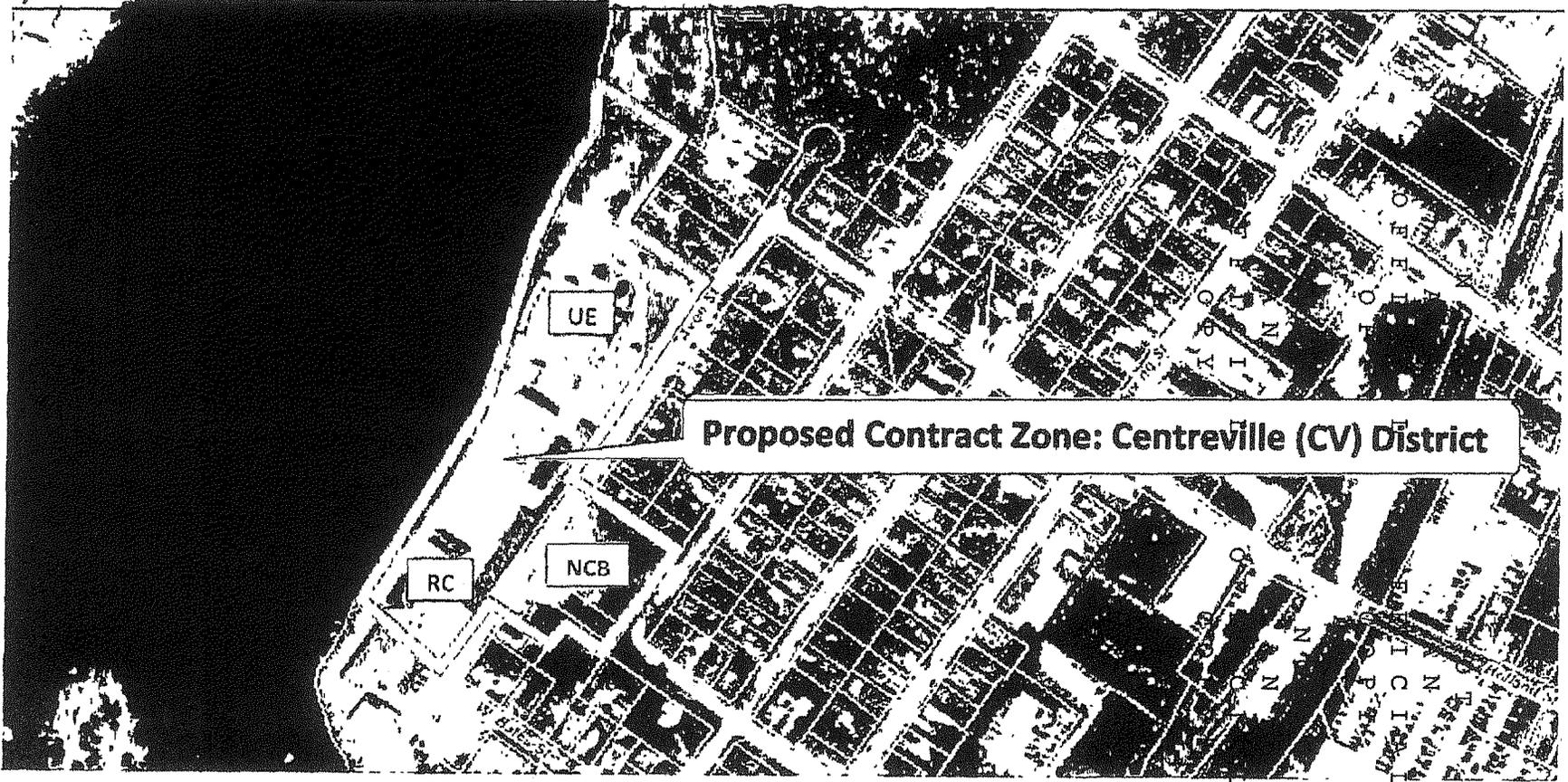
MAYOR AND BOARD OF ALDERMEN

George Fitzhugh
Kenneth J. Bastin
William A. Casco

Gulab Singh
Charles E. T. (1011264)
John W. Starnes
George H. Call

A true record, Attest:

Gerald P. Bernbe
Gerald P. Bernbe
City Clerk
Lewiston, Maine



Proposed Contract Zone: Centreville (CV) District

Proposed Contract Zone: Centreville (CV) District
10, 35, 37 Avon Street

ANDROSCOGGIN COUNTY
THOMAS N. CHAMBERLAIN
REGISTER OF DEEDS

**CONTRACT ZONE AGREEMENT
BETWEEN
THE CITY OF LEWISTON
AND
SAXON PARTNERS, LLC**

AGREEMENT made this ____ day of December 2019 by and between the **CITY OF LEWISTON**, a body corporate and politic, located in Androscoggin County and State of Maine (hereinafter the “**CITY**”) and **Saxon Partners, LLC**, a Massachusetts limited liability company (hereinafter “**SAXON**”).

WITNESSETH

WHEREAS, **SAXON** has proposed developing up to a 245-unit residential housing complex on 10, 35, and 37 Avon Street (hereinafter the “**Project**”); and

WHEREAS, **SAXON** has proposed the construction and operation of the **Project** on a portion of Tax Map 206 Lots 19, 27 and 28, as described in a Purchase and Sale Agreement between **SAXON** and Lewiston Waterfront Development, LLC, dated April 20, 2018, and extended on October 29, 2019; and

WHEREAS, the **Project** is located in the Centreville (hereinafter “**CV**”) zoning district; and

WHEREAS, the **CITY** will benefit from the construction and operation of the **Project**; and

WHEREAS, the **Project** requires locating up to 245 residential units on 10 Avon Street, **SAXON** requests a modification to the existing contract zone for 10,

35, and 37 Avon Street as recorded in the Androscoggin County Registry of Deeds, Book 10157, Pages 40 – 68; and

WHEREAS, under the existing contract zone, the Property has a density cap of 1,180 square feet per dwelling unit and requires no more than 210 dwelling units be located on 10 Avon Street and no more than 35 dwelling units be located on 35 and 37 Avon Street, SAXON requests that the Property be allowed a density cap of 1,000 square feet and these aforementioned dwelling unit caps for 10, 35, and 37 Avon Street be lifted; and

WHEREAS, the CITY by and through its City Council has determined that said Space and Bulk amendments would be and are pursuant to and consistent with the CITY'S comprehensive land use plan and consistent with the existing and permitted uses in the CV zone; and

WHEREAS, the CITY has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions that relate only to the physical development or operation of the Property in order to ensure that the Space and Bulk amendments are consistent with the CITY'S comprehensive land use plan; and

WHEREAS, the CITY authorized the execution of this Agreement on _____ 2019; and

* * *

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. *Dimensional Requirements.* The Property shall comply with the dimensional requirements currently in force in this specific CV zone, with the following exceptions:
 - a. The minimum net lot area per dwelling unit with public sewer requirement found in the existing contract zone (Space and Bulk Table, Book 10157, Page 46) shall be reduced from 1,180 square feet to 1,000 square feet; and
 - b. The dwelling caps for 10, 35, and 37 Avon Street found in the existing contract zone (Space and Bulk Table Footnote "c", Book 10157, Page 48) shall be removed.

The above stated restrictions, provisions, and conditions are an essential part of the agreement, shall run with the Property, shall bind and benefit SAXON, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the CITY, by and through its duly authorized representatives.

SAXON shall file a copy of this AGREEMENT in the Androscoggin County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, within thirty days following final approval of this contract zone amendment by the CITY.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning and Land Use Code of the City of Lewiston (including

the CV zoning district) and any applicable amendments thereto or replacement thereof.

In the event that SAXON or any successor fails or refuses to comply with the conditions imposed or the terms of the AGREEMENT, any use of the Property and any buildings and structures developed pursuant to the rezoning shall be abated and the property brought into compliance with all applicable provisions of the Zoning and Land Use Code of the City of Lewiston.

WITNESS:

CITY OF LEWISTON

By: _____

Edward A. Barrett
City Administrator

STATE OF MAINE
ANDROSCOGGIN, ss.

Date: _____, 2019

Personally appeared before me the above-named Edward A. Barrett, in his capacity as City Administrator, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Lewiston.

Before me,

Notary Public/Attorney at Law

WITNESS:

SAXON PARTNERS, LLC

By: _____

Donald S. Smith
Manager

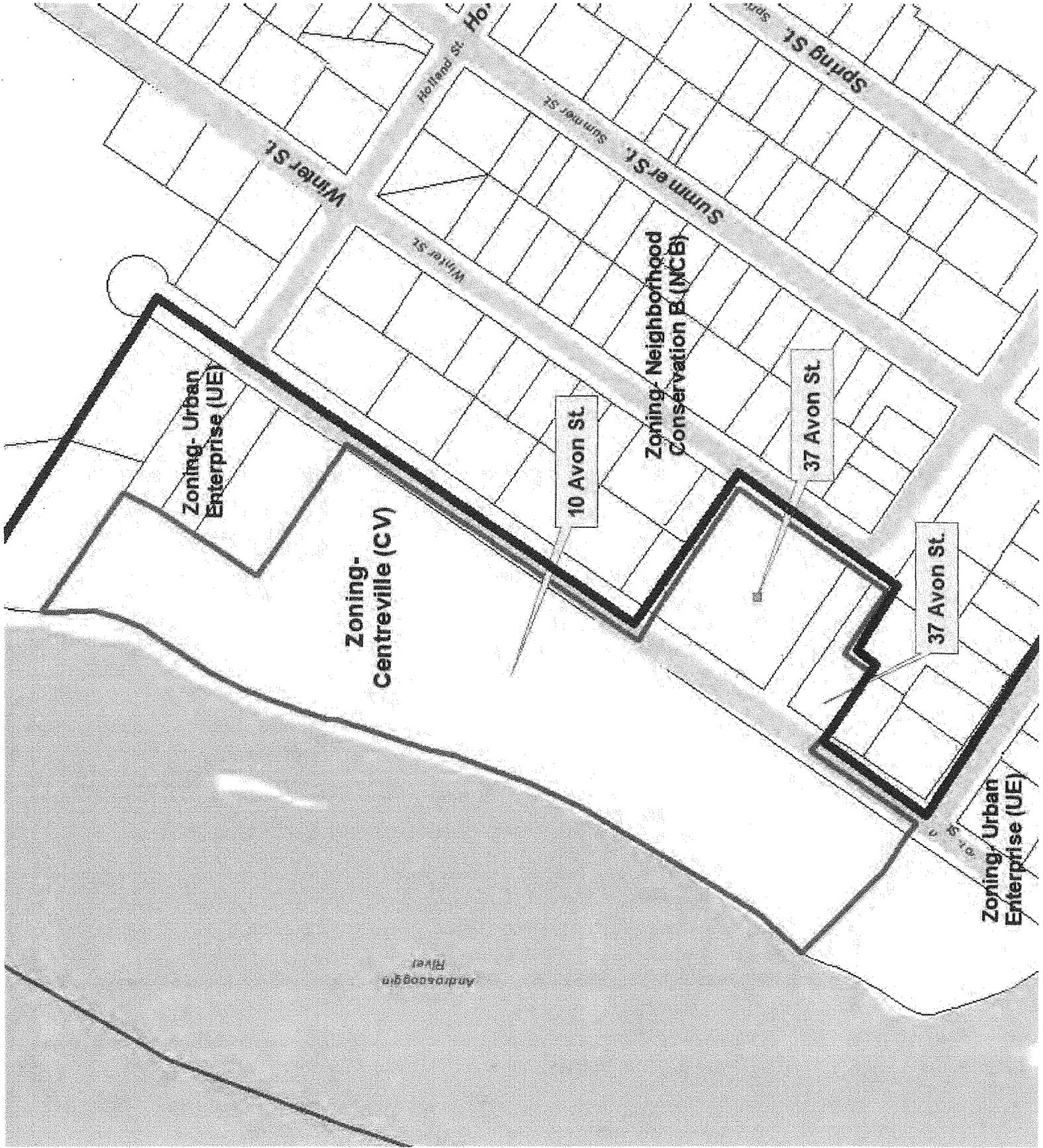
COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH, ss.

Date: _____, 2019

Personally appeared before me the above-named Donald S. Smith, in his capacity as an Owner of Saxon Partners, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Saxon Partners, LLC.

Before me,

Notary Public/Attorney at Law



Zoning- Urban Enterprise (UE)

Zoning- Centreville (CV)

Zoning- Neighborhood Conservation B (NCB)

10 Avon St

37 Avon St

37 Avon St

Zoning- Urban Enterprise (UE)

Androsogin River

Winter St

Winter St

Summer St

Spring St

Holland St

10 St

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 15

SUBJECT: Order, Replacing the City Master Policies 40, Treebate, and 62, Tree Planting Policy, with a New Tree Planting Policy, Master Policy 62.

INFORMATION:

Several Councilors have asked staff to review our current tree planting programs and, if possible, consolidate them all into a single policy. These programs include any actual budget for street tree replacement, a 50/50 program that is no longer funded but which split the costs of new public trees requested by a resident on a 50/50 basis, and the City's Treebate program where the City reimburses a property owner for a portion of the cost of purchasing and planting a qualifying tree via a credit on their stormwater bill. From time to time, the City has also provided trees at no cost to be planted on private property where such plantings cannot be supported in the public right of way.

The attached policy consolidates all of these programs together into a single policy to make them more easily accessible to the public. In addition, it expands eligibility for the treebate program to all residential properties where it is currently limited to single family homes and duplexes.

This proposal was reviewed at a recent City council workshop where some minor adjustments were requested. It is now ready to be adopted.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Order, Replacing the City Master Policies 40, Treebate, and 62, Tree Planting Policy, with a New Tree Planting Policy, Master Policy 62.



COUNCIL ORDER

Order, Replacing the City Master Policies 40, Treebate, and 62, Tree Planting Policy, with a New Tree Planting Policy, Master Policy 62.

Whereas, the City currently has a number of separate policies and programs relating to planting and replacing trees in the community; and

Whereas, several members of the Council requested that these policies be reviewed with a view toward combining them into a single policy more readily accessible to the public and expanding the availability of certain programs to all residential properties in the City;

Now, therefore, be it ordered by the City Council of the City of Lewiston that

City Master Policies 40, Treebate, and 62, Tree Planting Policy, are hereby repealed and replaced with a New Tree Planting Policy, Master Policy 62, a copy of which is attached hereto.

Tree Planting Policy

City of Lewiston

1.0 Purpose

Trees enhance the urban, suburban and rural environment of Lewiston by reducing stormwater runoff and absorbing rainfall, reducing soil erosion, exchanging gases, and conserving energy. These are especially true when trees are strategically placed along streets and around buildings. The purpose of this policy is to provide for healthy streetscapes and provide incentives to the owners of single family and multi-family properties to plant additional trees on their properties.

2.0 Policy Statement

It is the City's policy to encourage planting trees on public and private property when it is to the benefit of the resident and the City. This policy covers three areas:

- 1) Replacing street trees within the right-of-way that have become diseased, damaged, or otherwise create a hazard to public health or property. The addition of trees within the right-of-way is intended to provide a more consistent streetscape and enhancement of public property. Replacement may be with another species having a more suitable habit (growth pattern) for the specific location.
- 2) Trees placed outside the right-of-way or off City property where the City has a stated plan and interest in developing or improving a streetscape.
- 3) A program encouraging property owners to plant trees within the public view on single family and multi-family residential properties.

3.0 Trees Planted on Public Property by the City

3.1 Applicability

Like all living things, trees have a limited lifespan and can become diseased or damaged by storms and human activities, necessitating their removal. Trees may also affect the operation of street infrastructure and utilities. When trees are removed or missing from the streetscape, they will be replaced if there is sufficient budget and there are no technical or safety reasons not to replace them.

3.2 Procedure

Whenever a tree is planted or removed from the City right-of-way, the City Arborist will evaluate the location for the suitable replacement trees or to add additional trees. The Arborist will consider the location, safety, potential space conflicts, other area trees, and the potential for disease, and make a determination as to whether a tree should be planted and what species is appropriate for the setting.

Tree Planting Policy

City of Lewiston

3.3 Assessment and Budget

Annually, the City Arborist will assess the City's tree health and condition based on experience from the preceding years and evaluation of trends, and make a recommendation for a tree replacement budget to the Public Works Director. The Public Works Director will forward a recommendation to the City Administrator and Council for consideration.

4.0 Trees Planted on Private Property by the City

4.1 Applicability

At times, the right-of-way layout/geometry, utility locations, American with Disability Act requirements, or other features will not accommodate trees in the public right-of-way. In cases where the City has determined there is a public interest in enhancing the streetscape with trees, it will seek permission for planting on private property. This determination will typically be in the form of a specific budgeted project that may be an add-on to a City paving or road reconstruction project, sidewalk project, neighborhood enhancement project, or a standalone treescape project.

4.2 Rights for Planting and Maintenance

As the project is developed, the Project Engineer and/or the City Arborist will contact the applicable owners to get an initial indication of their willingness to allow the City to plant and maintain a tree(s) on their property for an initial five-year period and grant the City an easement or license to do so.

Once the project is funded and the owner has indicated a willingness to allow the City to plant and maintain a tree or trees on their property, then the City will draft and execute a five-year easement/license to authorize planting and initial maintenance of the tree(s). If the tree(s) must be replaced beyond the original five year city maintenance period, it will be by mutual agreement between the City and the then current property owner. For City planted trees, the owner, during the five-year City maintenance period, has no obligation to maintain the tree(s) other than to take care not to willfully damage them. The City's responsibility for the tree(s) shall end at the expiration of the five-year maintenance period.

5.0 Tree Planted on Private Property by the Owner (Treebate)

5.1 Eligibility

The treebate program is available to property owners of single family or multi-family residential properties.

Tree Planting Policy

City of Lewiston

5.2 Amount of Treebate

The City will credit the property owner's stormwater fee for 50% of the invoiced cost of purchasing and or planting a qualifying tree up to a maximum of \$100. Applicants are eligible for no more than one tree per year.

