

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

I. CALL TO ORDER – On Monday, October 21, 2019, at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Alan Minthorn, Lynn Copeland, Micah Smart, and Nathan Johnston. Acting City Administrator Patrick Fox and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

- Main Street Bridge Closed – Acting City Administrator Pat Fox noted that Pan Am Railways is doing a concrete deck replacement on the Main Street bridge right in front of the Transportation Center. The closure will start about 6:00 a.m. on Saturday the 26th and extend through to sometime Sunday evening.
- Earth Day 2020 – Tomorrow is 6 months before Earth Day 2020 marks the 50th anniversary of Earth Day. Many cities across the United States are recognizing this as is the National League of Cities.

A. RECOGNITION OF RAY LUND

City Hall Tower Print – Received a City Hall tower print from resident Ray Lund. The city has framed it and will be placing it in some suitable location within City Hall. Some of you T.A. students may remember that Mr. Lund was on the faculty there until he retired.

V. PUBLIC COMMENT

- Stephen Shiman, School Dept. Liaison – I'm looking forward to the 30th when we have a joint workshop
- Robert Biggs, 92 Middle Street, Executive Dir. of Main Street - For those of you who weren't there on Saturday, you missed a great event, the Pumpkin Harvest Festival. We had over 3,000 in our downtown. Unfortunately, the city team lost to a 5 & 7-year-old in our water bucket challenge. But I think we will come back strong next year. Batman was there and we had over 100 kids in costume for the costume contest. First time for a rock wall in our downtown which was very impressive. In addition, I would like to clarify something. This Thursday, we are going to have the Saco Main Street Candidate forum which all our councilors both opposed and unopposed as well as mayoral race will be in attendance and we will have a series of questions for them to answer. While we do not endorse any candidate, Saco Main Street does believe strongly in the our right and responsibility to vote and with that you need to have good information. So, we feel this is the best way for people to see what is going on and see what opinions people have. This will be streamed live as well as recorded and will be posted to our Facebook and website page afterward. There was an erroneous report today that in the Courier that said our candidate forum was going to be Thursday Oct. 21st, and it is actually Thursday, Oct. 24th in the City Hall Chambers from 6:00 p.m. – 8:30 p.m. Mayor Lovell noted that the city team will have to practice for the next time.
- David Plavin, 2 Surf St. – I'm here to speak in support of the resolution for the Saco Bay Erosion Mitigation plan. Make no mistake about it this is probably our last best chance to get something done before the beach or coastal homes are either gone or compromised. If there is any evidence required for the true value of Saco's coastline to the city look no further to this past summer. The dredge of the Saco River replenished Camp Ellis beach and we have had more people visiting than we have seen in many years. A second restaurant was opened, and one can only imagine what could be if we can make this situation permanent. A further benefit from the sand was seen in the past 3 weeks we have seen 2 hurricanes and a subtropical storm pass by in the Atlantic and a powerful nor'easter from last week and one would expect major damage, road washouts, closures and more. Just track back a year ago when an October storm closed North Ave. for the entire winter that caused damage to coastal homes. So far this season the extra sand has acted as a buffer and reduced the effects of powerful 18' waves. It has not eliminated all the effects but has reduced rain strength and would create more opportunities for projects to be held elsewhere in the city which I'm sure Pat would appreciate. Summer residents, rentals and tourists remain Saco's biggest industry and it is time to

expand on that and not to contract or hold on. Only by remediation of the jetty savage effects cannot become a reality. We can start on that road tonight by passing the resolution. I'm asking all the councilors to vote in support of it to make this unanimous. All of Saco and the surrounding communities benefit by a vital shoreline. Citizen initiatives have shown a new interest in getting something done. We need to make this happen now. Thank you.

VI. CONSENT AGENDA

Councilor Minthorn moved, Councilor Archer seconded to approve consent agenda items #A and B as follows:

- A. **Notice of Election for the General & Referendum Election, November 5, 2019** – “Be it Ordered that the City Council approve the Notice of Election for the General & Referendum Election scheduled for Tuesday, November 5, 2019”. Further move to approve the Order.
- B. **Acceptance of Findings of Fact and Conclusion of Law** – “Move to approve the Findings of Fact and Conclusion of Law, dated October 2, 2019, concerning the appeal filed by the Saco School Department of an order made by the City’s Electrical Inspector and the Code Enforcement Officer requiring a de-powering of premises at 5 Willey Road in Saco.”

The motion passed with six (6) yeas and one (1) abstention – Councilor Smart.

VII. AGENDA

A. BUDGET UPDATE (AS OF JUNE, PRE-AUDIT)

Finance Director Glenys Salas reported on the city expenditures and revenues.

General Fund Budget Update

- 1 **Overall** - The General Fund Unassigned Fund balance will close the year much higher than originally anticipated thanks to stronger-than-anticipated revenues and lower-than-anticipated expenditures. As of this review, the Net Operating Income for FY2019 is predicted to be \$1.27 million. This was largely because revenues were \$1.5 million above budget. Economic growth, much stronger than predicted, helped the City earn far more than anticipated on items like interest earnings, excise, development fees, and state revenues. Under-spends were related to open positions in certain departments as well as Fringe benefits lines that had not been audited against actual employee selections for some time. This total is still pending the City's annual audit.
- 2 **Assessor** - 96.9% of budget spent. Assessing spent much of the year with only one full time headcount. Payments made under contracted services to temp help compensated for the underspend on salary lines.
- 3 **Building Maintenance** - 103.8% of budget spent, \$2464 over budget. Heating fuel for City Hall came in \$3631 over budget
- 4 **Capital Projects** - The Assigned Fund Balance for Capital Projects will be transferred to the new Capital Projects account in FY2020, so this item will be fully spent each year going forward. For FY2019, the City rolled forward \$1.9 million in assigned fund balance related to capital projects from FY2018. For FY2020, the City will roll forward \$1.6 million from FY2019.
- 5 **City Administration** - 96.8% of budget spent. The Grants & Projects Specialist position was left vacant from February through the end of the fiscal year.
- 6 **City Clerk** - 95.4% of budget spent. The City Clerk's office was generally under budget across all line items for FY2019.
- 7 **Code Enforcement** - 90.4% of budget spent. The second code enforcement position was not filled until February of this year.
- 8 **Contingency** - 105.7% of budget spent, \$28,329 over budget. \$12,805 of the overspend is associated with Unit 91 expenses that occurred before sale of the property closed. The remaining overspend is due to higher than anticipated legal fees, which have been expended out of this account as they have occurred.
- 9 **Council** - 103.4% of budget spent, \$580 over budget. The travel and training lines were overspent. Although supplies were underspent to compensate for the overage, it was not enough to bring the department in under budget. The updated Council budget for FY2020 will solve this challenge.
- 10 **Finance** - 95.6% of budget spent. Base pay was over budgeted (this has been corrected in FY2020). Travel & Training was under budget due to the timing of annual conferences.
- 11 **Fire/Ambulance** - 97.3% of budget spent. Employee turnover allowed the department to come in under budget. However, the overtime lines were overspent.
- 12 **Fringe Benefits** - Fringe benefits came in \$221,079 under budget. By rolling forward increases, rather than analyzing benefits cost at the employee level, the city has overbudgeted fringe benefits. This was corrected for the FY2020 budget.
- 13 **Information Technology** - 92.1% of budget spent. Licensing fees came in lighter than anticipated. With the reallocation of licensing costs to departmental budgets in FY2020, this will be easier to track.