5.3 Qualifying Trees

To qualify, trees must be deciduous, non-invasive, and have a caliper measurement of at least 1.5 inches. (Caliper is a measure of the diameter of the trunk 6 inches above the soil surface.) A list of pre-qualifying tree species can be found in Attachment A. Other trees can potentially qualify upon written approval from the City Arborist prior to purchase and planting.

5.4 Application

In order to qualify for a guaranteed Treebate, residents must complete the application form found in Attachment B in advance of purchasing the tree to ensure city participation. Notice of approval by the City Arborist will constitute an assurance to the applicant that funds are available for the purchase and/or planting.

A tree that does not meet the requirements of the program will not be eligible for reimbursement.

5.5 Planting Location Requirements

In general, trees must be planted in a location where they are visible from the public right-of-way and within 100 feet of the primary residential structure. Trees must be planted at least:

- (a) forty (40) feet from all intersections and traffic signs/signals
- (b) ten (10) feet from abutting properties or structures.
- (c) thirty (30) feet from existing trees.
- (d) ten (10) feet from utility poles, hydrants, and driveways.

Consideration must be given to avoid future tree/utility conflicts, both overhead and underground. Note that private underground utilities (such as water and sewer service lines and electrical feeds) and underground irrigation systems are the responsibility of the property owner. The City Arborist will assist upon request.

Tree Planting Policy

City of Lewiston

Sufficient care must be taken to protect the tree from potential damage by vehicles, equipment, and the public.

5.6 Fruit Trees.

Fruit trees must be planted outside the City right-of-way such that all falling fruit stays on the privately owned property.

5.7 Procedure for Claiming Treebate

Once a tree has been purchased and planted, the resident must provide the City with a copy of the invoice or other acceptable proof of payment specifying the species of tree purchased and trunk caliper along with a picture of the planted tree. Treebate claims should be submitted to: City Arborist, City of Lewiston, Department of Public Works, 103 Adams Ave., Lewiston, ME 04240, Phone: (207) 513-3003.

After review, the applicant will be notified whether or not they have qualified for a Treebate.

5.8 Planting and Care Guide

The City Arborist, at the contact information above, may assist with the helping a property owner choose a location and with proper planting and care guidelines.

Tree Planting Policy

City of Lewiston

APPENDIX A

RECOMMENDED TREES

BOTANICAL NAME: Acer rubrum

COMMON NAME: Red Maple

Zone 3, 40-60' in height, spread less than or equal to height. Very tolerant of soils, however, prefers slightly acid, moist conditions.

Cultivars: 'Armstrong' - Narrow Spirelike Crown; 'Autumn Blaze;' 'Red Sunset'

BOTANICAL NAME: Acer saccharum

COMMON NAME: Sugar Maple

Zone 3, 60 - 75' in height. Spread is 2/3's or equal to the height. Prefers well drained moderately moist, fertile soil, a slightly acid soil seems to result in greater growth, not extremely air pollution tolerant.

Needs ample, unrestricted space to grow.

Cultivars: 'Green mountain' - Upright oval crown, performs better than species in dry restricted growing areas.

BOTANICAL NAME: Cladrastis lutes

COMMON NAME: Yellowwood

Zone 3, 30 - 50' in height with a spread of 40 to 50 feet. Tolerates high pH soils as well as acid situations. Requires well drained soils. Fragrant white flowers in spring. Bright yellow foliage in spring gradually change to bright green in summer and yellow in fall.

BOTANICAL NAME: Fraxinus americana

COMMON NAME: White ash

Zone 3, 50 - 80' in height with a spread of similar proportions. Prefers deep, moist, well drained soils but also withstands soils which are not excessively dry and rocky.

BOTANICAL NAME: Fraxinus pennsylvanica

COMMON NAME: Green ash

Zone 3, 50 - 60' in height by about 1/2 that in spread. Very adaptable tolerates high pH, salt, drought, and sterile soils.

Cultivars: 'Honeyshade' - Glossy foliage; 'Marshall's Seedless' - Vigorous growth with less insect problems than the species.

BOTANICAL NAME: Ginkgo biloba

COMMON NAME: Ginko

Zone 4, 50 - 80' in height, variable spread 30' plus. Prefers sandy, deep, moderately moist soil but grows in almost any situation. Air pollution tolerant; a durable tree for difficult to landscape situations. Extremely free of pest.

BOTANICAL NAME: Gleditsia triacanthos var. inermis

COMMON NAME: Thornless Honeylocust

Zone 4, 40 - 60' in height, with comparable spread. Prefers rich, moist soils of a limestone origin, however, it withstands a wide range of conditions including dry soils, high pH and salt spray. Cultivars: 'Fairview' - Rapid grower; strong sturdy habit of growth; wide upright; 'Shade master' - tall straight trunk with graceful arching branches.

BOTANICAL NAME: phellondendron amurense

COMMON NAME: Amur Corktree

Tree Planting Policy

City of Lewiston

Zone 3, 30 - 45' in height with equal spread. Does well on many types of soils, withstands acid or alkaline conditions.

Cultivars: 'Red spire' - Compact upright form, hardiest; 'Autumn Blaze' - Wider than Red spire

BOTANICAL NAME: *Pyrus calleryana* 'bradford' COMMON

NAME: Bradford Callery Pear

Zone 4, 30 - 50' in height with a 20 - 35' spread. Adaptable to many different soils, tolerates dryness and pollution. White flowers in spring, glossy green foliage, turns scarlet in fall.

BOTANICAL NAME: *Quercus palustris* COMMON

NAME: Pin Oak

Zone 4, 60-70' in height with a crown spread of 30-40'. Strong pyramid shape, tolerant of poor soils. Very common street tree.

BOTANICAL NAME: *Sophora japonica*

COMMON NAME: Japanese Pagoda tree

Zone 4, 50 - 75' in height with comparable spread. Prefers loamy well-drained soil. White mildly fragrant blossoms in spring.

Cultivars: 'Fastigrata' - Upright growth habit; 'Regent' - Fast growth rate.

BOTANICAL NAME: *Syringa reticulata* x Ivory Silk

COMMON NAME: Japanese Tree Lilac

Zone 3, 20-30' in height, 15 -25' in crown width. PLANT SINGLE STEM ONLY. One of the most trouble free street trees, this is not a standard lilac shrub. Excellent specimen tree or in groups. Waxy green leaves with fragrant creamy white flowers in late June. Good choice for small or tight areas without much room. Does not tolerate wet soils.

BOTANICAL NAME: *Tilia cordata*

COMMON NAME: Little Leaf Linden

Zone 3, 60 - 70' in height and 1/2 to 2/3's that in spread. Prefers moist, well drained soil, pH adaptable and pollution tolerant. Dark glossy green foliage changing to yellow in fall.

BOTANICAL NAME: *Ulmus Americana* 'Princeton'

COMMON NAME: Princeton Elm

Zone 3, 60 - 80' in height and 40-50' in crown spread. American Elm cultivar, vigorous and good resistance to Dutch Elm Disease.

BOTANICAL NAME: *Ulmus Homestead*

COMMON NAME: Homestead Elm

Zone 4, 60 - 70' in height and 30-40' in crown spread. Fast growing tree, good tolerance to poor soil, heat and insects and disease.

FRUIT TREES: Must be rated for zone 4 or lower.

Tree Planting Policy City of Lewiston

APPENDIX B

TREEBATE APPLICATION FORM

Date: _____
Name: _____
Address: _____
Phone: _____
Email: _____
Species:

- | | |
|--|--|
| <input type="checkbox"/> Red Maple | <input type="checkbox"/> Sugar Maple |
| <input type="checkbox"/> Yellowwood | <input type="checkbox"/> White Ash |
| <input type="checkbox"/> Green Ash | <input type="checkbox"/> Ginko |
| <input type="checkbox"/> Thornless Honeylocust | <input type="checkbox"/> Amur Corktree |
| <input type="checkbox"/> Pin Oak | <input type="checkbox"/> Bradford Callery Pear |
| <input type="checkbox"/> Japanese Pagoda Tree | <input type="checkbox"/> Japanese Tree Lilac |
| <input type="checkbox"/> Little Leaf Linden | <input type="checkbox"/> Princeton Elm |
| <input type="checkbox"/> Homestead Elm | |
- Other¹ (Please specify): _____

SUBMIT THIS FORM TO: City Arborist, City of Lewiston Department of Public Works, 103 Adams Ave.,
Lewiston, ME 04240. Ph: (207) 513-3003

YOU WILL BE NOTIFIED ONCE YOUR APPLICATION HAS BEEN REVIEWED. ELIGIBILITY FOR
STORMWATER UTILITY CREDITS ARE GRANTED ON THE BASIS OF FUND AVAILABILITY.
ONCE APPROVED AND PLANTED, PLEASE ATTACH ALL RECEIPTS (showing species, trunk caliper, and
price paid) and a photo of the planted tree and submit to the City Arborist at the contact above.

¹ Specify the other variety desired; our City Arborist will review your request to determine
whether it is appropriate and be back in contact with you.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 16

SUBJECT: **Resolve**, Amending Master Policy 81 – Miscellaneous Fees and Penalties – to establish Penalties for Violations of the Rental Registration Ordinance.

INFORMATION: In May 2018, the Lewiston Area Public Health Committee, in conjunction with staff of the City Planning and Code Enforcement Department, developed a draft rental registration ordinance. This work was undertaken in light of a goal set in the City's comprehensive plan to establish a rental registration program as a mechanism to expand property maintenance and life safety inspection services associated with multifamily dwelling units and to provide information on an annual basis such as emergency contact information for owners and managers. This plan was presented to the City Council during a workshop on May 15, 2018. A number of stakeholders appeared at that meeting, including owners of multi-family buildings in Lewiston, to express their opinions on the proposal. While there were some who spoke in favor, a majority of those present expressed opposition.

Given this, the City Council established an Ad-Hoc Advisory Committee on Rental Registration on June 19, 2018 and charged the Committee to investigate whether the City should or should not adopt a rental registration program and to report its findings and recommendations to the City Council. The final report of the Committee recommended that a no-cost registration program be implemented. The Council accepted the report and provided funding in the FY20 budget to support its implementation. A rental registration ordinance has now been adopted.

During Council discussion of the ordinance, there was also consideration of penalties for failure to register or for violations of other provisions of the ordinance. An initial version of these penalties was presented to the Council at its last regular meeting and was tabled to allow for a discussion at a workshop. At that workshop, direction was provided to specify the other violations for which penalties might be applied and to clarify that the escalating penalties for failing to register a property would reset annually. Those adjustments are shown on the attached **Resolve**.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the **Resolve**, Amending Master Policy 81 – Miscellaneous Fees and Penalties – to establish Penalties for Violations of the Rental Registration Ordinance.



COUNCIL RESOLVE

Resolve, Amending Master Policy 81 – Miscellaneous Fees and Penalties – to establish Penalties for Violations of the Rental Registration Ordinance.

Whereas, Upon the recommendations of the Ad-Hoc Committee on Rental Registration and following numerous discussions and detailed review, the City Council has adopted a no-fee rental registration ordinance; and

Whereas, this ordinance requires that all multi-family buildings with three or more rental units be registered with the City to ensure that the City has current information regarding these structures and the responsible parties associated with them; and

Whereas, to be effective, penalties must be established to ensure that these buildings do, in fact, register and that they comply with other requirements of this ordinance;

Now, therefore, be it resolved by the City Council of the City of Lewiston that

City Master Policy 81, Miscellaneous Fees and Penalties, is hereby amended as follows:

Chapter 18, Article VI – Registration Requirements for Multi-Family Buildings – Penalties

The following civil penalties shall be imposed for the issuance of citations for violations of Section 18-94, Registration required:

Failure to register:

First month or portions thereof	\$50
Second through sixth month	\$100 per month or portion thereof
Months beyond six <u>through twelve</u>	\$200 per month or portion thereof ¹

Failure to post registration certificate \$100 per occurrence

Other violations: \$100 per occurrence

The following civil penalties shall be imposed for the issuance of citations for violation of Section 18-96, Registration Requirements:

Failure to timely provide updates to required information in 18-96 (a) Legal Owner or Owners; 18-96 (b) Business Operator; 18-96 (c) Property Manager; and 18-96 (d) Emergency Contact \$100 per occurrence

¹ Penalties reset annually on date of required registration.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET: AGENDA ITEM NO. 17

SUBJECT:

Amendments to the City Business License Fee Schedule Policy regarding the fees for marijuana businesses.

INFORMATION:

The proposed amendments to the City Business License Applications and Fee Schedule Policy are pertaining to the upcoming changes in the license categories for marijuana related businesses. Given the unforeseen number of existing establishments and the potential for more, as well as the amount of time and resources involved by various city departments in processing and inspecting establishments (ie City Clerk, Police, Fire, Planning/Code Enforcement), there is a justifiable need to increase the fee. The staff recommends the amounts presented in the attached schedule.

Note: Additions are underlined; deletions have ~~strikeout~~ lines.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:	1	2	3	4	5	6	7	M
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To approve the proposed amendment to the City Business Licensing Fee Schedule Policy, Policy Manual Number 7, as recommended by the City Administrator.

(Note: Full copy of the proposed amendments is attached. Additions are underlined; deletions have ~~strikeout~~ lines.)

Proposed Marijuana Business Fee Schedule

The current license application fee in Lewiston is \$550 annually. Given the unforeseen number of existing establishments and the potential for more, as well as the amount of time and resources involved by various departments in processing and inspecting establishments (i.e. clerks, police, fire, planning/code enforcement), there is a justifiable need to increase the fee. Recommended fee's include:

City Policy #7

CITY BUSINESS LICENSE APPLICATIONS

FEES, PENALTIES AND INSPECTION & APPROVAL SCHEDULE

22. Medical-Marijuana Businesses

a. ~~Non-refundable application fee for Registered Primary Caregiver Operation: \$550.00~~

b. ~~Non-refundable application fee for Registered Dispensary: \$550~~

- Marijuana Store: Annual Operation Permit/License Fee: \$5,000
- Marijuana Manufacturing Facility: Annual Operation Permit/License Fee: \$2,500
- Marijuana Testing Facility: Annual Operation Permit/License Fee: \$2,500
- Marijuana Cultivation:
 - Tier 1: 0 to 500 SF of plant canopy: Annual Permit/Licensing Fee: \$1,000.
 - Tier 2: 501-2,000 SF of mature plant canopy: Annual Permit/License Fee: \$1,500.
 - Tier 3: 2,001-7,000 SF of mature plant canopy: Annual Permit/License Fee: \$2,500.
 - Tier 4: 7,001-20,000 SF of mature plant canopy: Annual Permit/License Fee: \$5,000.
 - Nursery Cultivation: Cultivation of not more than 1,000 SF of plant canopy in compliance with 28-B M.R.S. §501.3: Annual Permit/License Fee: \$1,000 (Plant canopies of individual Nursery Cultivations are permanently capped at 1,000 SF.)
- Dispensary: Annual Operation Permit/License Fee: \$5,000

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 18

SUBJECT: ORDER, Approving the HOME Agreement with Blake & Pine LP and authorizing the City Administrator to Execute the Same.

INFORMATION:

Avesta Housing has been working to develop a 35 unit mixed income housing project that will be located at 111 Blake and 82 Pine Streets. Earlier this year, the City Council approved a development agreement with Avesta for this project. Under that agreement, the City agreed to provide Tax Increment Financing for this project and to award \$325,000 in HOME funds from the U.S. Department of Housing and Urban Development in support of this project.

Federal HOME regulations require a formal agreement to commit HOME funds to a project. That agreement lays out the various federal regulations that must be adhered to Such as the timing of disbursement of funds, income restrictions on tenants and rents that can be charged, how the property will be marketed, and compliance with federal fair housing requirements.

The attached order will authorize the City Administrator to execute a HOME agreement for this project. Please see the attached memorandum for additional information.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Order, Approving the HOME Agreement with Blake & Pine LP and authorizing the City Administrator to Execute the Same.



City of Lewiston, Maine
City Council Order
November 19, 2019



ORDER, Approving the HOME Agreement with Blake & Pine LP and authorizing the City Administrator to Execute the Same

Whereas, Blake & Pine LP, in partnership with Pinecone Housing Corporation and Community Concepts, Inc., desires to build a 35 unit mixed income housing project at 111 Blake Street and 82 Pine Street in Lewiston, Maine; and

Whereas, the City Council approved an *Agreement for Development Assistance and Tax Increment Financing* between the City and Bates & Pine LP which was executed on August 13, 2019; and

Whereas, in that Joint Development Agreement, the City conditionally agreed to provide \$325,000 of HOME funds to assist with construction of the project pending an environmental Finding of No Significant Impact and Release of Funds from the U.S. Department of Housing and Urban Development; and

Whereas, that pledge of HOME funds was contingent upon Blake & Pine LP securing financing to construct the proposed project; and

Whereas, MaineHousing has committed \$4,871,513 in Low Income Housing Tax Credits and \$700,000 of grant subsidy; the Federal Home Loan Bank has committed \$500,000 of grant funding; and Norway Savings Bank has committed to \$979,428 in loans to fund construction of the project; and

Whereas, the attached *HOME Agreement and Declaration of Covenants and Restrictions* between the City and Blake & Pine LP specifies the obligations of each party related to the commitment of City HOME funds, including but not limited to the timing of disbursement of HOME funds, income restrictions on tenants, restrictions on rents that can be charged, and how the property will be marketed and comply with federal fair housing requirements;

Now, therefore, be it Ordered by the City Council of the City of Lewiston that

The attached *HOME Agreement and Declaration of Covenants and Restrictions* between the City and Blake & Pine LP is hereby approved and the City Administrator is authorized to execute the document on behalf of the City.

Economic and Community Development

Lincoln Jeffers
Director



To: Honorable Mayor and Members of the City Council
From: Lincoln Jeffers
RE: **Avesta – Blake + Pine HOME Agreement**
Date: November 14, 2019

Background

The city is a partner in the Auburn Lewiston HOME Consortium. In recent years the Consortium receives between \$450,000 and \$500,000 annually which is split between the two cities, with Auburn receiving a slightly higher percentage of the money as the managing partner. The federal regulations associated with HOME funds are very restrictive. The funds can only be used to support low income homeowners, the creation of affordable housing, or to provide direct rental assistance to low income residents. The City has provided HOME funding to assist with construction costs on other workforce housing projects developed in Lewiston including The Lofts at Bates Mill, The Hartley Block, Birch Hill Senior Housing, and Tedford Housing's Supportive Blake Street Family Apartments.

Avesta Housing has been working to develop a 35 unit mixed income housing project that will be located at 111 Blake and 82 Pine Streets. They have partnered with Community Concepts to develop the project. The project, to be called Blake+Pine, will have 21 apartments restricted to renters making no more than 50% of the Area Median Income (AMI), 7 apartments restricted to renters making no more than 60% of AMI, and 7 market rate apartments with no income restrictions.

The City of Lewiston approved a 15 year, 50% Tax Increment Financing and development district for the project on August 13, 2019. Included in that TIF agreement was a reference to \$325,000 of HOME funds to be awarded to the project, once project financing had been secured and an environmental review had been completed on the project that had a Finding of No Significant Impact (FONSI). The attached HOME Agreement allows the conditional award of the HOME funds pending final approval and release of funds from HUD after a total of 30 days public notice regarding the FONSI from the project. The public notice period has begun.

Blake+Pine has received planning board approval.

Avesta's request for HOME funding for the project is an eligible use of the funding. The City has evaluated and underwritten Avesta's proforma for Blake+Pine and found the requested HOME dollars to be warranted and a needed part of the financing for the project.

Agreement Summary

Federal HOME regulations require a formal agreement to commit HOME funds to the project. That agreement, the *HOME Agreement and Declaration of Covenants and Restrictions*, specifies the requirements the developer must meet to receive HOME funds. The agreement articulates the various federal regulations that must be abided by as to the timing of disbursement of HOME funds, income restrictions on tenants, restrictions on rents that can be charged, and how the property will be marketed and comply with federal fair housing requirements.

Based on federal regulations that limit the amount of HOME funds that can be invested per unit, Blake and Pine will have 2 of the 28 workforce housing units designated as HOME units. The units will be "floating" rather than dedicated to specific units. With floating units, if the income of a tenant who qualified to rent a HOME unit increases beyond the income cap, the next available apartment of the same size will become a HOME unit and be rented to an income qualified tenant.

One of the HOME units will be a one bedroom unit, the other will be a two bedroom unit. Both of the units will be considered "Low HOME" units, where the apartment is rented to tenants with a household income less than 50% of the Area Median Income (AMI), based on household size. The 2019 income limits are attached as Exhibit C to the agreement but, for example, they range from \$22,700 for a one person household, to \$32,400 for a four person household. Low HOME rents in 2019 are capped at \$608 for a one bedroom unit, and at \$730 for two bedroom unit. The 2019 rent limits are included as part of the HOME Agreement as Exhibit B. The U.S. Department of Housing and Urban Development adjusts the income and rent limits annually.

Requested Action `

The City Council is asked to approve the *HOME Agreement and Declaration of Covenants and Restrictions* and to authorize the City Administrator to execute the document. This is the last council action required to release the HOME funds that will be used to help pay construction costs of the project.

**HOME AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS
PURSUANT TO 24 CFR § 92.504(c)(3)**

This HOME AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS (the "Agreement") is made this ____ day of November, 2019 by and between the CITY OF LEWISTON, a municipal corporation (the "City") with a mailing address of 27 Pine Street, Lewiston, Maine 04240, and **BLAKE & PINE LP**, a Maine limited partnership with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (the "Borrower" or the "Partnership"), in furtherance of the regulations issued by the United States Department of Housing and Urban Development set forth in 24 CFR Part 92 (the "HOME Regulations").

WHEREAS, as of the date of this agreement, **PINECONE HOUSING CORPORATION**, a Maine business corporation and affiliate of Avesta Housing Development Corporation ("General Partner"), is the sole general partner of Partnership;

WHEREAS, **COMMUNITY CONCEPTS, INC.** a Maine Non-profit organization will replace **PINECONE HOUSING CORPORATION** as General Partner before the construction loan closing for the Project (defined below);

WHEREAS, Partnership has site control of property located at 111 Blake Street and 82 Pine Street, in Lewiston, Maine (the "Property");

WHEREAS, the Partnership is constructing a new building on the Property, consisting of 28 units of affordable rental housing including one, two and three bedroom housing units (the "Units") and related space for income qualified individuals and families as well as 7 market rates one and two bedroom units ("Project") on the Property;

WHEREAS, the City is providing a loan to the Partnership in the amount of up to \$325,000 with funds from the United States Department of Housing and Urban Development's HOME Investment Partnerships Program (the "Loan") to pay certain eligible costs in the project budget attached as Exhibit A for the new construction of 2 of the Units in the Project ("HOME Units"), the terms of which are specified in the Construction Loan Agreement between the City and the Borrower, to be entered into after the date hereof and incorporated by reference. The documentation associated with the Loan, including this document, are referred to as the "Loan Documents");

WHEREAS the Partnership acknowledges the City's resulting beneficial interest in the Project, and Partnership acknowledges its obligation to manage the construction of the Units in furtherance of discharge of the public trust; and

WHEREAS, City has provided the Loan to Partnership in consideration of the Partnership's agreement to abide by the provisions of this Agreement;

NOW THEREFORE, City and the Partnership agree as follows:

1. Project Description. The Project consists of new construction of 35 units of housing. Of these, 28 will be affordable rental housing to serve low-income households. Among those 28 units, two will be HOME Units consisting of 1 one-bedroom unit, and 1 two-bedroom unit. The Project location is on the Property. The amount of HOME subsidy per HOME Unit is \$162,500, which will be used to assist in the construction of the HOME Units. The subsidy will be provided in the form of a deferred loan with no re-payment required until maturity unless there is a default not cured during any applicable cure period.
2. Term of this Agreement/Affordability Period. This Agreement shall remain in effect, in accordance with 24 CFR §§ 92.252(e) and 92.504, for twenty (20) years after the date on which the HOME Units are first occupied ("Affordability Period").
3. Declaration. The covenants and restrictions contained in this Agreement shall run with the land, shall bind the successors and assigns of the Partnership and all future owners of the Property (collectively the "Partnership"), and shall inure to the benefit of the City, during the Affordability Period. The Property is more particularly described on Schedule A attached hereto and incorporated herein. The covenants and restrictions set forth herein are enforceable by City as a contract beneficiary whether or not the Partnership is or remains indebted to City under the Loan. Upon expiration of the Affordability Period, the covenants and restrictions contained in this Agreement shall terminate. Notwithstanding the foregoing, upon full satisfaction of all obligations of the Loan Documents, as determined by the City, the Partnership may request that the City modify this Agreement as permitted pursuant to the HOME Regulations. The parties shall cooperate to prepare an appropriate amendment to this Agreement, which amendment shall be duly recorded in the Androscoggin County Registry of Deeds by the Partnership at its cost and expense. The covenants and restrictions set forth herein shall survive a sale, transfer, or other disposition of the Property by any Partnership, including foreclosure or transfer of title in lieu of foreclosure, or the repayment of the Loan, except to the extent provided herein. The covenants shall cease to apply to the Property in the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other events that prevent the City from enforcing the covenants contained herein, provided that the Loan is repaid within a reasonable period of time after such involuntary noncompliance.
4. Conditional Commitment of Funds. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part §58. The parties further agree that the provision of any funds to the Project is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of the pending environmental review.

Furthermore, the Partnership, and/or their contractors are prohibited from undertaking or

committing any funds to physical or choice-limiting actions, (even with their own funds), including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, except as may be allowed under the applicable federal regulations. Violation of this provision may result in the denial of any funds under this agreement.

5. Use of HOME Program Funds. In accordance with 24 CFR §92.504(c)(3)(i), the HOME funds shall be used exclusively for the payment of HOME-eligible costs incurred in connection with construction of the Project. The HOME loan proceeds may not be used for ongoing operating expenses of the development. The HOME funds shall be invested on a pro rata basis of the total HOME eligible costs as described in HUD notice CPD-16-15.

6. Schedule. The start and completion of construction of the Project shall be accomplished within the time provided in the Loan Documents. Construction shall be completed no later than the date which is eighteen (18) months from the date of the first disbursement of the Loan.

7. Rent Affordability. The Project shall comply with the affordability restrictions set forth in 24 CFR, part 92, including § 92.252, as maybe amended from time to time as follows:

- a. Low Income Requirements: All of the HOME Units will be occupied by persons whose income is less than 50% of area median income ("AMI") adjusted by family size.
- b. HOME Units: Pursuant to 24 CFR § 92.252(j), all of the HOME Units will be on a floating basis.
- c. Rent Calculations: During the Affordability Period defined in Section 2, all HOME Units must be leased to income eligible tenants for no more than the maximum allowable rents. The maximum allowable rents and utility allowances must be recalculated annually. A HOME Unit is rent-restricted if the gross monthly rent does not exceed the rents for the appropriate unit size and geographic area published for the HOME Investment Partnership Program, or successor program, by HUD. Gross monthly rent shall include any payment under Section 8 of the United States Housing Act of 1937 and utility allowance, where applicable, determined by taking into account such determinations under Section 8 of the United States Housing Act of 1937. New rent maximums for the HOME Investment Partnership Program, or successor program, are published annually by the U.S. Department of Housing and Urban Development ("HUD") to help all Partnerships establish revised maximum allowable rents for their projects available on the HUD website at:

<https://www.hudexchange.info/programs/home/home-rent-limits/>

The current HUD maximum allowable rents are attached hereto as Exhibit B. The maximum rent for the HOME Units shall be calculated as follows:

Pursuant to 24 CFR 92.252(b) 2 of the HOME Units will be occupied by a household at or below 50% of AMI. The rent for Low HOME units will be the lesser of: (a) the fair market rent determined under Section 8 of the U.S. Housing Act of 1937 for existing housing; or (b) 30% of the adjusted income of a family whose annual income equals 50 % of AMI income as published by HUD each year as the Low HOME Rent.

- d. Pursuant to 24 CFR § 92.252(a), the maximum rent for residents paying utilities and services shall not exceed the applicable maximum rent less a monthly utility allowance as determined by Lewiston Housing Authority for their federal rental voucher or certificate program. Income eligibility and rent will be determined in accordance with the HOME Regulations.
- e. Actual rent charges for HOME Units are subject to City's approval which must be obtained prior to any assessment or increase. The Partnership shall provide prior written notice to a resident before increasing the rent in accordance with State law and HOME Regulations (24 CFR § 92.252(a)(3)) (which as of the effective date of this Agreement is forty-five (45) days prior written notice).
- f. Pursuant to 24 CFR § 92.252(h), during the Affordability Period, the Partnership is responsible for certifying the incomes of all initial tenants who lease a HOME Unit. In addition, the Partnership must provide the City with annual documentation and certification of the incomes of tenants residing in HOME Units.
- g. Pursuant to 24 CFR § 92.252(e), HOME Units shall remain affordable in accordance with this Agreement without regard to the term of any mortgage or transfer of ownership of the Property by the Partnership, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The affordability requirements of this Agreement shall revive according to original terms if, during the Affordability Period, the Partnership of record, before the foreclosure, or deed in lieu of foreclosure, or any entity that is owned in part or in whole by a former Partnership or has family or business ties with a former Partnership, obtains a Partnership interest in the Property.
- h. If either HOME Unit is or becomes occupied by an individual or family receiving tenant-based rental assistance, the total amount of rent for that unit must not exceed the maximum rent in this Section 7. If either HOME Unit receives project-based rental assistance under a State or federal program, including without limitation project-based rental assistance under the Section 8 Project-based Voucher Program, the maximum rent for the HOME

Units will be the maximum allowed under the State or federal project-based rental assistance program for such Unit, provided that the tenants pay no more than thirty percent (30%) of their adjusted income toward rent.

8. Income Determinations. The income for occupants of HOME Units shall be determined as follows:

a. The income of residents shall be initially determined and recalculated annually by Partnership in accordance with procedures prescribed by the HOME Final Rule 24 CFR §92.203 and 24 CFR §92.252. HOME income limits are published by HUD and are available at the website at:

<https://www.hudexchange.info/programs/home/home-income-limits/>

The current HOME income limits are attached hereto as Exhibit C. The Partnership will determine annual income by examining the source documents evidencing annual income.

b. Subject to the requirements set forth in Section 7 above, if the income of an initially eligible resident exceeds the applicable income limit set in Section 7 of this Agreement during the resident's occupancy of the applicable unit, the initially eligible resident will be treated as continuing to meet the applicable income limit, provided that the Partnership shall rent the *next available comparable unit* in the Project to a resident whose income does not exceed the applicable income limit as follows:

1) If the income of a resident in a Low HOME Unit increases above 80% of AMI, then Partnership shall rent the *next available comparable unit* in the Project to an individual or family whose income does not exceed 50% of AMI. The initially income eligible resident whose income rises above 80% of AMI shall pay rent in an amount equal to the lesser of (a) 30% of the resident's adjusted income, or (b) the market rent for comparable units in the area that are not HOME- assisted.

c. If a HOME Unit has been allocated low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), the amount of rent the initially income eligible resident pays shall not be adjusted and the unit does not need to be replaced by another comparable unit until the resident's income rises above 140% of the income restrictions established under Section 42 of the Code.

9. Resident Protections. The Partnership shall comply with 24 CFR § 92.553, which includes the following resident protections.

a. Written Leases. The Partnership shall enter into a written lease with

residents in HOME Units. The term of the lease shall be for a period of at least one (1) year, except by mutual written agreement of the resident and the Partnership.

b. Prohibited Lease Terms. The lease may not contain any of the following provisions:

1) an agreement by the resident to be sued, to admit guilt, or to a judgment in favor of the Partnership in a lawsuit brought in connection with the lease;

2) an agreement by the resident that the Partnership may take, hold, or sell personal property of household members without notice to the resident and a court decision on the rights of the parties; provided, however, this prohibition does not apply to an agreement by the resident concerning disposition of personal property remaining in the unit after the resident has moved out of the unit, in which case the Partnership may dispose of this personal property in accordance with Maine law;

3) an agreement by the resident not to hold the Partnership or the Partnership's agents legally responsible for any action or failure to act, whether intentional or negligent;

4) an agreement of the resident that the Partnership may institute a lawsuit without notice to the resident;

5) an agreement by the resident that the Partnership may evict the resident or household members without instituting a civil court proceeding in which the resident has the opportunity to present a defense, or before a court decision on the rights of the parties;

6) an agreement by the resident to waive any right to a trial by jury;

7) an agreement by the resident to waive the resident's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

8) an agreement by the resident to pay attorney's fees or other legal costs even if the resident wins in a court proceeding by the landlord against the resident; provided, however, the resident may be obligated to pay costs if the resident loses.

c. Termination of Tenancy. The Partnership shall not terminate the tenancy or refuse to renew the lease of a resident except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the tenancy period for transitional housing; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days written notice specifying the grounds for the action, which notice must be served upon the resident by the Partnership or its agent.

d. Resident Selection. The Partnership shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use, and occupancy of the units or in connection with the employment of application for employment of persons for the operation and management of the units. The Partnership shall not discriminate against, or refuse to lease, rent, or otherwise make available the units to, a holder of a certificate or voucher under the federal rental certificate or voucher program or a holder of a comparable document evidencing participation in a HOME Program tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME Program tenant-based assistance document. The Partnership shall adopt written resident selection policies and criteria specific to the targeted population of residents to be housed in the HOME-assisted Units that:

- 1) are consistent with the purpose of providing housing for low-income families;
- 2) are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and
- 3) provide for the selection of residents from a written waiting list in the chronological order of their application, insofar as is practicable; and
- 4) provide for the prompt written notification to any rejected applicant of the grounds for any rejection.

10. Property Standards. The Partnership shall comply with all applicable requirements set forth in Subpart F of the HOME Regulations, as provided elsewhere in this Agreement and also including the following:

- a. The construction of the Units shall comply with City's building code and all other applicable local codes, construction standards, ordinances and zoning ordinances in effect at the time of project completion. The Property shall be decent, safe and sanitary and shall conform to all applicable codes that have been adopted by the City.
- b. The Units shall comply with the accessibility requirements set forth in 24 CFR § 92.251 which includes meeting requirements set forth at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Energy Policy and Conservation Act and HUD's Energy Star Standards, and the Maine Human Rights Act.
- c. All Units and common areas in the Project shall comply with the lead-based paint standards set forth in 24 CFR § 92.355.
- d. During the term of this Agreement, the Units shall remain in compliance with

applicable local codes or meet HUD's Housing Quality Standards for decent, safe and sanitary housing if required.

- e. The Partnership hereby grants to the City and its duly authorized representatives and agents the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspecting the property to determine compliance with this Agreement.

11. Affirmative Marketing and Minority Outreach Requirements. Pursuant to 24 CFR § 92.351, the Partnership agrees to comply with the affirmative marketing and minority outreach requirements of the City's Fair Housing and Affirmative Marketing Policy, which is attached as Exhibit D, as may be amended or replaced from time to time. The Partnership shall maintain evidence to demonstrate compliance with the policy and procedures and provide the City with annual reports of compliance.

12. Records. The Partnership shall maintain:

- a. full and correct records evidencing compliance with this Agreement including, without limitation, certifications and verification of occupancy and resident income and resident leases;

- b. records which demonstrate the HOME Units meet the affordability and income targeting requirements of 24 CFR 92.252 for the rental period for at least three (3) years after such tenant no longer resides in a Unit;

- c. records which demonstrate that each lease for a HOME Unit complies with the tenant and participant protections, as specified in 24 CFR 92.253;

- d. Pursuant to 24 CFR § 92.508(c), the Partnership shall retain all books and records related to the Agreement for a minimum of five (5) years, except that records of individual tenant income verifications, Project rents and Project inspections shall be retained for the most recent five (5) year period until five (5) years after the affordability period terminates. If any litigation, claims, negotiations, audits, monitoring, inspection, or other action commenced during the record retention period, all records must be retained until the later of (i) completion of the action and resolution of all issues related to the action, or (ii) the end of the record retention period.