- 14 Insurance** - 119.4% of budget spent, \$39,504 over budget. Insurance has been consistently under budgeted the last few budget cycles. The realignment of insurance renewals with the fiscal year returned \$161K from non-spendable fund balance to cash, which more than compensates for the \$39K over budget. Additionally, the Finance Director has audited the allocation of insurance premium between the city and school and found that the city was paying too high a portion of premiums. This will save \$63,406 in FY2020 and should bring our insurance premiums in line with budget going forward.
- 15 Parks & Recreation** - 102.2% of budget spent, \$38,794 over budget. Higher than anticipated participation in popular programming for seniors and children required more expenditures in supplies and overtime. This is more than covered by higher-than-budgeted program revenues, which came in nearly \$80K above budget. In essence, Parks & Recreation ended the year net favorable by \$41,117.
- 16 Planning & Economic Development** - 96.2% of budget. This department experienced significant turnover in FY2019. The savings on the economic development specialist role was matched by a lower transfer from the Economic Development Fund.
- 17 Police Department** - 95.2% of budget. Several positions were open for a significant portion of the year. A portion of this was compensated for by overtime, which was \$100K over budget. Savings elsewhere include \$11K saved on electricity and \$18K in savings on maintenance.
- 18 Public Works** - 97.7% of budget. Due to the new public works facility and the need to spend down bond proceeds, there has been less bandwidth for recurring maintenance projects. The end of year underspend of \$134,778 is tighter than the \$180,000, which was used to forecast the General Fund Balance for the approved budget book.
- 19 Solicitor** - 101.9% of budget spent, \$2,309 over budget. As mentioned previously, the City is dealing with significantly higher legal fees than anticipated.
- 20 Supported Entities** - The conservation commission, Coastal Waters Commission, and Economic Development Commission did not spend their full respective budgets.
- 21 Transfer Expense** - 113.5% of budget, \$184,826 over budget. TIF transfers came in \$160K over budget. The remaining overspend is related to the call firefighter retirement fund, and is covered by \$8000 in savings in the Fire Department and use of committed fund balance.
- 22 Assessor** - \$19K in tree growth tax. This item is hard to predict and was therefore not budgeted for in FY2019.
- 23 Building Rentals** - \$19,556 below budget. Accounts receivable is continuing to work to receive the last of the rent owed by the former tenants of the Train Station.
- 24 Cable Television Franchise** - 107.7% of budgeted revenues. Subscription rates have been higher than anticipated.
- 25 City Clerk** - 101% of budgeted revenues. After tracking behind much of the year, the City Clerk ended the year with fees right on target.
- 26 Code Enforcement** - 159.7% of budgeted revenues, \$259,234 above budget. The strong economy has boosted available funding for both business and residential projects.
- 27 Federal Assistance** - Thanks to the hard work of Public Works, in collaboration with HR and Emergency Services, the City was granted \$509,269.53 in FEMA compensation for expenses incurred during the 2018 March Nor'easter. This is \$186,743 above anticipated funding. Public Works has expressed an interest in re-appropriating this incremental revenue from the unassigned fund balance for the creation of a Hazard Mitigation Fund to offset future expenses related to natural disasters.
- 28 Finance Revenues** - 95.9% of budgeted revenues. Lien Fees came in under budget.
- 29 Interest Earnings** - 252.4% of budgeted revenues, \$348,901 above budget! The city has benefitted immensely from a strong repo market in FY2019.
- 30 Planning & Economic Dev** - 219.5% of budgeted revenues, \$89,614 above budget. Finance and Planning collaborated to investigate where planning fees were being deposited in the General Ledger. This exercise uncovered \$96K in revenues that had been erroneously deposited in a liability account. With the fix in place, the City now has visibility into the revenue associated with a strong economy and economic development in Saco. This revenue also reflects fees paid directly to the City for the services of our Site Inspector, approved as part of the FY2019 budget process.
- 31 Police Department Revenues** - 107.3% of budget revenues. The new parking enforcement officer was able to increase revenues, as forecasted, coming in nearly \$10K over budget. False Alarm Fines also came in higher than budgeted thanks to the updated fee schedule.
- 32 Public Works (Excise Tax)** - 115% of budgeted revenues, \$654,601 above budget. Car sales remained strong in FY2019, boosting our Excise Tax revenue.
- 33 Real and Personal Property** - 98.5% of budget, \$492,561 below budget. The Assessor has boosted the overlay for FY2020, so we should not come up short again next year. This gap is more than compensated for by strong Excise, Interest, and State revenues.
- 34 Sale of City Assets** - 98.5% of budget. Aside from the sale of Unit 91, the City budgets a placeholder of \$10,000 each year. This year, we did not have \$10K in assets to sell.
- 35 State Revenues** - 108.1% of budget, \$218,545 above budget. Homestead, BETE, and Revenue Sharing all came in higher than anticipated.
- 36 Transfer Revenue** - 121% of budget, \$220,161 above budget. \$275,133 was transferred from the remaining balance on the energy bond to compensate the General Fund for expenses incurred for the Middle School boiler.
- 37 Unallocated** - 19.5% of budget. The higher budget was related to slush from accounts receivable reconciliations. The budget has been adjusted for FY2020.

General Fund Budget Update

Target through June
100.0%

Net Operating Income (Use of Fund Balance)	1,273,882
plus Use of Designated Fund Balance	253,947
less Increase in Designated Fund Balance	(50,964)
Net Change in Undesignated Fund balance	1,476,864
plus Undesignated Fund balance beginning of Year	6,289,422
	<i>11.27% of Adopted budget</i>

Fund	City General Fund	Undesignated Fund Balance Curr	7,766,286	13.92% of Adopted budget**
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Type	Department	FY2018	FY2019	FY2019	FY2019	FY2019	FY2019	% of Budget Spent	Actual vs. Target*
		Actual	Adopted	Budget	Actual	Encum	Total Spent		
Expense	Assessor	194,032	212,888	219,361	212,250	341	212,590	96.9%	(6,770)
	Building Maintenance	106,555	133,582	64,328	61,601	5,191	66,791	103.8%	2,464
	Capital Projects	3,316,646	2,804,971	4,681,819	2,849,499	17,748	2,867,247	61.2%	
	City Administration	288,501	365,096	391,875	370,184	9,255	379,440	96.8%	(12,435)
	City Clerk	301,768	316,609	340,665	322,727	2,252	324,979	95.4%	(15,685)
	Code Enforcement	333,617	307,465	330,688	297,639	1,376	299,016	90.4%	(31,673)
	Contingency	301,728	165,482	496,554	524,829	54	524,883	105.7%	28,329
	Council	15,381	16,627	16,977	17,378	178	17,557	103.4%	580
	County Tax	1,293,389	1,206,722	1,206,722	1,197,241	0	1,197,241	99.2%	(9,482)
	Federal Assistance	0	0	0	0	0	0		0
	Finance	478,468	468,562	469,103	445,557	2,794	448,351	95.6%	(20,751)
	Fire/Ambulance	3,099,819	3,228,186	3,317,433	3,197,661	29,377	3,227,038	97.3%	(90,394)
	Fringe Benefits	3,722,906	4,366,537	4,080,757	3,858,418	1,261	3,859,679	94.6%	(221,079)
	Human Resources	140,069	180,125	212,923	179,478	32,770	212,247	99.7%	(676)
	Information Technology	430,522	543,871	669,436	526,232	90,176	616,408	92.1%	(53,028)
	Insurance	226,506	203,750	203,750	243,254	0	243,254	119.4%	39,504
	Overlay	0	0	0	0	0	0		0
	Parks & Recreation	1,616,770	1,705,835	1,739,863	1,741,152	37,506	1,778,658	102.2%	38,794
	Planning & Econ Dev	391,278	477,067	462,076	406,937	37,430	444,367	96.2%	(17,709)
	Police Department	3,791,620	3,930,056	4,008,814	3,800,225	14,222	3,814,446	95.2%	(194,368)
	Public Works	5,425,046	5,458,871	5,951,474	5,539,239	277,457	5,816,696	97.7%	(134,778)
	School Budget	23,706,762	27,267,360	27,267,360	27,267,360	0	27,267,360	100.0%	(0)
	Solicitor	165,871	141,670	119,671	115,712	6,267	121,979	101.9%	2,309
	Supported Entities	838,334	966,269	973,169	969,116	0	969,116	99.6%	(4,053)
	Transfers	2,516,859	1,323,765	1,366,696	1,551,522	0	1,551,522	113.5%	184,826
Expense Total		52,702,426	55,791,367	58,591,514	55,695,211	565,654	56,260,865	96.0%	

*Actual vs. target is calculated based on actuals versus % of the year elapsed actuals or versus total budget if actuals are greater than budget.

**May be lower at years' end.

Type	Department	FY2018	FY2019	FY2019	FY2019	FY2019	FY2019	% of Budget Spent	Actual vs. Target*
		Actual	Adopted	Budget	Actual	Encum	Total Spent		
Revenue	Assessor	3,292	(0)	(0)	19,526	(0)	19,526		19,526
	Budgeted Use Of Surplus	(0)	190,130	710,284	(0)	(0)	(0)	0.0%	
	Building Rentals	67,066	55,990	55,990	36,434	(0)	36,434	65.1%	(19,556)
	Cable Television Franchise	358,422	274,860	274,860	295,924	(0)	295,924	107.7%	21,064
	City Clerk	112,507	131,664	131,664	132,930	(0)	132,930	101.0%	1,266
	Code Enforcement	628,619	434,126	434,126	693,360	(0)	693,360	159.7%	259,234
	Federal Assistance	(0)	(0)	(0)	186,743	(0)	186,743		186,743
	Finance	146,731	136,945	136,945	131,359	(0)	131,359	95.9%	(5,586)
	Fire/Ambulance	(0)	(0)	(0)	(0)	(0)	(0)		(0)
	Fringe Benefits	(30)	(0)	(0)	(8,077)	(0)	(8,077)		(8,077)
	Interest Earnings	219,137	228,880	228,880	577,781	(0)	577,781	252.4%	348,901
	Parks & Recreation	903,474	920,184	920,184	1,000,095	(0)	1,000,095	108.7%	79,911
	Planning & Econ Dev	77,609	75,000	75,000	164,614	(0)	164,614	219.5%	89,614
	Police Department	143,660	146,444	146,444	157,189	(0)	157,189	107.3%	10,745
	Public Works	4,457,901	4,282,797	4,282,797	4,937,398	(0)	4,937,398	115.3%	654,601
	Real And Personal Property	42,052,752	44,601,051	44,601,051	44,108,490	(0)	44,108,490	98.9%	(492,561)
	Sale Of City Assets	7,818	10,000	341,012	336,026	(0)	336,026	98.5%	(4,986)
	State Assistance	2,627,967	2,699,993	2,699,993	2,918,538	(0)	2,918,538	108.1%	218,545
	Transfers	1,024,487	1,544,461	1,049,113	1,269,274	(0)	1,269,274	121.0%	220,161
	Unallocated	2,660	58,843	58,843	11,489	(0)	11,489	19.5%	(47,354)
Revenue Total		52,834,075	55,791,367	56,147,185	56,969,093	0	56,969,093	101.5%	

*Actual vs. target is calculated based on actuals versus % of the year elapsed actuals or versus total budget if actuals are greater than budget.