- e. The City shall have the right to examine such records and to inspect the Project at reasonable times upon reasonable notice by the City, and the Partnership shall furnish copies of any such records requested by the City pursuant to 24 CFR § 92.508(d). The City, HUD and the Comptroller General of the United States, and any of their representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Partnership, in order to make audits, examinations, excerpts and transcripts.

13. Monitoring. The Partnership shall cooperate with the City who will regularly monitor

the HOME Units and Project for compliance with program requirements. Onsite inspections for compliance with property standards will be made at least once every two (2) years. In addition, the City may annually review the Partnership's compliance with all written agreements. Noncompliance with program requirements could result in default of all HOME financing.

14. Reports.

a. Fifteen (15) days prior to the first occupancy of a HOME Unit, the Partnership shall submit to the City a Fair Housing and Affirmative Marketing Plan in the form attached to this Agreement as Exhibit D.

b. Three (3) days prior to the first occupancy of a HOME Unit, the Partnership shall submit to the City the following records which demonstrate:

1) The Units meet the property standards specified in Section 9 of this Agreement including the lead-based paint requirements;

2) Proposed form of leases.

c. The Partnership shall submit within thirty (30) days after initial occupancy of the HOME Units demographic data on the tenants in the form attached hereto as Exhibit E.

d. The Partnership shall submit a report by January 30th of each year which demonstrates:

1) pursuant to 24 CFR § 92.252(f)(2), information on rents and occupancy of the HOME Units as of December 31 of the previous year in the form attached hereto as Exhibit F; and

2) efforts to promote fair housing in the form attached hereto as Exhibit G.

15. Enforcement of the Agreement. This Agreement shall be enforceable by the City in accordance with the terms hereof. A default of any document executed by the Partnership related to this Agreement (collectively referred to as the "Loan Documents"), including, without limitation the HOME Non-Recourse Promissory Note in the aggregate original principal amount of Three Hundred and Twenty Five Thousand Dollars (\$325,000), the Construction Loan Agreement between the City and the Partnership dated even herewith, the Mortgage and Security Agreement from the Partnership to the City dated even herewith, and the Collateral Assignment of Leases and Rents from the Partnership to the City dated even herewith which defaults are not cured within any applicable grace period, shall be a default under this Agreement. Upon default of this Agreement or a default by the Partnership under any Loan Document which is not cured within any applicable grace period, the City may exercise any remedy provided hereunder and/or under the Loan Documents, including the right to foreclose on the Property, and/or maintain an action in law or in equity (through injunctive relief or specific performance) to enforce this Agreement and/or immediately cure the default, and/or collect damages.

Notwithstanding anything to the contrary contained herein: (i) Partnership shall

have thirty (30) days to cure any monetary default and sixty (60) days to cure any non-monetary defaults (or such longer period of time reasonably determined by City if such non-monetary default is curable but cannot be cured within sixty (60) days despite the commercially reasonable efforts provided cure is commenced during the sixty (60) days and diligently pursued until completion); (ii) the limited partners of the Partnership shall have the right (but not the obligation) to cure any default within any applicable cure period set forth herein; and (iii) this Agreement is or shall be subject to the terms of an Intercreditor Agreement among Partnership's construction lender, if any, Maine State Housing Authority, City, the Partnership, its General Partner and any amendment and restatement or other replacement of such agreement executed by the parties thereto (the "Intercreditor Agreement").

16. Other Program Requirements. 24 CFR § 92 Partnership shall comply with all applicable federal requirements set forth in Subpart H of the HOME regulations, including the following:

a. Other Federal Requirements and Nondiscrimination. Partnership acknowledges that 24 CFR 92.350 provides that the Federal requirements set forth in 24 CFR Part 5, subpart A, are applicable to participants in the HOME program, and that these Federal requirements include the following:

(i) Nondiscrimination and Equal Opportunity.

(1) Civil Rights, Fair Housing, and Age and Disability Discrimination Acts

Assurances: During the performance of the Loan Agreement, the Partnership assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, or religious preference, under any program or activity funded by this Agreement, as required by the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- 2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

(2) Training, Employment, and Contracting Opportunities Assurance of

Compliance: The Loan derives from a program providing financial assistance from HUD which is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), and the regulations issued by HUD to implement Section 3 (24 CFR Part 135) (the "Section 3 Regulations"). Pursuant to 24 CFR 135.3, the requirements of the Section 3 Regulations apply to the recipient of such financial assistance only where the

amount of federal assistance exceeds \$200,000, and apply to a contractor or subcontractor of such recipient only where the amount of assistance of the contract or subcontract exceeds \$100,000. The Partnership shall provide, to the greatest extent feasible, training, employment and contracting opportunities generated by the financial assistance to low and very-low income persons and business concerns owned by low or very-low income persons, or which employ low or very-low income persons.

(3) MBE/WBE Affirmative Action Outreach Program: The Partnership hereby agrees to comply with the City's minority and women owned business outreach program in accordance with Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p.198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(ii) Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR Part 87; and the requirements for funding competitions established by the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(iii) Debarred, Suspended or Ineligible Contractors. The prohibitions at 24 CFR Part 24 on the use of debarred, suspended or ineligible contractors.

(iv) Drug-free Workplace. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations at 24 CFR Part 24.

b. Affirmative Marketing. The Partnership shall comply with the provisions of Section 10 above.

c. Displacement, Relocation and Acquisition. If applicable pursuant to the HOME Regulations, the Partnership shall cooperate with the City in connection with any project-specific relocation plan to be prepared by the City, and shall certify that, to the extent applicable, it will comply or has complied with the federal relocation, displacement and acquisition rules governing the HOME Program, which are contained in the Uniform Relocation Act, 49 CFR Part 24, and applicable program regulations. 24 CFR § 92.353 requires that tenants who are displaced from housing units demolished or converted as a result of HOME-funded activities be provided with relocation assistance.

d. Labor. If applicable pursuant to the HOME Regulations, the Partnership shall pay not less than the wages prevailing in the City, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, including, ensuring the construction contract includes the above wage provisions.

e. Lead-based Paint. The Property shall comply with the lead-based paint standards

in §92.355, as provided in Section 9 above.

f. Conflict of Interest.

(1) Interest of Employees, Officers and Officials. No employee, agent, consultant, officer or elected official or appointed official of the City, or employee, agent, consultant or officer of Partnership, and no other public official of the City who exercises any functions or responsibilities with respect to the activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, during their tenure and for one (1) year thereafter, may obtain a financial interest or benefit from a HOME assisted activity or have an interest in any contract or subcontract, or agreement with respect thereto, or the proceeds hereunder, either for themselves or those with whom they have family or business ties. The Partnership shall incorporate, or cause to be incorporated, in all such contractors or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section. Fulfillment of "sweat equity" obligations as defined in Section 8201 of the HOME regulations shall not be considered a violation of this prohibition.

(2) Prohibition Against Occupying HOME Units. No officer, employee, agent, official or consultant of the Partnership may occupy a HOME Unit.

g. Consultant Activities. If applicable, no person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid for with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

h. Religious Prohibitions. HOME funds may not be used to provide or support inherently religious activities such as worship, religious instruction or proselytizing.

i. Repayment. If applicable pursuant to 24 CFR § 92-301, the Developer must repay the Loan from Project income.

j. Project. The Project shall consist of the Property together with a building or a portion of a building or structure, or several proximate and interrelated buildings or structures and facilities, functionally related and subordinated thereto each containing one or more

similarly constructed units and facilities which are functionally related and subordinate to such units and any property leased other than the Property for the purpose of providing additional parking for the Project.

k. Rent to General Public. The HOME Units will, on a continuous basis, be rented or available on a non-transient basis for rental to members of the general public throughout the Affordability Period.

l. No Change to Units. The Partnership shall not make any change in the nature, size, number or location of the Units in the Project or the amount of commercial or non-- residential space.

17. Violation of Agreement. If the Partnership or any other owner of the Property fails to comply with this Agreement, the City may, in its sole discretion, take one or more of the following actions:

a. Exercise any and all rights and remedies set forth in this Agreement and the other documents executed in connection with the Loan, including all Loan Documents, which Loan Documents are hereby incorporated by reference in this Agreement; and

b. Other appropriate action, including, without limitation, maintaining an action in law or in equity to recover damages incurred by the City from such failure, instituting an action seeking a declaratory judgment, specific performance, or temporary or permanent injunctions and any other available remedies, and the City shall recover any reasonable costs or expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees. The exercise of any remedies by the City is subject to the terms and conditions of the Intercreditor Agreement or other similar agreement to which the City is a party. The City shall be entitled to recover its reasonable attorney fees in connection with any actions taken in order to enforce this Agreement, even if it does not initiate litigation in connection with such enforcement.

18. Compliance with Covenants and Restrictions. The Partnership covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of a Partnership to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. The Partnership shall immediately notify City if the Partnership anticipates that occupancy of the Units may fall below the limits required in this Agreement and agrees to take such action as City deems necessary to prevent non-compliance with such paragraph.

19. Indemnity. The Partnership and all other owners of the Property shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to

the Partnership's breach of any of its obligations under this Agreement as a result of such breach. The obligations survive the termination or expiration of this Agreement as necessary to effect its provisions.

20. Purchase Option. Notwithstanding anything to the contrary contained in the Loan Documents, the execution and delivery of a purchase option agreement, with the prior written consent of the City, shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder. Any requisite City consent shall not be unreasonably withheld for (a) the exercise of such purchase option agreement by the optionee thereunder and (b) the assumption without penalty of the Loan obligations by the optionee thereunder, and Borrower's release from such obligations. Subject to any consent requirement, the exercise of the rights under such purchase option agreement shall not constitute a default or accelerate the maturity of the Loan.

21. Extended Use Agreement. The City acknowledges that Borrower and Maine State Housing Authority (the "Credit Agency") intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the event the extended use agreement required by the Credit Agency is recorded against the Property, the Lender agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

22. Authority of the Partnership. The Partnership hereby covenants and represents that (a) the Partnership is a Maine limited partnership, validly existing under the laws of the State of Maine, with all requisite power, authority and legal right to perform the obligations set forth in this Agreement; (b) the Partnership is duly authorized to execute and deliver this Agreement and to perform the obligations set forth herein; (c) the undersigned individual is duly authorized to execute and deliver this Agreement and to bind Partnership to the terms and conditions hereunder.

23. Taxes. The Partnership shall pay to the City all real estate taxes assessed on the Premises, and covenants that if ownership of the Premises is conveyed to a tax exempt organization, including but limited to a 501(c)(3) organization, that it will provide notice to said tax exempt organization that City will require a payment-in-lieu of taxes equal to the property taxes assessed on the Premises. This covenant shall terminate upon termination of this Agreement pursuant to Section 2 above.

24. Waiver. No delay or omission by the City in exercising any right or remedy available to it under this Agreement shall impair or preclude the exercise of any such right or remedy or constitute a waiver or release of any default by the Partnership. The provisions of this Agreement cannot be waived, except in writing by the City clearly expressing the City's

intent to waive said provisions.

25. Amendment. This Agreement may be amended or modified in whole or in part only by written agreement of the Partnership and the City clearly expressing intent to amend this Agreement.

26. Change in Federal Law. The Partnership acknowledges that this Agreement is based upon the HOME Investment Partnerships Program as it exists on the effective date hereof and that HOME Regulations may be subsequently modified or interpreted by the federal government in a manner that the City believes is inconsistent with the covenants set forth herein. The Partnership agrees to comply with any additional covenants and restrictions that the City believes upon advice of counsel are necessary to ensure compliance with HOME Regulations and that are communicated in writing to the Partnership, even though such covenants or restrictions are not a part of this Agreement as originally executed. In such event, any such additional covenant or restriction shall be deemed an amendment to and material part of this Agreement as if this Agreement had been amended in accordance with Section 25 hereof. If counsel for the Partnership disagrees with the advice of counsel for the City, the Partnership shall have the right at its own expense to proceed with obtaining a favorable ruling from HUD or such court interpretation which the Partnership deems advisable and in its best interest.

27. Assignment. This Agreement and the Loan shall not be assigned by the Partnership without the prior written consent of the City, and any such attempt to do so shall be null and void.

28. Severability. The invalidity or unenforceability of any clause, part or provision of this Agreement shall not affect the validity or enforceability of the remaining portions thereof.

29. Successors and Assigns. This Agreement shall be binding upon Partnership and the Partnership's successors, transferees and assigns and shall inure to the benefit of and be enforceable by the City, its successors, transferees and assigns.

30. Incorporation by Reference. The above Recitals to this Agreement and all schedules and exhibits attached to this Agreement and all Loan Documents are incorporated herein and made a part of this Agreement.

31. Notices. Any notice or demand required or provided for in this Agreement shall be in writing and hand-delivered or mailed by overnight delivery by a nationally recognized carrier or certified or registered United States mail, postage prepaid, return receipt requested, to the Partnership or the City at their respective addresses set forth below, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. Notice shall be deemed given upon receipt or rejection. Notices shall be given to:

If to City:

Director, Economic and Community Development
City of Lewiston
27 Pine Street
Lewiston, Maine 04240

With a copy to:

Martin I. Eisenstein
Brann & Isaacson
184 Main Street
P.O. Box 3070
Lewiston, Maine 04243

If to Partnership:

Blake & Pine LP
c/o Pinecone Housing
Corporation
307 Cumberland Avenue
Portland, Maine 04101
Attention: President

With a copy to:

Maurice A. Selinger, III, Esq.
Curtis Thaxter LLC
P. O. Box 7320
Portland, Maine 04112

32. Governing Law. This Agreement shall be governed by the laws of the State of Maine.

IN WITNESS WHEREOF, the City and the Partnership have duly executed this Agreement effective as of the date first above written.

SIGNATURES APPEAR AT TOP OF NEXT PAGE

CITY OF LEWISTON

By: Edward A. Barrett
Its: City Administrator

STATE OF MAINE
ANDROSCOGGIN ss.

November __, 2019

Personally, appeared the above-named Edward A. Barrett, City Administrator of the City of Lewiston, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Lewiston.

Before
me,

Notary Public/Attorney-at-Law

WITNESS:

BLAKE & PINE LP

By: Pinecone Housing Corporation, its
General Partner

By: _____
Name: Dana Totman, its President

STATE OF MAINE
ANDROSCOGGIN ss.

November __, 2019

Personally, appeared the above named Dana Totman, President of Pinecone Housing Corporation, General Partner of Blake & Pine LP as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation and limited partnership.

Before me,

Notary Public/Attorney-at-Law

EXHIBITS

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Schedule A: Property Description

A. Sources and Uses

B. Rent Limits

C. Income Limits

D. Fair Housing and Affirmative Marketing Requirements

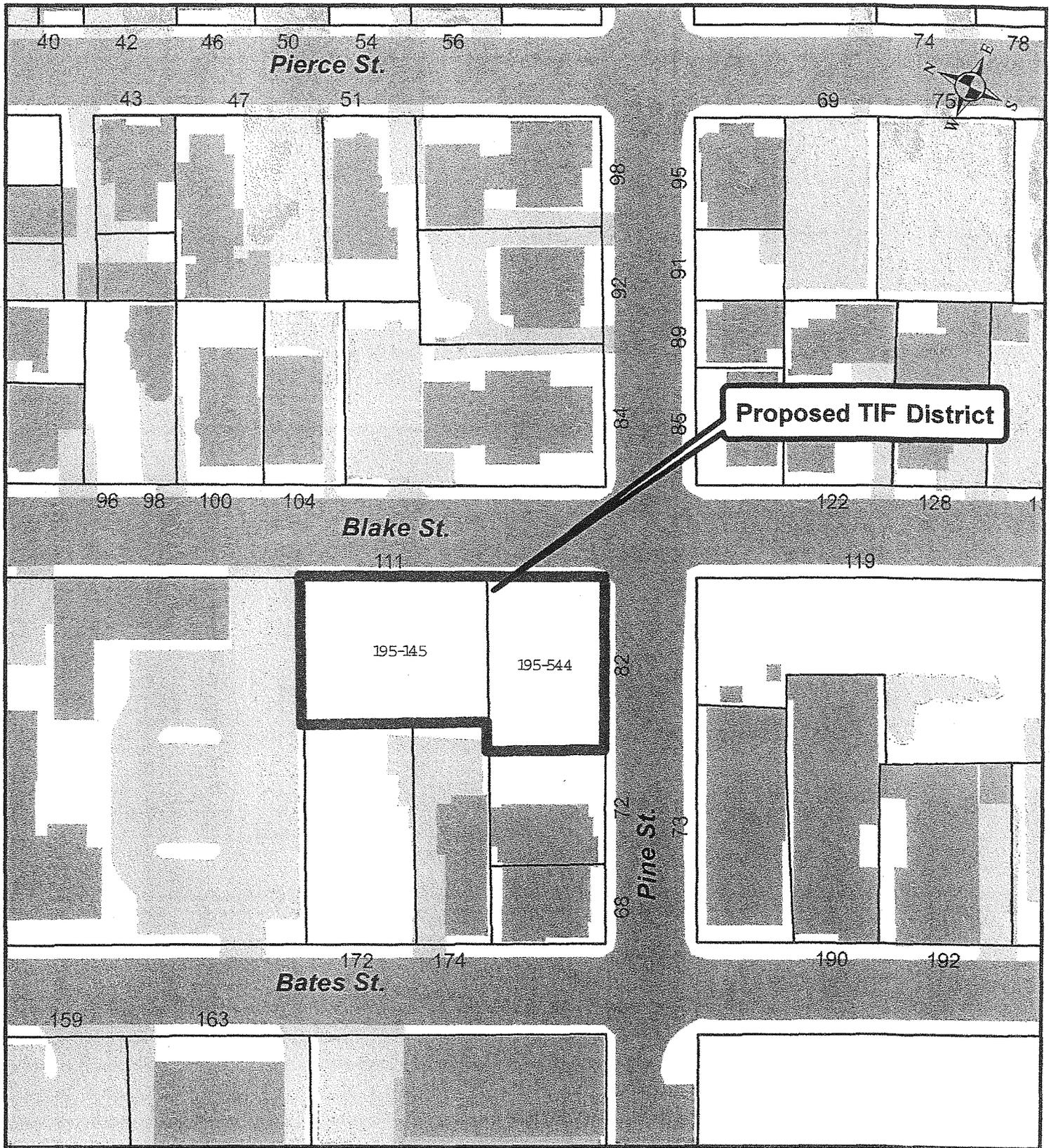
E. Initial Occupancy of HOME-Assisted Units Report

F. Annual Reports of HOME-Assisted Units

G. Efforts to Promote Fair Housing

SCHEDULE A

(Property Description)



Proposed TIF District

Blake St.

Bates St.

Pine St.

Proposed
Blake & Pine
 Tax Increment Financing (TIF) District
 111 Blake Street & 82 Pine Street

June 2019

Exhibit A
Sources and Uses

SOURCES AND USES OF FUNDING:

<u>FUNDING SOURCES SUMMARY</u>	<u>AMOUNT</u>	<u>FUNDING SOURCE</u>
Tax Credit Equity	\$ 4,871,513	Tax Credit
Grant #1	700,000	MSHA Subsidy
Grant #2	500,000	FHLB Boston
*Other Financing (not amortized)	325,000	Home Investment Grant
Interest Only	291,379	Norway Savings Bank
Subsidized Advance	<u>688,049</u>	Norway Savings Bank
Total	\$ 7,375,941	(\$210,741/unit cost)

*The Home Investment Grant will be funded by the Auburn-Lewiston Home Consortium (ALHC) through the HOME/LIHTC Rental Housing Program.

<u>DEVELOPMENT USES SUMMARY</u>	<u>AMOUNT</u>
Acquisition Costs	\$ 51,113
Construction Costs	5,565,000
Architectural & Engineering Fees	416,250
Other Owner Costs	217,649
Interim Financing Costs	188,612
Permanent Financing Fees & Expenses	34,000
Developer's Fee	431,250
Initial Project Reserves	275,942
Project Administration & Management costs	117,625
Other Development Costs	<u>78,500</u>
Total	\$ 7,375,941

See Development Costs breakdown for more detailed information, attachment #2

Exhibit B

Rent Limits

U.S. DEPARTMENT OF HUD
STATE:MAINE

		2019 HOME PROGRAM RENTS					
PROGRAM	EFFICIENCY	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Bangor, ME HUD Metro FMR Area							
LOW HOME RENT LIMIT	647	693	832	962	1073	1184	1295
HIGH HOME RENT LIMIT	690	784	996	1217	1338	1457	1578
For Information Only:							
FAIR MARKET RENT	690	784	996	1248	1749	2011	2274
50% RENT LIMIT	647	693	832	962	1073	1184	1295
65% RENT LIMIT	823	883	1061	1217	1338	1457	1578
Penobscot County, ME (part) HUD Metro FMR A							
LOW HOME RENT LIMIT	567	608	730	842	940	1037	1134
HIGH HOME RENT LIMIT	659	662	876	1061	1164	1266	1368
For Information Only:							
FAIR MARKET RENT	659	662	876	1098	1184	1362	1539
50% RENT LIMIT	567	608	730	842	940	1037	1134
65% RENT LIMIT	718	770	926	1061	1164	1266	1368
Lewiston-Auburn, ME MSA							
LOW HOME RENT LIMIT	567	608	730	842	940	1037	1134
HIGH HOME RENT LIMIT	659	712	915	1092	1199	1304	1410
For Information Only:							
FAIR MARKET RENT	659	712	915	1150	1460	1679	1898
50% RENT LIMIT	567	608	730	842	940	1037	1134
65% RENT LIMIT	739	793	953	1092	1199	1304	1410
Portland, ME HUD Metro FMR Area							
LOW HOME RENT LIMIT	813	871	1046	1209	1348	1488	1627
HIGH HOME RENT LIMIT	989	1071	1339	1538	1696	1853	2010
For Information Only:							
FAIR MARKET RENT	989	1071	1387	1829	2198	2528	2857
50% RENT LIMIT	813	871	1046	1209	1348	1488	1627
65% RENT LIMIT	1039	1114	1339	1538	1696	1853	2010
York-Kittery-South Berwick, ME HUD Metro FM							
LOW HOME RENT LIMIT	835	894	1072	1239	1382	1525	1667
HIGH HOME RENT LIMIT	1011	1039	1374	1593	1758	1921	2083
For Information Only:							
FAIR MARKET RENT	1011	1039	1374	1721	2413	2775	3137
50% RENT LIMIT	835	894	1072	1239	1382	1525	1667
65% RENT LIMIT	1075	1153	1386	1593	1758	1921	2083
Cumberland County, ME (part) HUD Metro FMR							
LOW HOME RENT LIMIT	647	693	832	962	1073	1184	1295
HIGH HOME RENT LIMIT	786	826	1069	1340	1445	1610	1744
For Information Only:							
FAIR MARKET RENT	786	826	1069	1416	1445	1662	1879
50% RENT LIMIT	647	693	832	962	1073	1184	1295
65% RENT LIMIT	905	971	1168	1340	1476	1610	1744

For all HOME projects, the maximum allowable rent is the HUD calculated High HOME Rent Limit and/or Low HOME Rent Limit.

EFFECTIVE DATE: JUNE 28, 2019

Exhibit C
Income Limits

U.S. DEPARTMENT OF HUD
STATE: MAINE

PROGRAM	2019 ADJUSTED HOME INCOME LIMITS							
	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bangor, ME HUD Metro FMR Area								
30% LIMITS	15550	17800	20000	22200	24000	25800	27550	29350
VERY LOW INCOME	25900	29600	33300	37000	40000	42950	45900	48850
60% LIMITS	31080	35520	39960	44400	48000	51540	55080	58620
LOW INCOME	41450	47400	53300	59200	63950	68700	73450	78150
Penobscot County, ME (part) HUD Metro FMR A								
30% LIMITS	13650	15600	17550	19450	21050	22600	24150	25700
VERY LOW INCOME	22700	25950	29200	32400	35000	37600	40200	42800
60% LIMITS	27240	31140	35040	38880	42000	45120	48240	51360
LOW INCOME	36300	41500	46700	51850	56000	60150	64300	68450
Lewiston-Auburn, ME MSA								
30% LIMITS	13650	15600	17550	19450	21050	22600	24150	25700
VERY LOW INCOME	22700	25950	29200	32400	35000	37600	40200	42800
60% LIMITS	27240	31140	35040	38880	42000	45120	48240	51360
LOW INCOME	36300	41500	46700	51850	56000	60150	64300	68450
Portland, ME HUD Metro FMR Area								
30% LIMITS	19550	22350	25150	27900	30150	32400	34600	36850
VERY LOW INCOME	32550	37200	41850	46500	50250	53950	57700	61400
60% LIMITS	39060	44640	50220	55800	60300	64740	69240	73680
LOW INCOME	52100	59550	67000	74400	80400	86350	92300	98250
York-Kittery-South Berwick, ME HUD Metro FM								
30% LIMITS	20050	22900	25750	28600	30900	33200	35500	37800
VERY LOW INCOME	33400	38150	42900	47650	51500	55300	59100	62900
60% LIMITS	40080	45780	51480	57180	61800	66360	70920	75480
LOW INCOME	52850	60400	67950	75500	81550	87600	93650	99700
Cumberland County, ME (part) HUD Metro FMR								
30% LIMITS	15550	17800	20000	22200	24000	25800	27550	29350
VERY LOW INCOME	25900	29600	33300	37000	40000	42950	45900	48850
60% LIMITS	31080	35520	39960	44400	48000	51540	55080	58620
LOW INCOME	41450	47400	53300	59200	63950	68700	73450	78150
Sagadahoc County, ME HUD Metro FMR Area								
30% LIMITS	15550	17750	19950	22150	23950	25700	27500	29250
VERY LOW INCOME	25900	29600	33300	36950	39950	42900	45850	48800
60% LIMITS	31080	35520	39960	44340	47940	51480	55020	58560
LOW INCOME	41400	47300	53200	59100	63850	68600	73300	78050

EFFECTIVE DATE: JUNE 28, 2019

Exhibit D

Fair Housing and Affirmative Marketing Requirements

**HOME Consortium
Cities of Auburn-Lewiston**

Fair Housing and Affirmative Marketing Policy

I. Introduction

The HOME Consortium serves the Cities of Lewiston and Auburn, Maine (Consortium). This Fair Housing and Affirmative Marketing Policy applies to any entity receiving money from the Consortium for new construction and rehabilitation of 5 or more homeownership and rental units. This policy furthers the Consortium's commitment to non-discrimination and equal opportunity in housing.

In an effort to comply with the Federal, State and Local Fair Housing Laws and regulations, the Consortium will play an active role in providing its housing partners with the information needed to effectively implement these regulations into the HOME sponsored activities.

In general, these laws:

- Prohibit discrimination in housing and housing related activities by the Consortium members and its housing partners;
- Require Consortium to affirmatively further fair housing;
- Prescribe design and construction standards to ensure equal access to housing by persons with disabilities;
- Promote the use of minorities and women, and minority and women owned business enterprises in Federally funded contracting opportunities;
- Encourage the creation of employment opportunities for low-income residents of neighborhoods where HOME Program activities are undertaken; and
- Require the implementation of affirmative marketing strategies and outreach to those segments of the populations identified as least likely to apply for the housing without such outreach.¹

The applicable laws are HOME Program 24 CFR Part 92 requiring Consortium to create policy and guidance to its housing partners; The Fair Housing Act 24 CFR Part 100 enacted in 1964 and amended in 1988, which prohibits discrimination against the protected classes listed; Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination based upon disability in federally subsidized projects; Americans with Disability Act (ADA) which expands the prohibition against persons with disabilities to any project not just those that are federally funded; Age Discrimination Act of 1973 which prohibits discrimination based upon age; State and Local Fair Housing Requirements which expands the protected classes to include sexual preference as a protected class and Outreach laws which include Section 3 of the U.S. HUD Act of 1968 which encourages recruitment and employment of

¹ Understanding the Basics. U.S. Department of Housing and Urban Development Office of Community Planning. Pg 13. HUD-2005-10-CPD. May 2005

low-income individuals; and Minority Business Enterprises and Women Business Enterprise (MBE/WBE) as described in the procurement regulation for the notification and solicitation of MBE/WBE contractors in 24 CFR 85.36(e) as incorporated into the HOME regulation at 24 CFR 92.351(b).

II. Fair Housing and Affirmative Marketing Policy and Procedures Statement

The following is the Affirmative Marketing Plan for the Consortium. Developers and owners of rental and homeownership projects of 5 or more units who receive HOME funds will be required to adhere to the affirmative marketing procedures. In addition, this document is affirmation of the L-A HOME Consortium's commitment to ensure that:

- Developers/Owners of rental and home ownership projects (5 or more units) receiving HOME funds adhere to affirmative marketing procedures.
- Developers/owners that receive HOME funding have maintained appropriate records to demonstrate compliance with this statement of policy and procedures.
- The Consortium's practices of citizen participation and outreach for HOME projects are inclusive of minority, women and disabled populations.
- The success of the Consortium's affirmative marketing actions are assessed for quality, monitored for compliance and amended as needed at least annually.

The following describes the policies and methods to meet the above five goals.

Goal # 1: Inform the public, housing owners, and the tenants about Fair Housing laws

1. The Consortium shall include the Fair Housing & Affirmative Marketing Statement as well as the Equal Housing Opportunity (EHO) logo in the HOME program agreement for each project funded with the exception of direct assistance to home buyers and Lease/Buy participants.
2. The Consortium shall include a statement of Fair Housing & Affirmative Marketing Statement and EHO logo in all advertisements for direct assistance to home buyers and Lease/Buy participants.
3. The Cities shall actively pursue the outreach activities established by their respective Analysis of the Impediments to Fair Housing (Attachment 1: City of Auburn and Attachment 2: City of Lewiston), including:
 - a. Educating landlords about fair housing issues;
 - b. Improving communications for people with limited English proficiency;
 - c. Increasing understanding of people with mental illness.

Goal #2: Owners of rental and home ownership projects receiving HOME funds shall adhere to affirmative marketing procedures.

The developer/owner shall complete HUD Form 935.2 entitled "Affirmative Fair Housing Marketing Plan" (Attachment 3) to the HOME Program Participating Jurisdiction (PJ) for approval. This will form the basis of the Affirmative Marketing Plan for the project.

The developer and/or owner agrees to the following signifying their commitment to the following:

1. Include the equal housing opportunity logo and the words "Equal Housing Opportunity" in all advertisements.
2. Notify organizations representing minorities disabled individuals regarding the housing opportunities (see Attachment 4 for a minimum list of those organizations)
3. Announce rental and home ownership opportunities in local newspapers including, at a minimum, the *Lewiston Sun Journal*.
4. Comply with Section 3 Regulations in all construction activities, as applicable.
5. Maintain documentation of their affirmative marketing efforts.
6. Comply with all applicable federal, state and local laws to affirmatively market and promote fair housing.
7. Provide translated material if the Consortium has determined there is opportunity to reach non-English speaking people that would be denied housing opportunity without such translation.

Goal #3: The Developer shall maintain and provide evidence to demonstrate compliance with this statement of policy and procedures.

Examples of proper documentation shall include, but are not limited to the following:

1. Copies of newspaper advertisements; or a citation of the advertisement used on radio or television.
2. Copies of correspondence with organizations representing minorities, disabled individuals, and women
3. Brochures, posters, and other printed advertisements and notices including the manner of distribution;

Goal #4: The Consortium's practices of citizen participation and outreach for HOME projects are inclusive of minority, women and disabled populations.

There are two parts to this goal. 1) It describes the consortium's commitment to promote fair housing and affirmative marketing to the tenants (women, minority and disabled) and 2) describes the Consortium's commitment to encouraging developers/owners of minority and women owned businesses to become actively involved in HOME funded projects.

1) The Consortium shall promote access to fair housing and affirmative marketing to the tenants (women, minority and disabled) in the following manner:

- a Include the Equal Housing Opportunity logo and the words "Equal Housing Opportunity" in all advertisements.
- b Notify organizations representing minorities, and disabled individuals regarding the housing opportunities (see Attachment 4 for a minimum list of those organizations)

- c. Announce program opportunities in local newspapers including, at a minimum, the *Lewiston Sun Journal*.
 - d. Provide translated material if determined that there is opportunity to non-English speaking people would be denied without such translation.
 - e. Ensure accessibility to people with disabilities of program related staff and program related meetings.
 - f. Maintain documentation of all program outreach efforts.
- 2) The Consortium shall encourage developers/owners of minority and women owned businesses to become actively involved in HOME funded projects.

The consortium will:

1. Contact the State of Maine Office of Economic Development or Department of Transportation to identify MBEs and WBEs in Maine.
2. Require the developer to contact MBEs and WBEs to participate as vendors and suppliers of goods and services;

Goal # 5: The success of the Consortium's affirmative marketing actions are assessed for quality, monitored for compliance and amended as needed at least annually.

The Consortium will annually assess the effectiveness of the affirmative marketing policies and procedures by:

1. Reviewing documentation of affirmative marketing provided by the developer/owners, and documentation by the Consortium.
2. Solicit input from organizations representing minorities, disabled individuals, and women as to the effectiveness of outreach to those they represent.
3. Completing the annual report and including it in the CAPER.
4. Recommending modifications to the Affirmative Marketing Plan based on the review.

Part III: Funding Considerations.

The Consortium's decision to fund a development proposal shall be based, in part on the following:

1. Whether the development is suited to allow accessibility to people with mobility impairments.
2. That the development is not located in an area of minority concentration.
3. That the housing will be accessible to social, recreation, education, commercial, and health facilities.

IV. Noncompliance by HOME Participants.

The Consortium shall assess the performance of project developers/owners to affirmatively market original and vacant units, based on records provided by the developer/owner. If the developer/owner fails to meet minimum requirements, the Consortium will work with the developer/owner to improve the performance. If there is continued non-compliance, the Consortium will consider disqualifying that developer/owner from further HOME program participation.

For any questions regarding this Plan contact the following: HOME Program staff designee for the City of Auburn and the City of Lewiston:

Community Development Dept.
City of Auburn
60 Court Street, Suite 344
Auburn, ME 04210
Office: 207-333-6601
Email: gphoenix@ci.auburn.me.us

Community Development Dept.
City of Lewiston
27 Pine Street
Lewiston, ME 04240
Office: 207-784-2951
jjochem@ci.lewiston.me.us

4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area. If more space is needed, attach an additional sheet. Notify HUD-Housing of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization	Group Identification	Approximate Date (mm/dd/yyyy)	Person Contacted or to be Contacted
Address & Phone Number	Method of Contact	Indicate the specific function the Group/Organization will undertake in implementing the marketing program	

5. **Future Marketing Activities** (Rental Units Only) Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.

Newspapers/Publications Radio TV
 Brochures/Leaflets/Handouts *
 Site Signs Community Contacts Other(specify) *

6. **Experience and Staff Instructions** (See instructions)

6a. Staff has experience. Yes No

6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

7. **Additional Considerations** Attach additional sheets as needed.

8. **Review and Update** By signing this form, the applicant agrees to review their AFHM Plan every 5 years and update as needed to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (24 CFR 200.620).

Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy)

Name (type or print)

Title & Name of Company

For HUD-Office of Housing Use Only

Reviewing Official: _____

Signature & Date (mm/dd/yyyy) _____

Name (type or print) _____

Title _____

For HUD-Office of Fair Housing and Equal Opportunity Use Only

Approved Disapproval (Check One)

Signature & Date (mm/dd/yyyy) _____

Name (type or print) _____

Title _____

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

The Affirmative Fair Housing Marketing (AFHM) Plan is needed to ensure that insured and subsidized developers are taking necessary steps to eliminate discriminatory practices involving Federally insured and subsidized housing. No application for any housing project or subdivision insured or subsidized under the Department of Housing and Urban Development's (HUD) housing programs can be funded without an approved AFHM Plan (See the "Applicability" section in the instructions below.) The responses are required to obtain or retain a benefit under the Fair Housing Act, Section 808(e)(5) & (6) and 24 CFR Part 200, Subpart M. The form contains no questions of a confidential nature.

Applicability: This form is to be completed by all insured or subsidized: (1) multifamily projects; and (2) single-family homebuilders that can not meet at least one of the following requirements: (a) is a signatory in good standing to a Voluntary Affirmative Marketing Agreement (VAMA); (b) has a HUD approved AFHM Plan; (c) has contracted with someone to market their houses who has an AFHM Plan or is a signatory to a VAMA; or (d) can self certify compliance with HUD's AFHM Regulations, maintain records of their AFHM activities and make the records available to HUD upon request. Single-family homebuilders that can meet at least one of the above requirements can complete block 11 on form HUD-92541-Builder's Certification of Plans, Specifications, & Site instead of completing the AFHM Plan. [See HUD Mortgagee Letters 1995-18 dated April 28, 1995 and 2001-09 dated April 2, 2001]

Each applicant is required to carry out an affirmative program to attract prospective buyers or tenants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, or familial status. Racial groups include White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino, persons with disabilities, or families with children. The applicant shall describe in the AFHM Plan the proposed activities to be carried out during advance marketing, where applicable, and the initial sales and rent-up period. The affirmative marketing program also should ensure that any group(s) of persons ordinarily not likely to apply for this housing without special outreach (See Part 3), know about the housing, feel welcome to apply and have the opportunity to buy or rent.

INSTRUCTIONS

Send completed form to: your local HUD Office
Attention: Director, Office of Housing

Part 1-Applicant and Project Identification. Blocks 1a thru 1f-Self-Explanatory. Block 1g-the applicant should specify the approximate date for starting marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy (if unoccupied). Block 1h-the applicant should indicate the housing market area, in which the housing will be (is) located. Block 1i - the applicant may obtain census tract location information from local planning agencies, public libraries and other sources of census data. Block 1j the applicant should complete only if a Managing/Sales Agent (the agent can not be the applicant) is implementing the AFHM Plan.

Part 2-Type of Affirmative Marketing Plan:

Applicants for multifamily housing projects should check both the MFH (Multifamily Housing) Plan and indicate the status of the AFHM Plan, e.g. new or update. As appropriate, single-family homebuilders who submit an AFHM Plan, should check the SFH (Single-family Housing) Plan box.

All Plans should indicate the racial composition of the housing market area in which the housing will be (is) located by checking one of the three choices. Single-family scattered site builder should submit an SFH Plan that reflects the racial composition of each the housing market area in which the housing will be (is) located. For example, if a builder plans to construct units in both minority and non-minority housing market areas, a separate AFHM Plan shall be submitted for each housing market area.

Part 3-Direction of Marketing Activity. Indicate which group(s) the applicant believes are least likely to apply for this housing without special outreach. Consider factors such as price or rental of housing, sponsorship of housing, racial/ethnic characteristics of housing market area in which housing will be (is) located, disability or familial status of eligible population, public transportation routes, etc.

Part 4-Marketing Program. The applicant shall describe the marketing program to be used to attract all segments of the eligible population, especially those groups designated in Part 3 of this AFHM Plan as least likely to apply. The applicant shall state: the type of media to be used, the names of newspaper/call letters of radio or TV stations; the identity of the circulation or audience of the media identified in the AFHM Plan (e.g., White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, persons with disabilities, and families with children) and the size or duration of newspaper advertising or length and frequency of broadcast advertising. Community contacts include individuals or organizations that are well known in the housing market area or the locality, that can influence persons within groups considered least likely to apply. Such contacts may include, but need not be limited to: neighborhood, minority and women's organizations, grass root faith-based or other community based organizations, labor unions, employers, public and private agencies, disability advocates, schools and individuals who are connected with these organizations and/or are well-known in the community. Applicants should notify their local HUD—Office of Housing of any changes to the list in Part 4c of this AFHM Plan.

Part 5-Future Marketing Activities. Self-Explanatory.

Part 6-Experience and Staff Instructions.

- 6a. The applicant should indicate whether the sales/rental staff have had previous experience in marketing housing to group(s) identified as least likely to apply for the housing.
- 6b. Describe the instructions and training provided or to be provided to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan.

Copies of any written materials should be submitted with the AFHM Plan, if such materials are available.

Part 7-Additional Considerations. In this section describe other groups to which the housing may be marketed and efforts not previously mentioned which are planned to attract persons least likely to apply for the housing. Such efforts may include outreach activities to grass root faith-based or other community based organizations, and other ethnic groups with limited English proficiency (LEP).

Part 8-Review and Update. By signing, the applicant assumes full responsibility for the AFHM Plans implementation and required reviews and updates. HUD may monitor the implementation of this AFHM Plan at any time and request modification in its format or content, where deemed necessary.

Notice of Intent to Begin Marketing. No later than 90 days prior to the initiation of sales or rental marketing activities, the applicant of an approved AFHM Plan shall submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15). It is submitted either orally or in writing to the Office of Housing in the appropriate HUD Office servicing the locality in which the proposed housing will be located.

OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the AFHM Plan. The burden hours for such notification are included in the total designated for this AFHM Plan form.

Exhibit E

Initial Occupancy of HOME-Assisted Units Report

HUD LIHTC Tenant Data Collection Form

Certification Type: _____ (1=Initial Certification ; 2=Recertification; 3=Other) If other, specify: _____	Effective Date of Certification: _____ LIHTC Qualification Date: _____ (YYYY-MM-DD)
--	---

Part I: Development Data

Compliance Agency Name: _____		
Property Name: _____	PIN: _____	BIN: _____
Building Address: _____	Unit Number: _____	# Bedrooms: _____

Part II: Household Composition

Was Unit Vacant on December 31, 2015? Yes; No (If Yes, no other tenant-specific information required.)

HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Race	Ethnicity	Disabled?	Date of Birth (YYYY/MM/DD)	F/T student (Y or N)	Last 4 Digits of SSN
1										
2										
3										
4										
5										
6										
7										

Part III: Gross Annual Income (Use ANNUAL Amounts)

Part III Removed in its Entirety

Part IV: Income from Assets

Part IV Removed in its Entirety

'Effective Date at LIHTC Certification' and 'Household Size at Certification' Moved to Part V

Privacy Act Information: This collection is authorized by 42 USC § 1437z-8. The collection of partial social security numbers is permitted by 42 U.S.C. § 3543 and 3544. The information collected on these forms is protected by the Privacy Act of 1974, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and the Fair Housing Act (42 U.S.C. 3601-19). This collection is mandatory, but disclosure by the tenant of race, ethnicity and disability status is optional.

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street S.W., Washington, D.C. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

Instructions

General Instructions: The purpose of this form is to enable reporting of federal low income housing tax credit data. The definitions for all fields are to be understood in that context. All fields below must appear on the state TIC. A state may not collect data in a field that differs from the applicable definition below. States are free to include other fields on their TICs that are designed to collect other data. Displaying OMB information on the form, including the OMB form number, is appropriate only if the HUD OMB-approved TIC remains unchanged. However, if any changes are made to the form (changing words, adding signature blocks, etc) the OMB number, approval date, etc must not be included on the state form. OMB rules do not allow for any modifications of an OMB form if the OMB number is used.

Part I - Development Data

Certification Type: Enter the type of tenant certification: Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, specify the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Effective Date: Enter the effective date of the tax credit certification. If a self-certification was conducted after a verified income certification, enter the self-certification date. Part IV below requests the date of the verified income certification.

LIHTC Qualification Date: Enter the most recent tax credit qualification date for the household that is less than or equal to the certification effective date.

Compliance Agency Name: Enter the name of the agency which conducts income and rent compliance for this unit.

Property Name: Enter the name of the development.

PIN: Enter the Project Identification Number. Please include hyphens between the state abbreviation, allocating year, and project-specific number. If there is not an established method of assigning PINs, HUD recommends using the following format: State Postal Abbreviation - Allocation Year - First two digits of BIN (if those digits are project specific); e.g. CT-10-01.

BIN #: Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609). According to IRS Notice 88-91, the BIN consists of a two character state designation (identical to a postal state abbreviation) followed by a two digit designation representing the year the credit is allocated, and a five digit numbering designation. For example, the identification number for one of 25 buildings allocated a credit in 1987 by the Connecticut Housing Finance Authority (the only housing credit allocating agency in the state) might read CT-87-00023.

Building Address: Enter the physical address of the building, including street number and name, city, state and zip code as provided on the IRS 8609 Form.

Unit Number: Enter the unit number.

Bedrooms: Enter the number of bedrooms in the unit.

Part II - Household Composition

Was Unit Vacant on December 31, 2015?: Check "Yes" if unit was vacant on December 31 of requesting year or check "No" if the unit was occupied on this date. "1"=yes; "2"=no

Name: List first name, middle initial and last name of all occupants of the unit. For unborn child of pregnant household member, enter "unborn".

Relationship to Head of Household: Enter each household member's relationship to the head of household by using one of the following coded definitions: H - Head of Household; S - Spouse; A - Adult co-tenant; O - Other family member; C - Child (including unborn child of pregnant household member); F - Foster child or Foster adult; L - Live-in caretaker; or N - None of the above.

Race: Enter each household member's race by using at least one of the following coded definitions: 1 - White; 2 - Black/African American; 3 - American Indian/Alaska Native; 4 - Asian (4a - Asian India; 4b - Chinese; 4c - Filipino; 4d - Japanese; 4e - Korean; 4f - Vietnamese; 4g - Other Asian); 5 - Native Hawaiian/Other Pacific Islander (5a - Native Hawaiian; 5b - Guamanian or Chamorro; 5c - Samoan; 5d - Other Pacific Islander); 6 - Other; or 8 - tenant did not respond.

Ethnicity: Enter each household member's ethnicity by using one of the following coded definitions: 1 – Hispanic or Latino; 2 – not Hispanic or Latino; or 3 – Tenant did not respond.

Disabled?: Check yes ("1" =yes; "2"=no; or "3"=Tenant did not respond) if any member of the household is disabled according to Fair Housing Act definition for handicap (disability):

- A physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. For a definition of "physical or mental impairment" and other terms used in this definition, please see 24 CFR 100.201, available at http://www.fairhousing.com/index.cfm?method=page.display&pagename=regs_fhr_100-201.
- "Handicap" does not include current, illegal use of or addiction to a controlled substance.
- An individual shall not be considered to have a handicap solely because that individual is a transvestite.

The housing credit agency administering its low-income housing credit program must, to the best of its ability, provide this disability status information, pursuant to 42 U.S.C. 1437z-8. However, it is the tenant's voluntary choice whether to provide such information, and questions to the tenant requesting the information must so state. If the tenant declines to provide the information, the housing credit agency shall use its best efforts to provide the information, such as by noting the appearance of a physical disability that is readily apparent and obvious, or by relying on a past year's information. For purposes of gathering this information, no questions with respect to the nature or severity of the disability are appropriate."

Date of Birth: Enter each household member's date of birth.

Student Status: Enter Yes if the household member is a full-time student or No if the household member is not a full-time student. "1" =yes; "2"=no

Last Four Digits of Social Security Number: For each tenant over 18 years of age, enter the last four digits of the social security number or the last four digits of the alien registration number. If tenant does not have a SSN or alien registration number, enter "0000".

Part III - Annual Income

Part III Removed in its Entirety.

Part IV - Income from Assets

Part VI Removed in its Entirety

'Effective Date at LIHTC Certification' and 'Household Size at Certification' Moved to Part V

Part V – Determination of Income Eligibility

Total Annual Household Income From all Sources: Refer to HUD Handbook 4350.3 for calculation of annual income and income from assets.

Effective Date of LIHTC Income Certification: If the current Tenant Income Certification (TIC) did not update the tenant's income information and the TIC is reporting previous income, enter the effective date of the income qualification corresponding to the total annual household income. If income certification is not required annually, this may be different from the effective date listed in Part I.

Household Size at LIHTC Certification: If the current Tenant Income Certification (TIC) did not update the tenant's household size information and the TIC is reporting previous information, enter the number of tenants corresponding to the total annual household income entered in Box L. If income certification is not required annually, this may be different from the number of tenants listed in Part II.

Household Meets LIHTC Income Restriction at: Indicate the income restriction that the household meets according to what is required by the LIHTC federal set-aside(s) for the project.

If the income restriction for this unit is set-aside below elected ceiling, enter the percent required. If this unit has an income-restriction set below the elected federal maximum, enter the percent required.

Current LIHTC Income Limit per Family Size: Enter the Current Maximum Move-in Income Limit for the household size. The income limit must be the IRS Section 42 income limit associated with the federal tax credit set-aside.

For Recertifications Only:

Current Income Limit x 140%: For recertifications only, multiply the Current Maximum Move-in Income Limit by 140% and enter the total.

Household Income Exceeds 140% at Recertification: Indicate whether the household income exceeds 140% of the current income limit.

Household Income at LIHTC Qualification Date: For recertifications, only, enter the household income at the time of LIHTC qualification.

Household Size at LIHTC Qualification Date: For recertifications only, enter the household income at the time of LIHTC qualification. On the adjacent line, enter the number of household members at the time of program qualification.

Part VI - Monthly Rent

Tenant Paid Monthly Rent: Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).

Monthly Utility Allowance: Enter the utility allowance. If the owner pays all utilities, enter zero.

Other Monthly non-optional charges: Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.

Gross Monthly Rent for Unit: Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges. The total may NOT include amounts other than Tenant Paid Rent, Utility Allowance and other non-optional charges. In accordance with the definition of Gross Rent in IRC §42(g)(2)(B), it may not include any rent assistance amount.

Total Monthly Rent Assistance: Enter the amount of total rent assistance received, if any.

Federal Rent Assistance: Enter the amount of rent assistance received from a federal program, if any.

Other Rent Assistance: Enter the amount of non-federal rent assistance received, if any.

Source of Federal Rent Assistance: If federal rent assistance is received, indicate the program source

Maximum LIHTC Rent Limit for this Unit: Enter the maximum allowable gross rent for the unit. This amount must be the maximum amount allowed by the Current Income Limit per Family Size—specifically, the max rent limit for the federal 50% or 60% set aside.

Unit Meets LIHTC Rent Restriction at: Indicate the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project. If your agency requires a rent restriction lower than the federal limit, enter the percent required.

If rent for this unit is set-aside below elected ceiling, enter the percent required. If this unit has a rent level set below the elected federal maximum, enter the percent required.

Part VII - Student Status

Are all Occupants Full-Time Students?: If all household members are full-time students, check "yes". Full-time status is determined by the school the student attends. If at least one household member is not a full-time student, check "no". ("1" =yes; "2"=no)

Student Explanation: If all occupants are full-time students, indicate the appropriate exemption as listed in the box to the right. Note that not all exemptions listed are applicable to each state, e.g. Extended-Use Period.

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by the certification/recertification. If the property does not participate in the HOME, Tax-Exempt, Affordable Housing Disposition Program (AHDP) or other housing program, leave those sections blank.

Tax Credit: Mark the appropriate box indicating the household's designation. If the property does not have any occupancy requirements in addition to those required by Section 42, mark the box that corresponds to the property's minimum set aside. Upon re-certification, if the household's income exceeds 140% of the income limitation imposed by Section 42, mark "OI".

HOME: If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set asides, mark the appropriate box indicating the household's designation.

Tax Exempt: If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.

AHDP: If the property participates in the Affordable Housing Disposition Program (AHDP) program, and this household's unit will count towards the set aside requirements, select the appropriate box to indicate if the household is a VLI, LI or OI (at re-certification) household.

Other: If the property participates in any other affordable housing program, complete the information as appropriate.

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 40 hours for each response. This includes the time for collecting, reviewing, and reporting the data. The information will be used to measure the number of units of housing financed with the Low-Income Housing Tax Credit (LIHTC) that are produced each year. The information will also be used to analyze the characteristics of these housing units, and will be released to the public. This agency (HUD) may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Exhibit F
Annual Reports of HOME Assisted Units

Annual Report on Occupancy of HOME Assisted Units

Please submit, by January 30 of each year a report that summarizes the occupancy of HOME assisted units as of December 31 of the previous year. The report shall be submitted to the Community Development Office, City of Auburn, 60 Court Street, Suite 344, Auburn, ME 04210

The report shall include the following information:

1. Location of HOME Assisted Units (Unit #)
2. # of bedrooms
3. Name of Tenants
4. Annual household income of tenants
5. Household size
6. Household type
7. Percent of Median Income of occupants
8. Monthly Rent/Utility allowance
9. Occupants Race and Ethnicity

Exhibit G
Efforts to Promote Fair Housing

Efforts to Promote Fair Housing

Please submit annually by January 30th of each year a report that summarizes Fair Housing efforts of the previous year. The report shall be submitted to the Community Development Office, City of Auburn, 60 Court Street, Suite 344. Auburn, ME 04210

The report shall include the following information about affirmative marketing efforts:

1. A list of advertisements, if any
2. A list of notices sent to organizations, if any
3. A list of race, disability, sex, age and familial status of all applicants and the reason for applicant denial,
4. An assessment of affirmative marketing efforts and what corrective actions will be taken, if any.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 19

SUBJECT: Order, Authorizing Staff to Take Steps to Dispose of the Martel School and Associate Property.

INFORMATION: The Martel School at the intersection of Lisbon and East Avenue is no longer needed for educational purposes. The Lewiston School Department has released this building and property back to the City, effective on October 1st of this year. Leading up to this date, the City Council has discussed the future of this property and has received recommendations from both the Planning Board and the Finance Committee, which are attached. Among the considerations of interest to the Council are: whether the current building, in particular the older brick portion of it, will be retained; the potential for the City to retain the rear portion of the property as open recreational space (see attached map); and the purpose for which the property will be used. At the same time, the Council appears flexible on these issues, depending on the proposals submitted.