**May be lower at years' end.

B. SACO BAY EROSION RESOLUTION

Councilor Copeland moved, Councilor Johnston seconded to approve the resolution as follows:

Mayor Marston D. Lovell
Councilor Marshall Archer
Councilor Roger Gay
Councilor William P. Doyle



Councilor Lynn H. Copeland
Councilor Alan R. Minthorn
Councilor Micah Smart
Councilor Nathan D. Johnston

Whereas, During the nineteenth century, the primary purpose of the Saco River was the transportation of goods and services to the manufacturing industry and residents of coastal northern York and southern Cumberland Counties. The State of Maine accepted the benefit bestowed by Congress that the distance from the Lower Falls to the mouth of the Saco River would become a Federal channel and harbor. Congress and the President gave this responsibility to the U.S. Army Corps of Engineers with its duties as described by law.

Whereas, During the late Nineteenth Century and early Twentieth Century, the U.S. Army Corps of Engineers advised Congress to broaden the navigational aids to the Saco River by employing jetties. Erosion caused by this construction was recognized nearly immediately and efforts were made during the early and mid-twentieth century to mitigate this erosion. This has not been successful for the North jetty.

Whereas, During the latter half of the twentieth century, Congress recognized the likelihood of erosion caused by U.S. Army Corps of Engineers navigational aids. A law was passed to require that the Corps correct these problems. At this point the Corps refused to acknowledge that the Saco River navigational aids were the problem.

Whereas, During the latter half of the twentieth century, the public gained greater interest in the recreational uses of the Saco River and Saco Bay. Beach front amusements including a pier in Old Orchard built in the first half of the century saw increased activity. Despite the fact that only 70 miles of Maine's 3,500 miles of coast is beach, the state has become known as Vacationland. Erosion has become harmful to this resource as has the sand accretion at the northern end of Saco Bay at Scarborough.

Whereas, In 2006 an independent study on Saco Bay erosion commissioned by the U.S. Army Corp of Engineers concluded that erosion north of the jetty was caused by the jetty. Despite evidence of damage from erosion north of Camp Ellis and damage from sand accretion at and south of Pine Point, the Corps restricted the impact of damage to 2,500 feet north of the jetty.

Be it Resolved that the City of Saco joins with its neighboring communities to ask that the state of Maine, through its Governor, seek sufficient Federal legislation to require the U.S. Army Corps of Engineers to remedy the problems of sand erosion and sand accretion along Saco Bay at no cost to any municipality or the State of Maine.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SACO THIS DAY OCTOBER 21, 2019.

ATTEST:

Michele Hughes, City Clerk

The motion passed with seven (7) yeas.

C. APPLICATION FOR PARK COVENANT AMENDMENT – TODDLE INN BUILDING

At the October 7, 2019 Economic Development Commission meeting, Adrienne Fouts, Attorney for the School

Department, presented the School Department's requests for the contemplated use of Toddle Inn, located at 5 Willey Road, for a public pre-kindergarten program.

Excerpts from October 7, 2019 Economic Development Commission Meeting:

Consideration of two requests dated August 7, 2019 by the Saco School Department for approval, under either Article 5.1, 5.2(I) or 5.13 of the Declaration of Covenants, Conditions, and Restrictions for the Saco Industrial Park – Springhill Section, of its contemplated use of 5 Willey Road under a Lease Agreement with Toddle Inn, dated May 1, 2019.

ACTION: Andrew Goldberg motioned to deny the consideration of the two requests dated August 7, 2019 by the Saco School Department. Andrea Moreshead seconded. Discussion ensued. Ms. Fouts, attorney for the school department, pointed out that the city has the power to grant a nontaxable use in this space and that there does remain taxable personal property on the premises. Bette pointed out that the vote the EDC takes would move on to the City Council as a recommendation, but that the Council may do with it what they will; they don't have to agree or disagree. **The motion to deny passes unanimously and will move forward to the City Council.**

Councilor Doyle moved, Councilor Johnston seconded to deny the Saco School's Department's request to waive or amend Section 5.2 of the City's Park Covenants governing the Spring Hill Section, and thereby not allow a non-taxable use to occupy the premises at 5 Willey Road. The motion passed with six (6) yeas and one (1) abstention – Councilor Smart.

D. RENEWAL APPLICATION FOR SPECIAL ENTERTAINMENT PERMIT – BIDDEFORD SACO COUNTRY CLUB – (PUBLIC HEARING)

The Biddeford Saco Country Club has applied for a renewal of their Special Entertainment Permit. The permit will be concurrent with the establishment's liquor license.

The applicant has paid all applicable permit fees and the clerk has properly advertised the public hearing in accordance with the Saco City Code, Chapter 93 - Entertainment §93-2.

Councilor Copeland moved, Councilor Minthorn seconded to open the Public Hearing. The motion passed with seven (7) yeas.

There were no public comments.

Councilor Copeland moved, Councilor Minthorn seconded to close the Public Hearing and be it ordered that the City Council grant the renewal application submitted by the Biddeford Saco Country Club for a Special Entertainment permit to be concurrent with the establishment's current liquor license. Further move to approve the Order. The motion passed with seven (7) yeas.

E. AMENDMENTS TO CHAPTER 4 – ADMINISTRATIVE CODE – (FIRST READING)

At the June 10th workshop, members of the Coastal Waters Commission brought forward changes to Chapter 4, Article VII, Section 39 that would establish a time limit for an appeal of a decision by the Coastal Waters Commission.

Councilor Copeland moved, Councilor Smart seconded “The City Council approves the first reading of the document titled ‘Amendments to Chapter 4 – Administrative Code, Article VII, Section 39’ and schedules the Public Hearing for November 4, 2019. The motion passed with seven (7) yeas.

Amendments to:

Chapter 4. ADMINISTRATIVE CODE

Article VII. Boards, Commissions and Committees

§ 4-39. Coastal Waters Commission.

A. Duties of the Coastal Waters Commission.

- (1) Establishing policy. The Saco Coastal Waters Commission exists for the general purpose of studying and evaluating public usage of and boating access to coastal waters under the jurisdiction of the City of Saco, planning for its future use, advising the City Council on policy matters and proposing to the City Council regulations concerning the Saco River and the City's coastal waters. The proposed regulations and policies shall be consistent with federal and state law.
- (2) Further duties. In addition, the Commission shall review and cooperate in maintenance and care of City-owned waterfront facilities with the Harbor Master and Public Works Department and plan harbor improvements in conjunction with the City, state and federal authorities. The Commission shall sit as a Board of Appeals to hear an appeal from any person aggrieved by any decision, act or failure to act of the Harbor Master. The Commission shall regularly inform the City Council and other boards, committees, commissions or officials of the City, as is appropriate, of its activities.

B. Organization.

- (1) The Coastal Waters Commission shall consist of seven members, appointed by the Mayor and confirmed by the Council. Each Commissioner shall be a resident of the City and shall serve without compensation. **[Amended 9-16-2002]**
- (2) Neither a municipal officer nor his/her spouse may be a member of the Commission.
- (3) Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.
- (4) Commissioners may be removed by the City Council for cause, after notice and hearing. A Commissioner shall forfeit his/her membership on the Commission if he/she fails to attend three consecutive regular meetings of the Commission without being excused by the Commission. The Chairman of the Commission shall notify the Mayor of the forfeiture of office by a Commissioner.
- (5) The term of office of a member shall be three years. Members may be appointed for a maximum of two consecutive three-year terms but may be appointed again after one year off the Commission. Each Commissioner shall be a resident of the City, shall be persons qualified to perform the duties of such office and shall serve without compensation. **[Amended 9-16-2002; 5-15-2007]**

C. Procedure.

- (1) A Chairman and a Secretary shall be elected by the Board in April of each year.
- (2) The Chairman or City Administrator shall call meetings of the Commission as required. The Chairman shall also call meetings of the Commission when requested to do so by a majority of the members or by the Mayor. The Commission shall meet at least twice per year, semiannually, to conduct official business. A quorum of the Commission necessary to conduct an official Commission meeting shall consist of at least four members. The Chairman shall preside at all meetings of the Commission and shall be the official spokesman of the Commission. **[Amended 5-15-2006]**
- (3) The Secretary shall maintain a permanent record of all Commission meetings and all correspondence of the Commission. The Secretary shall be responsible for maintaining those records which are required as a part of the various proceedings which may be brought before the Commission. All records to be maintained or prepared by the Secretary are deemed public and shall be filed in the Municipal Clerk's office and may be inspected at reasonable times. The City Administrator may assign secretarial help to do minutes and other clerical work of the Commission.
- (4) The Commission shall adopt rules of procedure, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Commission upon good cause shown.

D. Procedure for appeals from decision of the Harbor Master.

- (1) **Jurisdiction.** The Coastal Waters Commission shall hear any appeal by any person affected directly or indirectly by any decision, order, rule, act or failure to act of the Harbor Master. In deciding any appeal, the Commission shall hear and approve, approve with modifications or conditions or disapprove the decision, order, rule, act or failure to act of the Harbor Master from which the appeal is made. The Commission's decision shall be made within 30 days of the filing of the appeal.
- (2) **Evidence.** The Commission may receive any oral or documentary evidence but shall provide, as a matter of policy, for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- (3) **Record of proceedings.** The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become part of the record and shall include a statement of findings and conclusions, as well as the reasons and/or basis therefor. Notice of any decision shall be mailed or hand-delivered to the petitioner, his/her representative or agent, agency or office, the City Administrator, City Clerk, Mayor and City Council within seven days of the Commission's decision.
- (4) **Appeal.** An appeal may be taken from any act or decision of the Coastal Waters Commission ~~by notice to the City Council by the appealing party within 30 days of such act or decision, by appeal to the City Council. Council must be notified of any appeal within 30 days of notice of decision by the Coastal Waters Commission.~~

E. **Interlocal cooperation.** The municipal officers of the City of Saco recognize the aesthetic beauty and environmentally sensitive condition of the Saco River, its harbors and the coastal waters of Saco Bay and fully recognize the City's obligation to the citizens of Saco and future generations to protect such a natural resource. The City Council further recognizes that the City of Biddeford also has an obligation to its citizens to protect these natural resources and, in the spirit of cooperation, hereby authorizes that the Coastal Waters Commission of Saco join with a similar Commission created by the City of Biddeford to address and incorporate community needs and wishes. The Commission shall have no police powers nor authority to create regulations or ordinances or to commit funds, but shall exist for the general purpose enumerated in Subsection A(1), Establishment of policy.

F. AMENDMENTS TO CHAPTER 118 – HARBOR, RIVER AND WATERFRONT – (FIRST READING)

At the June 10th workshop, members of the Coastal Waters Commission brought forward changes to Chapter 118 that would strengthen the language in the ordinance and create a Harbor Master position that would be Maine Criminal Justice Academy (MCJA) certified.

Since that time, the Public Works Director, Police Chief, and Finance Director have reviewed and made additional recommended changes.

Councilor Copeland moved, Councilor Minthorn seconded “The City Council approves the first reading of the document titled ‘Amendments to Chapter 118 – Harbor, River, and Waterfront’ and schedules the Public Hearing for November 4, 2019. The motion passed with seven (7) yeas.

Amendments to:

Chapter 118 - Harbor, River, and Waterfront

[**HISTORY:** Adopted by the City Council of the City of Saco 5-16-2006; amended in its entirety 1-22-2013. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Animals on beaches — See Ch. 64, Art. I, and the Saco Beach Management Plan

Article I

General Regulation of Waters

§ 118-1 **Title; purpose.**

This chapter shall be known as the "~~Saco River~~, Harbor, River, and Waterfront Ordinance." This chapter is hereby adopted by the City of Saco to ensure the proper operation of recreational and commercial watercraft, and to promote the equitable recreational and commercial use and safe enjoyment and recreational use of the City's waters, which includes all waters adjacent to riverfronts and beaches within the City of Saco, as well as the Camp Ellis pier facilities.

§ 118-2 **Scope and enforcement.**

No provision of this chapter shall be interpreted as conflicting with federal and state laws applicable to the coastal waters, tidal rivers and harbors of this state, but shall be read as supplementing said laws where applicable. This chapter shall be enforced by the City through its designated Harbor Master, Harbor Patrol and other subordinates or designees.

§ 118-3 **Definitions.**

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates another meaning:

BEACH

Refers to that shoreline area directly adjacent to bodies of water, which is customarily comprised of sand, ledge, or loose rock.

BEACHING PILINGS

Pilings installed adjacent to the landing for purpose of pier user permit holders' boat maintenance.

BERTH

The place where a vessel lies when at anchor, on a mooring or at a wharf.

CAMP/CAMPING

The building of and/or occupation of any shelter, tent, lean-to, or other structure or vehicle intended to provide its occupants refuge from the weather.

CHANNELS

Areas of the harbor and river kept open for navigation or other purpose by rule or regulation of the City Council, the Department of the Army Corps of Engineers, the Harbor Master or other regulatory or legislative body.

CHARTER VESSEL

A vessel that carries passengers for hire to engage in sightseeing or fishing.

COASTAL WATERS

Those waters adjacent to all shorelines within the City of Saco, including beaches and riverfront.

COMMERCIAL VESSEL

A vessel engaged in commercial fishing ~~for profit~~ which generates taxable income from fishing.

DISORDERLY CONDUCT

(per 17-A M.R.S.A., § 501-A) In a public place, a person intentionally or recklessly causes annoyance to others by intentionally:

[Amended 2-3-2014]

- A. Making loud and unreasonable noises; or
- B. Activating a device, or exposing a substance, that releases noxious and offensive odors; or
- C. Knowingly fighting, accosting, insulting, taunting or challenging any person with offensive, derisive or annoying words, or by gestures or other physical conduct, that would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged; or
- D. Obstructing or littering.

DOCK

The slip or waterway extending between two piers or projecting wharves or cut into land for the reception of vessels.

DOCK STEWARD

A City employee responsible for overseeing the day-to-day safe and effective operations at the Camp Ellis Pier.

FLOAT

A platform that floats and is anchored at or near shore or attached to a pier, used for landing or other purposes. Floats may be designated as general purpose; commercial; charter boat; or, maintenance.

HARBOR

The tidal waters within the geographical limits of the City from the high tide watermark to the three-nautical-mile line shown on the most recently published federal government nautical chart. It shall specifically include Saco Bay and all portions of the Saco River.

HARBOR MASTER

The officer appointed by the Director of Public Works to enforce this chapter and oversee the jurisdiction area of the River and Harbor.

HARRASSMENT

(per 17-A M.R.S.A, § 506-A) A person is engaged in harassment if, without reasonable cause: the person engages in any course of conduct with the intent to harass, torment or threaten another person, after having been notified, in writing or otherwise, not to engage in such conduct by any sheriff, deputy sheriff, constable, police officer or justice of the peace or person of equivalent authority.

HEADWAY SPEED

Refers to the minimum amount of power necessary to allow a vessel to navigate safely through the water. Depending on the size, composition and design of the vessel, headway speed may vary.

INNER HARBOR

Refers to the area from green can buoy No. 7 to the area known as the Lower Narrows and encompasses all of Camp Ellis.

LANDING

A place for landing and discharging persons or things, as from a vessel.

MOORING

The means of securing a vessel to a particular location in City waters, other than temporarily by anchor. Dock, pier, wharf or float tie-ups are not moorings. A vessel is considered to be moored if at anchor for more than 48 consecutive hours.

OBSTRUCTING or LITTERING

The throwing of large rocks or debris as to impede the navigable river.
[Added 2-3-2014]

PIER

A structure extending into navigable water for use as a landing place or to protect or form a harbor. This definition will include breakwaters, jetties and commercial locations used for the loading and unloading of cargo.

PIER USE AGREEMENT

A contract between a pier user and the City of Saco that documents the proper care and allowed uses of the Camp Ellis pier facilities which must be signed by the prospective user prior to issuance of a pier use permit.

PIER USE PERMIT

A document detailing the level and location of pier use allowed for each permitted vessel, as defined below:

- A. **COMMERCIAL VESSEL PIER USE** Allows commercial vessels paying the appropriate fee the priority use of the designated floats, pier, and hoists for the unloading of perishable product, as well as use of the fuel facility (if available).
- B. **CHARTER VESSEL PIER USE** Allows charter vessels paying the appropriate fee the use of the pier, designated floats, pier and hoists, as well as the fuel facility (if available).
- C. **RECREATIONAL VESSEL PIER USE** Allows recreational vessels paying the

appropriate fee use of the designated floats for loading and unloading. Limited occasional use of the pier, hoists, and fuel facility (if available) is allowed at the discretion of the Harbor Master.

PORT

Includes Saco Bay, the City wharves at Saco, together with all known landings and any other public landings or wharves that might be acquired by the City of Saco.

RECREATIONAL VESSEL

A vessel used solely for personal recreation.

RENTAL AGENT

Any person, firm, proprietorship or corporation that rents canoes, kayaks, sailboats under 20 feet in length, personal watercraft and/or motorized watercraft under 22 feet in length to the general public for a fee.