The attached Order would authorize the staff to initiate the process of disposing of this property in accordance with directions received from the Council during these various discussions. The request for proposals for reuse will include the following requirements:

1. A clear outline of the intended purpose for which the property will be used;
2. Specifying whether the existing buildings will be reused, in whole or in part, or partially or fully demolished;
3. Specifying whether the proposal can be accommodated on the portion of the parcel fronting on Lisbon Street or whether the entire parcel is needed, is preferred (indicating the proposal can advance without it but would prefer it be included), or is not needed;
4. A proposed schedule for the reuse/redevelopment;
5. Supporting documentation for the financial feasibility of the project;
6. The amount to be paid to the City for the property.

This item was tabled at the last meeting, and the Council requested more detailed information on how the Request for Proposals would be drafted. A draft of sections of an RFP was presented at a workshop and is now attached to an amended Council Order to provide clear guidance on what should be included.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAR/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Order, Authorizing Staff to Take Steps to Dispose of the Martel School and Associate Property.



COUNCIL ORDER

Order, Authorizing Staff to Take Steps to Dispose of the Martel School and Associate Property.

Whereas, the Martel School property is no longer required for educational purposes; and

Whereas, the Lewiston School Department has released this property back to the City; and

Whereas, recommendations have been solicited and received from both the Planning Board and the Finance Committee regarding the potential disposition of this property; and

Whereas, the Council has indicated its interest in soliciting proposals for reuse of this property while also identifying issues of potential interest to the Council regarding such issues as the future of the buildings and the possibility of retaining a portion of the property for open space and recreational purposes;

Now, therefore, be it ordered by the City Council of the City of Lewiston that

City staff is hereby authorized to issue a request for proposal for the sale and reuse of the Martel School building and property subject to the request for proposals including the following requirements:

1. A clear outline of the intended purpose for which the property will be used;
2. Specifying whether the existing buildings will be reused, in whole or in part, or partially or fully demolished;
3. Specifying whether the proposal can be accommodated on the portion of the parcel fronting on Lisbon Street or whether the entire parcel is needed, is preferred (indicating the proposal can advance without it but would prefer it be included), or is not needed;
4. A proposed schedule for the reuse/redevelopment;
5. Supporting documentation for the financial feasibility of the project;
6. The amount to be paid to the City for the property.

The request for proposals shall solicit the information substantially as shown on the attached draft request for proposals.

Addition is underlined.

CITY OF LEWISTON, MAINE

SALE & REDEVELOPMENT OF THE PRIOR MARTEL SCHOOL BUILDING AND PROPERTY, 860 Lisbon Street

RFP #:
PROPOSAL DUE DATE:

This is an invitation for proposals to purchase and redevelop property at 860 Lisbon Street owned by the City of Lewiston. The property is being offered for sale and redevelopment by the City as a means to enhance development in the area.

Background:

This property is the location of the former Martel School. With the opening of the new Connors elementary school, the Lewiston School Department has released the property back to the City, which is now seeking proposals to develop or redevelop the property (see attached map). The land area of the property totals 133,248 square feet or slightly over three acres. As currently developed, the property is divided into two areas, the portion fronting on Lisbon Street that includes the Martel School Buildings and the rear portion that includes open space and a playground. An access drive to the Shaw's plaza development crosses a portion of the rear of the lot via an easement on the City property. While the City Council will consider proposals for the entire property, the Council's preference is for the City to retain the open space and playground area. The entire property is currently zoned Office Residential, which allows for certain limited commercial-service and institutional uses along with mixed use and residential uses. The current assessed value of the entire property is \$1,758,430, of which \$260,250 is for the land alone.

The initial three story brick façade school building fronts on Lisbon Street and dates to 1922. Various additions have been added to the school over the years, including an auditorium and one story classroom wing. The City Council has expressed a preference that the exterior of the historic initial school building be retained if possible. Interested parties should clearly indicate in their proposal which portions of the existing buildings they proposed to retain and renovate and which would be removed.

INFORMATION FOR DEVELOPERS

2.1 The parcel being offered for sale is described as follows:

Property:	860 Lisbon Street
Approximate Acreage	3.3+/- acres
Map/Lot	176-064
Zoning	OR

- 2.2 Reuse or redevelopment of property must comply with all applicable City ordinance requirements, including Zoning and Land Use codes. Proposers should clearly indicate whether their proposal will require a zone change on the property.
- 2.3 The proposed reuse strategy for the subject property will be a principal determining factor in judging what the City deems to be the most acceptable proposal.

CONTENTS OF THE PROPOSAL

- 3.1 The proposal shall contain the price being offered for the purchase of this property, whether the offer is for the entire parcel or only a portion of it, and shall provide an estimate of the value of any proposed new investment on the parcel bid.
- 3.2 Submitted proposals shall provide specific details on the proposed reuse of this site. Additional data, exhibits, statements, drawings, etc. are recommended to insure a total understanding and proper evaluation of each proposal by the City.
- 3.3 Submitted proposals shall describe which, if any, portions of the existing building on the property are to be retained and redeveloped. If applicable, detailed information should be provided on all renovations proposed including but not limited to electrical, plumbing, heating, roofing and window treatments.
- 3.4 The proposal shall include proof of the submitter's financial ability to undertake said proposal and shall include a time line for completion.
- 3.5 The proposal may include examples of other similar projects undertaken by the proposer in support of the reuse proposal and the technical abilities of proposer to perform.

**DRAFT
LEWISTON, MAINE**

SALE & REDEVELOPMENT OF 147 SABATTUS STREET

**RFP #:
PROPOSAL DUE DATE:**

PROPOSAL FORM

TO: Director of Budget/Purchasing
City of Lewiston
City Hall, 27 Pine Street
Lewiston ME 04240

Dear Sir:

The undersigned hereby declares that he/she has carefully examined the proposed Sale and Reuse of City Owned land request for proposals and proposes and agrees, if the proposal is accepted, to complete the transaction on the item(s) proposed.

Location Address 860 Lisbon Street

Price Offered: _____

Offer is for: Both Parcels Front Parcel only

If for both parcels, is the proposal conditioned on acquiring the full parcel or is the full parcel simply preferred:

Full Parcel is Required Full Parcel is Preferred

Does the proposal reuse all, a portion, or none of the existing structures?

Reuses: all none a portion

If a portion, please describe the portion to be retained and renovated:

Please provide a complete description of the proposed reuse of the property, including, if applicable, the renovations planned for any retained portions of the existing buildings or a description of the anticipated size and nature of the development proposed for the property. (Attach additional sheets if necessary.)

Please provide an estimated date by when the redevelopment will be completed and an estimate of the total investment proposed for the property, less proposed purchase price:

\$ _____

Estimated date of completion: _____

NAME	
SIGNATURE	
PRINTED/TYPED NAME	
TITLE	
LEGAL ADDRESS	
MAILING ADDRESS	
DATE	
TELEPHONE #	
FAX #	
E-MAIL ADDRESS	

Please attach any other supporting materials required by the request for proposal or

which you believe would be helpful in the evaluation of your proposal.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor Cloutier and Lewiston City Council
FROM: Douglas Greene, AICP; Deputy Director/City Planner
DATE: September 17, 2019
RE: Planning Board Action

The Planning Board took the following action at their meeting held on August 12, 2019 regarding a recommendation on the disposition of Martell Elementary School located at 860 Lisbon Street.

The following motion was made:

MOTION: by **Benjamin Martin** pursuant to Article VII, Section 4(h) of the Zoning and Land Use Code to send a favorable recommendation to the City Council for the disposition of 860 Lisbon Street. The motion included the following recommendations:

- 1) Consider using a portion of the property for a new fire station;
- 2) Consider preserving the school's open space and playground for a future neighborhood park;
- 3) Given the surrounding land uses and the amount of nearby vacant commercial space, the Planning Board was reluctant to make a recommendation to initiate a zone change that would create more commercially zoned land;
- 4) The City Council should consider the costs of maintenance and condition of the school.

Second by **Normand Anctil**.

VOTED: 5-0 (Passed)

The following summary of the Finance Committee recommendation on Martel School was prepared by City Purchasing Agent, Allen Ward:

Recommended to the City Council disposition of the Martel School with the following Considerations

1. Consider preserving the school's open space and playground for a future neighborhood park
2. Given the surrounding land uses and the amount of nearby vacant commercial space, the Planning Board was reluctant to make a recommendation to initiate a zone change that would create more commercially zoned land
3. The City Council should consider the costs of maintenance and condition of the school
4. Consideration for hiring a Commercial Property Appraiser to determine best value and future use of the property
5. Consideration for any potential reverter clause language that might be on the property with Franklin Trust.

Regarding Condition #6, a preliminary review by Lincoln following the meeting suggests that Franklin has no reverter language covering Martel School location.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor and City Council

FROM: Douglas Greene, AICP, RLA; Deputy Director/City Planner

DATE: October 9, 2019

RE: Martel School Disposition

To help in the evaluation to dispose of Martel School, Staff has broken down the property into three areas to help the City Council with their decision. Based on comments from the Planning Board, Finance Committee and City Council, the attached map divides the property into the following areas and includes the approximate size of each:

- 1.) Martel School Building area (82, 151 sf. or 1.88 ac.),
- 2.) Open Space total area* (57,945 sf. or 1.33 ac.)
 - a) Usable Open Space area (51,197 sf. or 1.17 ac.)
 - b) Shaw's Entrance Area (6,748 sf. or .15 ac.)

*- City records show the Martel School property extends into the entrance area of the Shaw's Shopping Center. (See attached map)

The property is located at 860 Lisbon Street, is 3.21 total acres in size (139,827 sf.), and is zoned Office Residential (OR) district. The permitted uses in the OR district are listed on attachment 2, Office Residential Land Use Chart.

Martel School Disposition

Breakout of Building Lot, Open Space and Shaw's Entrance Areas

Martel School Shaw's Entrance Area 6,748 sf.

Martel School Open Space Area 57,945 sf. Total 51,197 sf. minus Shaw's Entrance

Martel School Building Lot Area 82,151 sf.

Contract Zoning CB

Contract Zoning CB

Zoning: CB

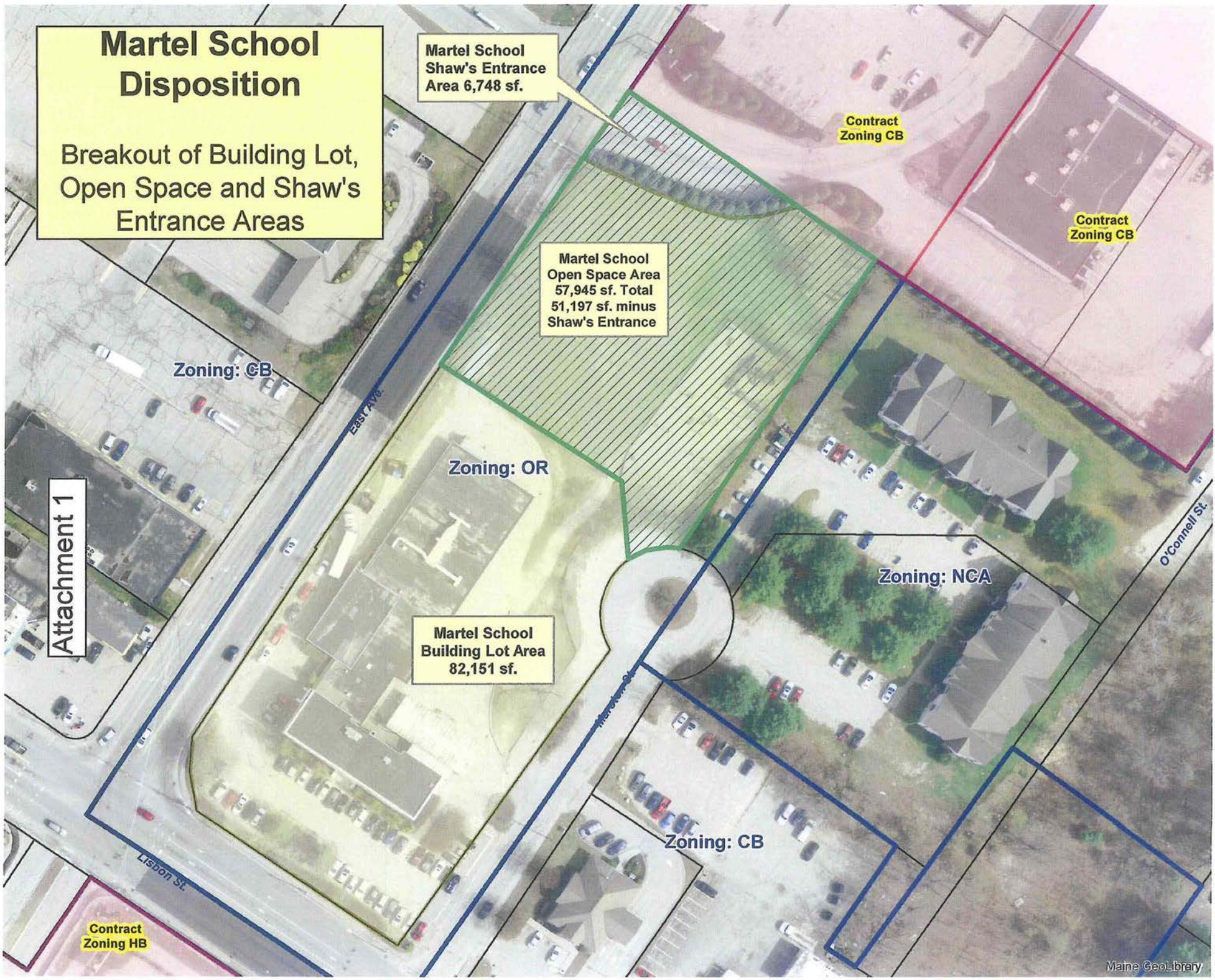
Zoning: OR

Zoning: NCA

Zoning: CB

Contract Zoning HB

Attachment 1



Attachment 2
Martel School Disposition
Office Residential (OR) Land Use Chart

Land Use Table: Office Residential Zoning District 10.08.19	Office Residential (OR)
USES(15)(33)	
Accessory use or structure	P
Commercial-Service	
Veterinary facilities excluding kennels and humane societies	P
Veterinary facilities including kennels and humane societies	
Nursery School	
Small day care facilities	P
Day care centers	P
Day care centers accessory to public schools, religious facilities, multifamily or mixed res. developments, and mobile home parks	
Business and professional offices including research, experimental, testing laboratories, engineering, research, management and related services	P(9)
Restaurants	
Drinking places	
Adult business establishments	
Hotels, motels, inns	
Movie theaters except drive-in theaters	
Places of indoor assembly, amusement or culture	
Art and crafts studios	
Personal Services	P
Retail stores	
Neighborhood retail stores	
Lumber and building materials dealer	
Gasoline service stations	
Gasoline service stations which are a part of and subordinate to a retail use	
New and used car dealers	
Recreational vehicle, mobile home dealers	
Equipment dealers and equipment repair	
Automotive services including repair	
Registered dispensary(27)	
Registered primary caregivers engaged in the cultivations of medical marijuana for two to five registered patients.	
Tattoo Establishments	
Industrial	
Light industrial uses	
Industrial uses	
Building and construction contractors	
Fuel oil dealers and related facilities	
Wholesale sales, warehousing and distribution facilities and self-storage facilities	
Self storage facilities	
Commercial solid waste disposal facilities	
Junkyards and auto graveyards	
Recycling and reprocessing facilities	
Private industrial/commercial developments(23)	
Transportation	
Airports or heliports	
Commercial parking facilities	
Transit and ground transportation facilities	
Transportation facilities	
Public and Utility	
Pumping stations, standpipes or other water supply uses involving facilities located on or above the ground surface and towers for municipal use	P
Power transmission lines, substations, telephone exchanges, microwave towers or other public utility or communications use	C
Municipal buildings and facilities	C
Preservation of historic areas; emergency and fire protection activities; bridges and public roadways	
Dams	

**Martel School Disposition
Office Residential (OR) Land Use Chart**

Land Use Table: All Zoning Districts 10.08.19	Office Residential (OR)
Institutional	
Religious facilities	P
Cemeteries	
Congregate care/assisted living facilities, institutions for the handicapped, nursing or convalescent homes, group care facilities	P
Hospitals, medical clinics, Museums, libraries, and non-profit art galleries and theaters	P
Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures,	C
Civic and social organizations	P
Public community meeting and civic function buildings including auditoriums	
Residential	
Single-family detached dwellings on individual residential lots	P
Mobile homes on individual residential lots	
Two-family dwellings	P
Multifamily dwellings in accordance with the standards of Article XIII	P
Single-Family attached dwelling in accordance with the standards of Article XIII	P
Mixed single-family residential developments in accordance with the standards of Article XIII	
Mixed residential developments in accordance with the standards of Article XIII	P
Mixed use structures	P
Lodging houses	
Home occupations	P
Bed and breakfast establishments as a home occupation	P
In-law apartments in accordance with the standards of Article XII	P
Single family cluster development	
Family day care home	P
Shelters	
Dormitories	
Natural Resource	
Agriculture	
Farm Stands	
Forest management and timber harvesting activities in accordance with the standards of Article XIII	P
Earth material removal	
Community gardens(20)	P
Water dependent uses, e.g. docks and marinas	
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet	
Recreation	
Campgrounds	
Public or private facilities for nonintensive outdoor recreation	C
Commercial outdoor recreation and drive-in theaters	
Fitness and recreational sports centers as listed under NAICS Code 713940	P

LEWISTON CITY COUNCIL

MEETING OF November 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 20

SUBJECT: Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 86 Nichols Street.