SAFETY EQUIPMENT

Includes, but is not limited to, signals, flares, horn, fire extinguisher and personal flotation devices as defined in federal law per the Federal Boat Safety Act of 1971, U.S. Code of Regulations, Maine Revised Statute, Title 12, Chapter 308, Watercraft Registration and Safety, Public Law 92-75, as amended.

VESSEL

Includes boats of all sizes, propelled by sail, machinery or hand; scows, dredges, shellfish cars and craft of any kind.

WHARF

A structure of timber, masonry, cement, earth or other material, built on the shore of a harbor, river, canal or the like, especially one extending parallel to the shoreline, so that vessels may lie close alongside to receive and discharge passengers and cargo.

§ 118-4 Governance.

The safe use and enjoyment of Saco's coastal waters depends upon several parties including the Harbor Master, the Harbor Patrol, Dock Stewards and the Coastal Waters Commission. Each of these parties shall have and enjoy the responsibilities set forth below:

- A. Coastal Waters Commission. In addition to those duties delineated in § 4-39 of this Code, the Coastal Waters Commission shall review, evaluate and make a recommendation to the Director of Public Works on the new appointment of the Harbor Master. The Commission shall also handle all appeals of decisions made by the Harbor Master pursuant to § 4-39 of this Code.
- B. Harbor Master. There shall be a Harbor Master appointed by the ~~Director of the Department of Public Works (Public Works) Chief of Police~~. The Harbor Master will be under the direction of the ~~Director of Public Works who will act as his/her immediate supervisor~~ Police Department. ~~He or she~~ The Harbor Master shall also have those duties and liabilities of that office as prescribed by state law, municipal ordinances and regulations adopted by the municipal officers, Coastal Waters Commission, or such other bodies empowered to regulate municipal harbors and specifically assigned herein. The Harbor Master may appoint deputies who, under the Harbor Master's direction, shall enforce and carry out the rules and regulations of this section (38 MRSA Chapter 1 (2)). The Harbor Master's specific duties shall include:
 - (1) The proper designation of channels. Channels for the passage of boats shall be designated on the plans of the Saco River, dated November 5, 1963, and filed with the City Clerk, and as updated from time to time. Said plans are hereby incorporated by reference as part of this chapter. Said channel shall also remain consistent with the United States Army Corps of Engineers designation of the tidal portion of the Saco River as a navigational project.

- (2) The assignment and location of anchorages. Vessels shall be anchored in the harbor in such places or areas as the Harbor Master shall designate. The Harbor Master may at any time order any vessel at anchor to change position when, in ~~his or her~~their opinion, such vessel is so anchored as to impede navigation or to endanger other vessels. Anchorages shall also remain consistent with the United States Army Corps of Engineers designation of anchorages within the Saco River Project.
 - (3) The assignment and monitoring of moorings and buoys. The placement of moorings is vital to safety in the coastal waters. The assignment, regulation and removal of all moorings and buoys shall rest with the Harbor Master as more fully detailed in § 118-5 below. The location of each mooring shall be identified by GPS coordinates, and is subject to change at any time at the discretion of the Harbormaster as conditions dictate.
 - (4) Implementation of this chapter. The Harbor Master shall be the party primarily responsible for assuring the goals and purposes of this section are met except where otherwise specifically noted. The Harbor Master shall enforce all provisions related to moorings, as well as §§ 118-13 through 118-20 of this chapter.
- C. Harbor Patrol. There shall be a Harbor Patrol which shall be comprised of law enforcement officers under the direct direction and supervision of the Saco Chief of Police. The duties of the Harbor Patrol shall include:
- (1) The Harbor Patrol will be responsible for ensuring that safe boating practices are used within the coastal waters and for the enforcement of City ordinances and state law.
 - (2) The Harbor Patrol shall have specific authority to enforce §§ 118-6 through 118-14 of this chapter.
 - (3) The Harbor Patrol will typically operate from Memorial Day weekend to Labor Day weekend or longer, as determined by available resources and the Chief of Police.
- ~~D. Dock Steward. There shall be Dock Stewards from time to time. The Director of the Public Works, will hire one or more seasonal employees to serve as Dock Steward at the Camp Ellis Pier. The Dock Stewards will be responsible for the safe and orderly execution of daily operations at the pier. The stewards are a conduit between the Harbor Master and Public Works, and the users and visitors to the Camp Ellis Pier. The Dock Steward(s) will typically serve Tuesday through Sunday from Memorial Day weekend through Labor Day weekend, and on selected weekends prior to Memorial Day or after Labor Day, at the discretion of the Director of Public Works. Specifically, the Dock Steward(s) will~~
- ~~E.~~
- ~~F. Collect and record boat launch, dock use and daily pier use fees and deposit fees collected at City Hall daily.~~
- ~~G.~~
- ~~H. Welcome vessel captains and greet passengers, inform visitors of docking rules and fees. Courteously answer questions regarding local services available (i.e., restaurants, taxi, supplies, etc.)~~
- ~~I.~~
- ~~J. Record vessels using the docks to include vessel registration numbers, arrival and departure times.~~
- ~~K.~~
- ~~L. Assist boaters with sewage tank pump-out operations (when the service is available).~~
- ~~M.~~
- ~~N. Assist visitors with proper parking meter use.~~
- ~~O.~~
- ~~P. Approve overnight parking waivers, when appropriate, and notify Public Works and the Police Department.~~
- ~~Q.~~
- ~~R. Perform other duties as directed by the Director of Public Works or the Harbor Master to ensure safe and effective operations at Camp Ellis Pier.~~

§ 118-5 Moorings and buoys.

A. Assignment of mooring locations.

~~(1)~~ The available locations for moorings within the coastal waters of the City of Saco are limited. Therefore, moorings are considered a limited resource which must be managed in an equitable manner, allowing maximum benefit of the resource. Accordingly, under-utilized or abandoned moorings, as further defined below, will be re-assigned. No mooring permit may be issued unless a mooring location has been assigned by the Harbor Master.

~~(2)~~ No mooring shall be set within City waters except by permission of the Harbor Master. Any person wishing to place a mooring in City waters or to relocate an existing mooring shall request such permission in advance from the Harbor Master. Annually, the Harbor Master shall prepare an updated list of approved mooring holders and provide it to the City Clerk by January 1. Only applicants appearing on the current approved mooring holders list may submit a mooring permit application to the City Clerk. Following acceptance of the application by the City Clerk and the payment of the appropriate fee, and provided the conditions in Subsection B(7) are met, the Harbor Master shall then assign a location for such mooring and shall advise the applicant concerning the requirements of these rules and regulations. Moorings set without authorization may be removed at the owner's expense by the Harbor Master.

~~(3)~~ In the assignment of mooring locations, the Harbor Master shall, insofar as the same may be done consistently with these rules and regulations and with due regard for the safety of other vessels and of navigation, give consideration to the choice of the applicant. However, where mooring rights of individuals are claimed to be invaded and protection is sought of the Harbor Master, the Harbor Master shall assign and indicate to the masters or owners of the vessels the location which they may occupy for said mooring, and the Harbor Master shall assign mooring privileges in all cases where individuals who own or have an interest in the shore rights are complainants and shall locate suitable mooring privileges temporarily or permanently, fronting their lands if so requested, but not so as to encroach upon the natural channel or channels established by this chapter. Moorings shall be set by July 30 of each year. The location of each mooring is subject to change at any time at the discretion of the Harbormaster as conditions dictate.

~~(4)~~ The City Clerk Hall shall maintain a waiting list, with a registration fee established by the City Council, after a public hearing.

~~(5)~~ The Harbor Master, based upon the waiting list, shall authorize moorings on a first-come-first-served basis, except that commercial harbor users may be given priority for facilities developed for commercial users with federal funds. The Harbor Master will provide the updated lists to the City Clerk on May 1, July 1 and October 1 each year and at other times when requested. The lists shall be provided to any member of the public who requests them. If there is a dispute about mooring assignments, the Saco Coastal Waters Commission shall hear appeals from the decisions of the Harbor Master.

~~(6)~~ Any permit issued hereunder may be revoked if the Harbor Master determines that any portion of a permit holder's application contains false or misleading information. Any revocation may be appealed as set forth herein. **[Added 2-3-2014]**

B. Application for mooring permits.

(1) Applications for mooring permits for any one-year period must be filed with the City Clerk by March 15 of the current year, on forms prescribed by the Saco Coastal Waters Commission. Applications and payment for renewal of a mooring permit which have not been received within 60 days of the permit application filing date will cause that mooring location to be deemed vacant, and the mooring location reassigned. Applications received during the sixty-day period are subject to a late fee. **[Amended 2-3-2014]**

(2) The City of Saco mooring permit application form contains additional rules and

regulations regarding use and placement of moorings, which are adopted herein by reference. The address of the applicant supplied with the permit application shall serve as the address of record for all purposes of notice where notice is required in this chapter.

- (3) Permits shall be ~~issued~~ effective for one calendar year (January 1 to December 31). They are at all times a revocable license issued subject to the terms herein, and under no circumstances will they be treated as, or deemed, a property right. **[Amended 2-3-2014]**
- (4) Any mooring location not occupied by the vessel or float registered to it, or a vessel of equal or lesser gross tonnage owned by the mooring permit holder, for at least one day in each of three out of the five months during the period May 1 through September 30 during the permit year ~~may be~~ is considered to be abandoned. The location ~~may will~~ be reassigned ~~by~~ at the discretion of the Harbor Master, after the Harbor Master has first given the registrant ~~30-14~~ 14 days' advance written notice at ~~his/her last known~~ the address of the mooring application address (certified mail, return receipt). The cost of removing moorings or dropping mooring chains shall be assessed to the owner if not removed by him within 30 days of receipt of said notice, in accordance with state law. The Harbor Master shall have the authority to waive the monthly occupancy requirement on extenuating circumstances such as a commercial fishing vessel's need to be off the mooring or other unforeseen absence from the area. Waivers granted shall not be effective for more than one (1) year. Notwithstanding the above, this subsection will not apply to a mooring whose owner has notified the Harbor Master that such mooring will not be occupied due to prolonged absence from the area, illness, or other extenuating circumstances, provided the permit is timely renewed annually as required by this chapter. **[Amended 2-3-2014]**
- (5) The annual application fee for the waiting list shall be established by the City Council after a public hearing.
- (6) Moorings are not transferable except as provided by 38 M.R.S.A. Chapter 1 § 3-A, which provides for the transfer of commercial moorings only, under certain specific circumstances.
- (7) A person may be denied a mooring permit if they are found to have previously violated this chapter without good cause; or if they are in arrears of any City tax or fee.

C. Adequacy of moorings. All existing moorings hereinafter to be set shall be of sufficient size to hold the vessel for which they are used. All moorings shall have approved buoys and must be visible at all times. All mooring requirements will be determined by the Harbor Master. Guidelines on mooring block weight, attachment requirements and chain-link size are listed below and on the mooring permit application.

Maximum Boat Length (feet)	Maximum Boat Weight (gross pounds)	Minimum Mooring Weight (pounds)	Minimum Chain Link Size (inches)
12	500	350	3/8
20	1,500	750	3/8
25	5,000	1,500	1/2
30	8,000	1,800	1/2
35	12,000	2,500	1/2
40		3,500	5/8

D. Inspections of moorings. The Harbor Master or ~~his/her~~ their designee shall inspect moorings biannually. It is the permit holder's responsibility to contact the Harbor Master to arrange for inspections. Two visits by the Harbor Master are included in the mooring application fee; any additional visits required to complete an inspection shall be at the applicant's expense.

E. Manner/condition of moorings:

- (1) All mooring floats shall meet United States Coast Guard regulations.
- (2) The float attached to the mooring line shall be of sufficient size to remain afloat

when not attached to the vessel.

- (3) The Harbor Master may at any time examine any mooring or mooring line to determine compliance with this section. Except in the case of an emergency, ~~he the Harbor Master~~ shall notify the owner of ~~his or her~~ intention to examine the mooring, either in writing or verbally, and request the presence of the owner during such examination. Any cost of examination shall be borne by the owner of the mooring.
 - (4) If a party fails to properly maintain ~~his/her~~ its mooring, float or cable, the Harbor Master will, in writing (by certified, return receipt mail), issue a ~~seven-day~~ notice-to-cure letter effective seven days from the date of mailing. If the offending party fails to correct the deficiency identified by the Harbor Master within seven days, the party's mooring permit shall thereafter be revoked upon the filing of a written decision from the Harbor Master to the City Clerk with copies provided to the offending party and the Coastal Waters Commission.
 - (5) Vessels on moorings must be properly maintained to minimize hazards to other vessels, including: **[Added 2-3-2014]**
 - (a) The vessel must be capable of moving under its own mechanical means.
 - (b) Sail, lines, halyards and sheets must be secured at all times when the vessel is not occupied.
 - (c) All accessories, anchors, lines, poles, etc., must be secured and within the gunwales of the vessel.
 - (d) Nothing may be trailing behind a moored vessel or protruding from the vessel that can damage another vessel.
 - (e) Failure to properly maintain a moored vessel may result in revocation of the mooring permit.
 - (6) All moorings, whether now existing or hereinafter set, shall be so located or relocated that the vessels secured thereby will not impede navigation within City waters nor endanger other vessels moored therein. If the Harbor Master shall find that any vessel is so moored as to impede navigation or to endanger other vessels, ~~he the Harbor Master~~ may require that the owner of the mooring or of the vessel secured thereby take such steps, whether by shortening the scope of the mooring lines or by the use of additional mooring or mooring lines, as will prevent such impeding of navigation or endangering of other vessels; or, in the alternative, ~~he the Harbor Master~~ may order that the mooring be removed and relocated. In requiring the removal of a mooring because of its danger to others, the mooring last set shall be the first ordered to be removed. Any person so ordered by the Harbor Master acting under this subsection shall remove a vessel within 48 hours after order, whether written or verbal; provided, however, that if the mooring owner fails to do so, then the Harbor Master shall thereupon cause the mooring to be removed or relocated. Any expense incurred by the City to move or remove a mooring shall be borne by the owner of the mooring or vessel. **[Amended 2-3-2014]**
 - (7) If in the sole opinion of the Harbor Master a mooring creates an emergency or imminently dangerous condition, or if immediate action is required to ensure proper navigation and safety, the Harbor Master may temporarily, without notice to the permit holder, take possession of the mooring and temporarily remove and/or secure it until such time as the permit holder can be notified. The parties shall thereafter determine together the appropriate terms and conditions for re_siting and re_installing the mooring.
- F. The Harbor Master shall hold all moorings and tackle removed from coastal waters as a lien against all fees, fines and costs incurred as a result of the acts, actions or inactions of any mooring permit holder. No such equipment shall be returned until all such charges are fully paid.
- G. Interference with moorings. Except by direction of the Harbor Master acting in an emergency or with permission of the owner, no person shall move or interfere with any mooring or vessel in the harbor.

H. Removal. **[Amended 2-3-2014]**

- (1) A mooring shall be removed after September 30, unless it is still in use by its owner. If not removed by its owner, the Harbor Master shall see to its removal at the expense of the mooring owner. The mooring and ground tackle shall not be returned to its owner until such bill is paid.
- (2) All noncommercial vessels shall be removed from the river by December 1. Moorings re-located to tidal flats for the winter season must be maintained by the mooring owner and moved to the assigned mooring location by July 30. Moorings that will not be used must be removed to the storage area

I. Waiver procedures.

- (1) A mooring permit holder may request a temporary waiver to the mooring requirements stated in this chapter by submitting a written request to the Harbor Master. A waiver will not be granted for a violation that impacts safe navigation on the Saco River. The waiver request must clearly state:
 - (a) Mooring number;
 - (b) Name and current address and phone number of the permit holder;
 - (c) The nature of the waiver (e.g., inability to position or remove an authorized mooring, inability to attach a boat to an authorized mooring, inability to pay for a mooring in a timely manner);
 - (d) The reason the waiver is needed; and
 - (e) Expected date for compliance (date the permit holder will make corrections or come into compliance with mooring requirements).
 - (2) The Harbor Master will notify the permit holder of ~~his~~ their decision to approve or disapprove the waiver in writing and provide a copy of the written decision to the City Clerk, the ~~Director of Public Works~~ Police Chief, and the Coastal Waters Commission. If the Harbor Master must disapprove the waiver request, the Harbor Master will send the decision via certified mail return receipt requested to the address of record. The permit holder can appeal the Harbor Master's decision to the Coastal Waters Commission.
 - (3) Waivers for medical conditions may be granted for a maximum of one permit year. **[Added 2-3-2014]**
 - (4) Waivers for mechanical conditions may only be granted for moorings which have been in use during the permit year. **[Added 2-3-2014]**
 - (5) Waivers and associated mooring privileges may be revoked if the Harbor Master determines that the waiver request misrepresented the facts and/or conditions that form the basis for the waiver request. **[Amended 11-4-2014]**
- J. Buoys other than for mooring vessels. No buoy of this type shall be placed in channels leading to wharves, nor shall such buoys be placed less than 150 feet from a mooring buoy for that vessel. The Harbor Master is empowered, in the interest of public safety, to require the removal of any buoys.

Article II

Prohibited or Restricted Actions

I. Enforcement by ~~Harbor Patrol~~ Harbor Master. The following provisions of this ~~Subarticle I~~ Article shall be enforced by the Harbor Patrol as part of law enforcement activities.

§ 118-6 Waterskiing and aircraft.