INFORMATION: The City recently accepted bids for the vacant, tax acquired property located at 86 Nichols Street on which the City condemned and subsequently demolished a building. Two bids were received, one from Bates College in the amount of \$20,000 for a not yet known institutional use, possibly including housing, parking, greenspace, a garden, etc.; a second in the amount of \$14,800 from Kevin and Erika Frisbee, abutters who own 29 Vale, and 105 and 111 Wood, for tenant parking. The property is assessed at \$14,800, which is the minimum sales price recommended by the Planning Board. The Finance Committee recommended offering this property for sale via sealed bids.

Bates College was contacted in regard to their willingness to pay taxes on the property. They responded by indicating that the College pays taxes on properties that are not used for institutional purposes, such as housing for faculty and staff, and that the College would continue to pay taxes on this site while it remains undeveloped. The College also indicated that there are no current plans to redevelop the site and, if acquired, it would maintain the property to a similar level as it maintains other vacant properties it owns.

The Frisbees own three properties with 15 total rental units in close proximity to 86 Nichols and plan to use the property for tenant parking.

Both bidders have indicated that they will be present at the meeting to address their interests in this property.

The Purchasing Agent has recommended the property be sold to the high bidder. However, the Council may wish to take into account the potential for such a sale to eventually result in the property becoming tax exempt should the College use it for institutional purposes.

Given the two bids, the blanks on the attached order will need to be filled in via amendment to indicate to whom the property will be sold.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends selling this property.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 86 Nichols Street.



COUNCIL ORDER

Order, Authorizing the Execution of a Quit Claim Deed and Any Other Required Documents for the Sale of the Property at 86 Nichols Street.

Whereas, the City condemned and demolished a structure at 86 Nichols Street; and

Whereas, taxes on this property remained unpaid and a lien eventually matured, allowing the City to take possession; and

Whereas, the Planning Board recommended that the City sell this property with a minimum price of \$14,800, the property's assessed value, and the Finance Committee recommended such sale be accomplished through the formal bid process; and

Whereas, bids were solicited and a two bids were received, one from Bates College for a not yet known institutional use and a second from the owners of three abutting multi-family properties with the intent to use this property for tenant parking; and

Whereas, after considering both proposals, the Council has determined the one that provides the greatest benefit to the City;

Now, therefore, be it ordered by the City Council of the City of Lewiston that

OPTION A

Staff is hereby authorized to execute a quit claim deed and any other required documents for the sale of 86 Nichols Street to Bates College for \$20,000 plus closing costs for an institutional use not yet known, including housing, parking, greenspace, a garden, etc., with the proceeds to be credited to the General Fund.

OPTION B

Staff is hereby authorized to execute a quit claim deed and any other required documents for the sale of 86 Nichols Street to Kevin and Erika Frisbee for \$14,800 plus closing costs for the purpose of providing parking to tenants of abutting properties owned by the Frisbees, with the proceeds to be credited to the General Fund.

City of Lewiston



October 22, 2019

polygonLayer

Override 1

LewistonGIS.DBO.LEW_parcel\$_poly_sub_layeredwithdata_w

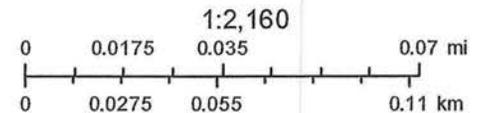
AdvancedDrawPolyline

Override 1

Override 2

LewGIS.SDE.LEW_roaddl_geocode

City Limits



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 21

SUBJECT: Resolve, Accepting an Appropriating a Lead Hazard Control and Green and Healthy Homes Grant from the United States Department of Housing and Urban Development and Authorizing the City Administrator to Execute the Required Grant Agreements.

INFORMATION:

The City Council and staff have been diligently working in concert with a variety of local partners including the City of Auburn, Community Concepts, and Healthy Androscoggin among others, to address lead and other environmental hazards associated with the City's housing stock, recognizing the human and financial toll of such hazards on our community and its residents. Over the years, the City has received a number of grants to assist property owners in addressing these problems through a combination of grants and loans from the City. We are currently in the final year of our most recent grant and, given the success and performance of the City in using these funds, we were able to apply for and have received a new round of grant funding.

The attached Resolve will accept a \$4,606,649 Lead Hazard Control Grant and a \$600,000 Green and Healthy Homes Grant that will supplement the lead work and allow us to address other environmental hazards associated with our older housing stock. The performance period for this grant is five years and its targets are to make 225 multi-family units and 25 single family homes in our Community Development Block Grant area lead safe.

The attached Resolve will accept and appropriate these funds and authorize the City Administrator to enter into the required grant agreements with the U.S. Department of Housing and Urban Development.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

ERAB/Kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Resolve, Accepting an Appropriating a Lead Hazard Control and Green and Healthy Homes Grant from the United States Department of Housing and Urban Development and Authorizing the City Administrator to Execute the Required Grant Agreements.



CITY OF LEWISTON, MAINE

November 19, 2019

COUNCIL RESOLVE

Resolve, Accepting and Appropriating a Lead Hazard Control and Green and Healthy Homes Grant from the United States Department of Housing and Urban Development and Authorizing the City Administrator to Execute the Required Grant Agreements.

Whereas, the City has been working diligently, together with other community partners, to address lead and other environmental hazards associated with our older housing stock; and

Whereas, these hazards can significantly affect the health of our residents, particularly our youth, resulting in future financial burdens on the School System, the City, and other levels of government; and

Whereas, as we complete the final year of our most recent lead grant, we have applied for and received a new, five-year grant of \$4,606,649 in Lead Hazard Control Funds and \$600,000 in Green and Healthy Homes Funds from the U.S. Department of Housing and Urban Development that will allow us to continue and extend this work; and

Whereas, these funds will support our efforts to make 225 multi-family units and 25 single family homes lead safe;

Now, therefore, be it resolved by the City Council of the City of Lewiston that

There is hereby appropriated \$4,606,649 in Lead Hazard Control Grant Funds and \$600,000 Green and Healthy Homes Grant Funds to be placed in the appropriate accounts to be established by the Finance Director; and

Further,

The City Administrator is authorized to execute the required grant agreements with the U.S. Department of Housing and Urban Development.

LEWISTON CITY COUNCIL

MEETING NOVEMBER 19, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 22

SUBJECT: Resolve, Calling Upon the Maine Legislature to Support an Extended Producer Responsibility for Packaging Law.

INFORMATION:

At a recent workshop, members of the City's Recycling and Waste Reduction Committee appeared before the City Council to request that the Council support a resolve calling upon the Maine Legislature to support an Extended Producer Responsibility program for product packaging.

During its last session, the legislature adopted LD 1431, which requires the Department of Environmental Protection to develop and report back to the legislature actual legislation to establish such a program and, to include in it, assistance for municipalities in financing packaging waste disposal and recycling programs.

While the details of this program have yet to be finalized and present, the Recycling Committee requested that the Council support such a program in concept, recognizing that the final proposal will require careful review and analysis.

The requested resolve is attached as is some of the background material presented by the Committee.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

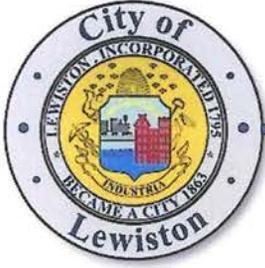
The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Resolve, Calling Upon the Maine Legislature to Support an Extended Producer Responsibility for Packaging Law.



COUNCIL RESOLVE

Resolve, Calling Upon the Maine Legislature to Support an Extended Producer Responsibility for Packaging Law.

Whereas, Maine’s communities are struggling to maintain, expand, and, in some cases, are eliminating recycling programs due to rising costs and difficult-to-manage materials; and

Whereas, product packaging, which includes plastic, metal, glass, and cardboard, constitutes approximately 30-40% of the materials managed by weight in Maine’s municipal waste management programs; and

Whereas, Maine taxpayers currently unfairly bear 100% of the cost and pay an estimate \$16 million to \$17 million each year to finance the management of this material through fragmented and increasingly expensive disposal or recycling options; and

Whereas, producers of product packaging have little incentive to minimize wasteful packaging or increase access to recycling, and there is no organized coordination between the producers of packaging and the municipalities that are responsible for disposing of or recycling the packaging materials; and

Whereas, producers of product packaging have taken some or all of the responsibility for managing post-consumer packaging in other parts of the world, including all European Union member states and five provinces in Canada, and, as a result, have greatly increased recycling rates, expanded infrastructure investment, created jobs, and reduced taxpayer costs;

Now, Therefore, Be It Resolved,

The City Council of the City of Lewiston supports an Extended Producer Responsibility (EPR) for Packaging law as endorsed by the Legislature in 2019 through the passage of LD 1431, A Resolve To Support Municipal Recycling Programs. We believe that this policy will work to make recycling in Maine:

More effective. Producers of packaging materials would have a direct economic incentive to produce less-wasteful packaging that can easily and profitably be managed by municipal recycling programs. Having shared responsibility between those who create the waste and those who manage the waste would foster recycling system improvements and enable greater participation in recycling across Maine; and

More sustainable. An EPR law for packaging is an insurance policy for Maine municipalities when global recycling markets are unfavorable. The current approach to recycling is not resilient to fluctuations in the global recycling market. When commodity prices fall unexpectedly, towns and cities may be forced to stop or restrict their programs; and

More equitable: Maine's cities, towns, and taxpayers are currently footing the bill for a problem they didn't create. With recycling reform, taxpayers will no longer pay for the cost of recycling since the net costs of recycling would be reimbursed -- and the packaging manufacturers that produce less-wasteful, more recyclable packaging would pay less than those who do not. This is a much more equitable way to distribute costs.

Be It Further Resolved, that

The City Clerk shall provide copies of this Resolve to the Members of the Legislature's Committee on Environment and Natural Resources and the Lewiston Legislative Delegation.



Natural Resources Council of Maine

3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • www.nrcm.org

July 2019

To Maine's Municipal Officials,

Thank you for operating a recycling program in your town. Maine people overwhelmingly want access to recycling. We recognize the burden to towns like yours of managing and paying for household recycling through your annual budget, and we know that market changes for recycled commodities are currently upending many of our local recycling programs. That is why we are writing to ask you to join a new statewide effort to reform recycling in Maine by shifting the cost burden away from municipalities.

At the request of the Legislature, the Maine Department of Environmental Protection will submit legislation by December 16, 2019, that would help solve this problem by establishing equitable, non-taxpayer-funded municipal recycling programs. This type of "extended producer responsibility" law has the power to:

- **Save Maine municipalities between \$16 and \$17.5 million each year.** Cities and towns would be reimbursed for any recycling costs by the corporations and brand owners that sell packaging into our state. Towns would still have control over their recycling programs, and could keep any revenue from the sale of recyclables. This is, in a sense, an insurance policy for our recycling programs when the commodities markets are unfavorable.
- **Protect Maine towns and cities from having to choose between what is right for the environment and their bottom line.** Mainers have worked hard to recycle because they want to do the right thing. Recycling also helps taxpayers avoid expensive disposal costs. Right now, taxpayers are being forced to pay for a problem they didn't create. This is unfair, and we are now recycling less and landfilling more waste as a result. The key to making our recycling programs more sustainable is to change who pays for them.

How you can help: One simple way that your municipality can show support for [Recycling Reform for Maine](#) is by adopting the attached resolution language. Feel free to personalize and put on your own letterhead. Please send to slakeman@nrcm.org by December 31, 2019. We will compile the documents and present them to the Legislature's Joint Standing Committee on Environment and Natural Resources, who will consider this policy in the winter and spring of 2020.

You can visit www.recyclingreform.org to find more information on this very important policy initiative. Please feel free to contact me with any questions.

Sincerely,

Sarah Lakeman, NRCM Sustainable Maine Director
(207) 430-0170 or slakeman@nrcm.org

Recycling Reform for Maine, municipalities that have passed a resolution in support of:

Kennebunkport

Kingfield

Limerick

Poland

Existing product stewardship programs in Maine:

Mercury thermostats

Fluorescent Bulbs

Electronic Waste

Mobile Phones and Rechargeable Batteries

Redeemable Beverage Containers

Oil Based Paints and Paint Cans

For more information on some of the product covered as Universal Waste, please refer to the Universal Waste Handbook developed by Maine DEP:

<https://www.maine.gov/dep/waste/hazardouswaste/documents/uwhandbook.pdf>

Short list of brands who pay in Quebec

From Chrissy Adamowicz <cadamowicz@nrcm.org>
To Joshua Nagine <joshuanagine@gmail.com>, hteddy <hteddy@gwi.net>, Megan Bates <MBates@lewistonmaine.gov>, Joline Beam <JBeam@lewistonmaine.gov>
Date 2019-10-31 11:21

Hi Everyone,

Thanks again for having me at your meeting last night. As you requested, below is a short list of the familiar companies that pay for Quebec's recycling programs. I included a link where you can find the full list.

[Here is a link to the EEQ page](#) that contains the table of flat fees for small producers. We know that DEP is looking at tables like this for Maine's small producers. We just don't know the precise details yet, and they may not even be laid out in the regulatory stage because this type of detail needs to be flexible in order to be adaptable in the face of market changes. With rapid changes in technology, and advancement of packaging materials, this flexibility is actually quite important so that we can make sure contributions from companies are fair from year to year.

I will also send you the table that lays out the different stages of the law's development through regulation, rules, and plans as soon as we complete it.

If there are other resources you are interested in please let me know and I am happy to help you find them. I don't have the entire committee's email, so please feel free to forward this message to them.

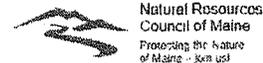
Best,

Chrissy Adamowicz

Sustainable Maine Outreach Coordinator

3 Wade Street, Augusta, Maine 04330

Direct: (207) 430-0144



NRCM is committed to a more inclusive Maine.

EEQ MEMBERS

Companies and organizations members* of Éco Entreprises Québec on March 15, 2019.
*Companies and organizations that have paid all required contributions under the 2018 Schedule of Contributions are considered members

Casio Canada Ltd.

Colgate Palmolive Canada inc.

Columbia Sportswear Canada

Coca-Cola Canada Limitée

ConAgra Foods Canada inc.

Costco Wholesale Canada Ltd

D

Dairy Queen Canada inc.

Danisco inc.

Danone inc.

DK Company

Domino's Pizza of Canada Ltd.

Dyson Canada Limited

E

Electrolux Canada Corp.

Estée Lauder Cosmetics Ltd.

F

Foot Locker Canada Corp.

Ford Motor Company of Canada

Frito-Lay Canada une division de Pepsi-Cola Canada itée

Fruit of the Loom Canada inc

Fujifilm Canada inc

G

Gap (Canada) inc

GE Lighting

General Mills Canada Corporation

You can find a complete list at the bottom of this page under "EEQ Members":

<https://www.eseq.ca/rapport-annuel/2019/eeq/index.php>

#

3M Canada

A

A & W food services of Canada inc.

Acer America Corporation

Adidas Canada limited

AFA Forest Products inc.

Air Canada

Apple Canada

Arrow Games inc.

Avery Products Canada (div. of CCL Industries inc.)

B

Bayer inc.

Bell Canada

Best Buy Canada Ltd.

Bissell Canada Corporation

Black and Decker Canada inc.

Blistex Corporation

BMW Group Canada

Burger King Canada Services ULC

C

Cadillac Fairview

Campbell Company of Canada

Canon Canada inc

Capital One Bank (Canada Branch)

General Motors of Canada

Godiva Chocolatier

Google Canada Corporation

Guess? Canada Corporation

H

Halfmark Canada

Hamilton Beach Brands Canada inc.

Hasbro Canada Corporation

Hershey Canada inc.

Home Depot Canada

Honda Canada inc.

HP Canada Co

I

IKEA Supply AG

J

John Deere Canada ULC

Johnson & Johnson VisionCare, inc.

K

Kellogg Canada

Keurig Canada inc.

Kimberly-Clark inc.

Kraft Heinz Canada ULC

L

Le Creuset Canada inc.

Lego Canada inc.

Lenovo

Lew Strauss & Co. (Canada) inc.

LG Electronics Canada inc.

Little Caesar of Canada inc

L'Oréal Canada inc.

Lululemon Athletica Canada inc

M

Marc Anthony Cosmetics Ltd.

Mars Canada inc.

Mary Kay Cosmetics Ltd.

Mazda Canada inc.
McDonald's Restaurants of Canada Limited
Mercedes-Benz Canada inc.
Mitsubishi Motor Sales of Canada inc.
Moen inc
Molson Canada 2005

N

Nespresso Canada
Nestle Canada inc.
Nestle Purina Petcare
Nestle Waters Canada
Newell Rubbermaid inc.
Nike Canada Corp

O

Ocean Spray International inc.
Old Navy (Canada) inc.

P

Panasonic Canada inc.
Pepsi Bottling Group Canada
Pepsi-QTQ
Procter & Gamble inc.

R

Reader's Digest Canada
Red Bull Canada Ltd.
Revlon Canada inc.

S

Samsung Electronics Canada inc.
Scotts Canada Ltd.
Sealy Canada Itée
Sharp Electronics of Canada Ltd.
Simons inc.
Skechers USA Canada inc.
Smucker Foods of Canada co
Sony Computer Entertainment Canada
Sony Electronics inc.

Sony Pictures Home Entertainment
STIHL Limited
Starbucks Coffee Company
Stencyle, LLC
Subaru Canada inc
Subway Franchise Systems of Canada. Ltd.
Sunbeam Corporation Canada Limited
Suzuki Canada inc.

T

TD Bank Financial Group
Teva Canada Ltd.
Texas Instruments inc.
The Aldo Group inc
The Children's Place (Canada) L.P.
The Clorox Company of Canada Ltd.
The Minute Maid Company Canada inc.
The Sherwin Williams Co.
Tiffany & Co Canada
Timex Group Canada inc.
Toyota Canada inc

U

U.S. Cotton (Canada) Co.
Unilever Canada

V

Valvoline Canada

W

Wal-Mart Canada Corp.
WD-40 Products (Canada) Ltd.
Wendy's Restaurants of Canada inc
Whirlpool Canada L.P.
Williams-Sonoma Canada
Wrigley Canada

Y

Yamaha Canada Music Ltd
Yamaha Motor Canada Ltd.

Extended Producer Responsibility for Recycling Programs