- A. Vessels towing water-skiers and aquaplanes. There shall be no waterskiing in congested mooring areas, anchorage areas or in ~~speed-limit-areas~~no wake zones. No person shall operate a vessel while towing water-skiers, aquaplanes or similar devices unless there is present in said vessel, in addition to the vessel operator, another person in a position to observe and assist the person or appurtenance being towed. The operator of such a vessel will be held responsible for compliance with the navigating rules for both the vessel and the person or appurtenance being towed. Except in connection with water carnivals and exhibitions authorized by the City Council, no such activity may be conducted during the period between 1/2 hour after sunset and 1/2 hour before sunrise. Special waterskiing areas will be designated by the City Council.
- B. Water-ski jumps. No person shall locate or use on the public waters under the jurisdiction of this Council a water-ski jump without first obtaining the approval of the City Council or its duly authorized representative.
- C. Aircraft. Aircraft shall be governed by the appropriate rules and regulations of the Maine Aeronautics Commission, excepting that they shall observe the same mooring and anchorage rules and regulations that apply to vessels.

§ 118-7 Imprudent operation of vessel.

A person may not intentionally, knowingly or recklessly operate a vessel in violation of state law (38 MRSA Chapter 1, Subchapter 7~~Title 12~~).

§ 118-8 Failing to report collision or accident.

- A. The owner, captain or operator of a vessel involved in a collision with another vessel, a wharf, pier, landing, dock or other fixed object within the harbor; a fire on-board; or an accident as defined by the United States Coast Guard, must report such collision to local law enforcement, Harbor Master, or the ~~Harbor Master~~Maine Marine Patrol by the quickest means available.
- B. Failing to report such collision, fire or accident, regardless of visible damage or injury, constitutes a violation of this section.

§ 118-9 Endangerment of life or property.

- A. A person is guilty of endangerment of life or property if that person:
 - (1) Operates a vessel and fails to have a proper lookout while towing a water-skier; or
 - (2) Operates a vessel and fails to require a water-skier to wear a personal flotation device (PFD); or
 - (3) Operates a vessel and permits a passenger to ride on the swim platform or bow while underway; or
 - (4) Operates a vessel and engages in "teak surfing," "drag surfing" or otherwise allows someone to physically hang onto the stern, transom, swim platform or gunnels of a vessel; or
 - (5) Water-skis without wearing a personal flotation device (PFD) designed and approved for water skiing; or
 - (6) Rides or physically hangs onto the stern, bow, transom, swim platform or gunnels of a vessel while underway.
- B. The provisions of this section do not apply to emergency personnel in the performance of their duties; emergency situations in which this activity could not be avoided; or the use of approved recreational equipment designed to be towed behind a vessel as long as the distance behind the vessel is adequate to prevent injury from moving parts, fuels and/or carbon monoxide gases.

§ 118-10 **Beach restrictions.**

- A. ~~Alcoholic beverages.~~The consumption or possession of alcoholic beverages is prohibited on any beach. For the purposes of this section, any person found within reasonable reach of an alcoholic beverage is deemed to be in possession.
- B. Vehicles are prohibited on any beach. No motorized or vehicular traffic of any kind may enter or use the beach for any purpose, with the exception of public safety vehicles and those City vehicles designated for public works purposes.
- C. Overnight camping on beaches is prohibited. No person or group may camp or otherwise set up temporary, overnight shelter on a beach for any purpose. "Overnight" is defined as any time following sunset and before sunrise.
- D. Camp fires or burning on beaches is prohibited. No person or group may have a camp fire or otherwise burn on a beach for any purpose.
- ~~D-E.~~ See the City's Beach Management Plan for further information on these restrictions and other expectations and rules.

§ 118-11 **Headway speed only zones.**

- A. Headway speed only zones shall be established by the Coastal Waters Commission for the tidal areas of the Saco River and Saco Bay.
- B. Designated headway speed only zones will be marked appropriately with buoys, signs or other reasonable markers likely to come to the attention of boaters. All types and locations of markers or buoys placed into the river or harbor will be approved by the authority having jurisdiction over navigable waters.
- C. Once approved, buoys will be placed in the designated areas by the Harbor Master or by an independent contractor hired by the City with the recommendation of the Harbor Master and Coastal Waters Commission. Placement of buoys or markers within the areas shall be at the discretion of the Harbor Master.
- D. These zones will be reviewed periodically to ensure that they do not conflict with state or City law and reflect the needs of the citizens of Saco.
- E. Pursuant to 38 M.R.S.A. § 281, whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of Saco or upon the offshore waters within the jurisdiction of the State of Maine at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing shall be guilty of a Class E crime. Further pursuant to 38 M.R.S.A. § 285, every law enforcement officer in the State of Maine, including harbor masters and their deputies, shall have the authority to enforce these laws, and in the exercise thereof shall have the authority to stop and board any such watercraft, vessel, or motorboat found in violation. It shall be unlawful for the operator of any such watercraft, vessel or motorboat to fail to stop upon hail from any such officer, and a violation of the same shall be punished as a Class E crime. **[Added 2-3-2014; amended 3-17-2014]**

§ 118-12 **Use of dune area.**

- A. No traffic of any kind, vehicular or pedestrian, may enter or use any area of the beach wherein so-called dune grass is growing. It shall also be a violation of this section to burn, crush, uproot, poison or in any other manner kill, injure or remove any dune grass or any other vegetation growing on the beach.
- B. For the purposes of this section, subsequent violations will have been committed for each square foot of dune grass damaged, injured or destroyed.

~~H. Enforcement by Harbor Patrol or the Harbor Master.~~

§ 118-13 **Waste and refuse.**

No person or vessel shall discharge, deposit, throw, sweep or cause to be deposited or swept into or upon the waters of Saco or into waters adjacent thereto any gas, fuel, coolant, oil, bilge water, human waste, ashes, dirt, stone, gravel, mud, logs, planks or any object or substance tending to pollute or obstruct the harbor or waters adjacent thereto or to shoal the depth of said waters. No person or vessel shall discharge, dump or dispose of any refuse, garbage, offal, gas, oil, fuel, coolant, waste, fish waste, or any other object or substance tending to pollute upon any shore of the City of Saco.

§ 118-14 **Disorderly conduct.**

No person shall conduct him or herself ~~or utilize the facilities in such~~ a manner that disrupts the ~~use or~~ enjoyment of the pier and its facilities by other pier users. Such conduct may result in the forfeiture of pier use permission after:

- A. First instance, a verbal warning by the Harbor Master;
- B. Second instance, a written warning by the Harbor Master; and
- C. Third instance, revocation of pier use permit.

~~III. Enforcement by the Harbor Master.~~

§ 118-15 **Derelict vessels.**

An owner, captain or operator of a vessel allows that vessel to become derelict if:

- A. The vessel lacks any license or registration, the prerequisite of which is required by state or local authority to allow operation of such vessel in the harbor;
- B. The vessel is submerged to a level substantially above its normal water line and remains so for a period greater than 48 hours;
- C. The vessel is damaged to the extent that it cannot be moved under its own power; or
- D. The owner, captain or operator of the vessel has failed or refused to comply with the lawful orders of the Harbor Master, ~~Assistant Deputy~~ Harbor Master or a law enforcement officer. A violation of this section will have a mandatory minimum fine of \$250 that may not be suspended;
- E. The owner of the vessel has failed or refuses to pay any applicable license fee, excise tax, harbor usage fee, mooring fee, dock or landing fee or any other service fee imposed by the City or Harbor Master. A violation of this section will have a mandatory minimum fine of \$250 that may not be suspended.
- F. Disclosure of vessel ownership. ~~This section Applications for pier use or mooring permits must disclose the~~ requires the disclosure of ownership of any vessel operating within the statutory limits of the City of Saco and further requires disclosure of all corporate, partnerships, trusts and any other nonindividual, including those persons undisclosed, anonymous or otherwise unidentifiable principals, responsible for the maintenance of property and vessels and accountable with respect to violations of this chapter.
- G. Order of disposal; abatement of violation by the City and recovery of costs.
 - (1) When the Harbor Master, after notice in writing to the owner of any derelict vessel by regular mail or by publication in a newspaper in the county three weeks successively, and after a hearing on such matter, adjudge that such vessel was or is derelict, dangerous or a nuisance, they may make and record an order prescribing what disposal shall be made thereof. The City Clerk shall deliver a copy of such order to a constable or deputy sheriff, who shall serve such owner, if the owner is a resident of the state, with an attested copy thereof, and make return of ~~his or her~~ actions thereon to the Clerk forthwith. If the owner or part owner is unknown or resides outside this state, such notice shall be given by publication in a paper published in the county for three successive weeks.
 - (2) If no application is made to the superior court, as is provided in this section, the City Council shall cause such vessel to be abated, removed or altered in compliance with its order, and all expenses thereof shall be repaid to the City within 30 days after demand, or may be recovered of such person by an action for money paid.
 - (3) Any owner aggrieved by an order made pursuant to this section may, within 30 days after such order is so made and filed, apply to the superior court which shall forthwith, after notice and hearing, affirm, annul or alter such order.
 - (4) If the court affirms an order made pursuant to this section, costs shall be recovered by the City; if it wholly annuls such order, the applicant shall recover costs; and if it alters it in part, the court may render such judgment as to costs as justice requires.

§ 118-16 Obstruction of public wharf, dock, landing or pier.

No person shall obstruct a wharf, dock, landing or pier by intentionally or knowingly:

- A. Obstructing, by any means whatsoever, the free use of any public wharf, dock, landing or pier and is not actively engaged in the loading or unloading of persons, product or cargo; or
- B. Allowing a vessel under that person's control or ownership to remain tied, moored or affixed to a public wharf, dock, landing, float or pier without authorization from the Harbor Master and payment of appropriate docking fees.

Possession of a Pier Use Permit does not overrule the above prohibitions and provide unlimited docking privileges to permit holders. Violators of this section will be subject to a \$150 fine per day. Allowing a vessel under that person's control or ownership to remain tied, moored or affixed to a public wharf, dock, landing or pier without legal authorization from the City or payment of docking fees.

§ 118-17 Diving, swimming, fishing on or near public wharves, docks, landings, piers or within channel prohibited.

- A. No person shall dive from or swim within 50 feet of any public wharf, dock, landing or pier. This restriction does not govern or limit special events sanctioned by the City, nor commercial divers and emergency personnel or others who have been granted special permission by the Harbor Master. At no time, other than for emergency purposes, may anyone swim within the channel.
- B. No person shall fish from City wharves.

§ 118-18 Obstruction of channel or inner harbor.

No person, firm, or organization may intentionally, knowingly or recklessly obstruct a channel or the inner harbor by:

- A. Setting any commercial fishing gear within the inner harbor or a channel; or
- B. Place or set any lobster traps, including buoys, within 100 feet of a mooring; or
- C. Place, stop, or anchor any vessel within a channel without providing for adequate room for a vessel of any reasonable size to navigate safely around in both directions simultaneously.
- D. Knowingly or willfully obstruct the free use of any channel or waterway within the harbor.

§ 118-19 Operation of vessel without proper safety equipment.

No person shall operate a vessel without meeting current state law. Operation of a vessel without proper safety equipment, a violation of this section, shall have a mandatory minimum fine of \$150 that may not be suspended and a citation may be issued for each piece of equipment that is missing, not in proper working order or in poor condition.

§ 118-20 Storage.
[Amended 2-3-2014]

Personal property, such as lobster pots, automobiles, cradles, boats, etc., shall not be stored on City wharves or landings or within the Camp Ellis parking lot. Exemptions to this rule shall be considered on an individual basis when submitted, in writing, to the Harbor Master. The hauling-out area at Camp Ellis will be under the jurisdiction of the Harbor Master.

Article III

Rentals and Rental Agents

§ 118-21 Licensing; rental agreement.

- A. ~~Licensing~~—All rental agents are to acquire and maintain a current business license through the City of Saco, and secure all pertinent state and federal licenses as necessary. Furthermore, rental agents must abide by all requirements or provisions issued by the Code Enforcement Officer, Planning Board, Zoning Board or other City official.

B. All rental agents must verify, by way of demonstrated ability, the operator's knowledge of the craft and equipment and ability to control and maneuver the craft safely. The rental agent may accept a watercraft license issued from another state or from the United States Coast Guard as proof of demonstrated ability. The rental agent may also waive the requirements of Subsection B(4) if the person renting has previously rented and demonstrated their ability with that type of equipment, within the last 30 days.

B.C. Rental agreement. A rental agent must provide, to any person whom they know to be operating a canoe, kayak, sailboat, personal watercraft (PWCs) or motorized watercraft:

- (1) The occupant capacity and weight limits of the craft being rented and operated.
- (2) Proper operational instruction and safety education for the craft being used. The rental agent may use an audio/visual presentation in lieu of personal instruction; however, the sole use of written instruction will not satisfy the requirements of this section.
- (3) Personal flotation devices (PFDs) of adequate size and proper working order for all intended occupants of the craft.
- ~~(4) Verify, by way of demonstrated ability, the operator's knowledge of the craft and equipment and ability to control and maneuver the craft safely. The rental agent may accept a watercraft license issued from another state or from the United States Coast Guard as proof of demonstrated ability. The rental agent may also waive the requirements of Subsection B(4) if the person renting has previously rented and demonstrated his/her ability, with that type of equipment, within the last 30 days.~~
- ~~(4)~~ (4) Written information pertaining to local and state laws governing the body of water in which they will be operating and a brief description of the so-called rules of the road. For PWCs or motorized watercraft, the information will also include the laws pertaining to headway speed violations and a map indicating "headway speed only" areas.

§ 118-22 Prohibited acts.

A. The following violations, in addition to the fines outlined in § 118-28, will also result in the immediate suspension of all City business licenses and/or permits.

- (1) Failing to provide safety instruction: A rental agent is guilty of failing to provide safety instruction if it fails to comply with all the requirements of § 118-21, above.
- (2) Failing to maintain records. The rental agent must maintain written records showing that the requirements of § 118-21, above, were followed. If a waiver of § 118-21, Subsection B(4), above, is allowed, a photocopy of the watercraft license, USCG license or previous rental agreement and demonstrated ability must be included. Rental agents may not destroy these records in the event of a watercraft accident, drowning or other incident involving the rented equipment. Records may otherwise be destroyed six months following the date of rental.
- (3) Failing to maintain a license/violation of licensing agreement. Any rental agent who fails to obtain or maintain a current City business license; or, who fails to abide by the requirements of § 118-21, is guilty of this violation.

B. No rental agent may continue to operate until the violations have been corrected and the City is satisfied with those corrections.

~~C. Failing to provide safety instruction: A rental agent is guilty of failing to provide safety instruction if it fails to comply with all the requirements of § 118-21, above.~~

~~D. Failing to maintain records. The rental agent must maintain written records showing that the requirements of § 118-21, above, were followed. If a waiver of § 118-21, Subsection B(4), above, is allowed, a photocopy of the watercraft license, USCG license or previous rental agreement and demonstrated ability must be included. Rental agents may not destroy these records in the event of a watercraft accident, drowning or other incident involving the rented equipment. Records may otherwise be destroyed six months following the date of rental.~~

~~E. No license/violation of licensing agreement. Any rental agent who fails to obtain or maintain a current City business license; or, who fails to abide by the requirements of § 118-21, is guilty of this violation.~~

§ 118-23 Agent negligence; City's right to recovery of costs.

- A. When a rental agent fails to follow the provisions of this article and an accident or incident occurs that requires the use of City services; or requires the City to hire or fund private businesses or other government agencies as a result of the accident or incident, the rental agent shall be responsible for reimbursement of all associated costs.
- B. These services include, but are not limited to: police, fire, rescue, or other emergency services; divers; water recovery specialists; engineers; environmental or hazardous materials specialists or companies; product inspectors, investigators, private consultants, attorneys, and/or legal expenses.

Article IV

Camp Ellis Pier, Parking Lot and Public Landing Regulations

§ 118-24 Pier use regulations.

- A. No person who owns, leases or operates a commercial or recreational boat or vessel shall use a public wharf, float, dock or pier unless they shall first obtain a permit ~~therefor for such use~~, as is hereinafter provided. A pier use agreement must be signed prior to the issuance of a user permit.
- B. No person who owns, leases or operates a commercial or recreational vessel shall store said boat or vessel on any public wharf, dock, pier or parking lot.
- C. All ~~said~~ pier use and mooring permit fees ~~should~~ must be paid to the City of Saco through City Hall and a receipt for same presented to the Harbor Master.
- D. User fees, mooring fees and parking fees are to be established annually by the City Council, by resolution, after a public hearing, as recommended by the Coastal Waters Commission.
- E. Commercial pier use permit holders have priority use of the hoists for loading and unloading perishable products. No person or vessel shall impede access to the hoists unless actively loading or unloading. Obstruction access to the pier or hoists while waiting for shore support vehicles is strictly prohibited. Such conduct may result in the forfeiture of pier use permission after:

(1) First instance, a verbal warning by the Harbor Master;

(2) Second instance, a written warning by the Harbor Master; and

(+)(3) Third instance, revocation of pier use permit.

~~E.F.~~ Use of the beaching piles located adjacent to the public landing will be available to pier use permit holders. The maximum size boat to use the piles shall not exceed twenty-thousand-pound displacement. Proper support must be installed under a berthed boat prior to allowing people to go into the boat fall area. Boats may only be berthed on the north side of the piles to maintain access to the public landing at all times. Berthed boats may remain at beaching piles for one full tide cycle.

~~F.G.~~ Exceptions. [Added 2-3-2014]

- (1) Noncustomary, short-term exceptions to these regulations may be allowed at the discretion of the Harbor Master, and may include:
 - (a) Use of the pump-out station.
 - (b) Pick-up or discharge of passengers.
 - (c) Use of the restroom facility.

- (2) Short-term exceptions may not exceed 15 minutes. Individuals who become customary pier users must obtain a pier use permit. For the purposes of this section, "customary" is defined as a short-term pier use that is repeated more than twice per month.

H. Any permit issued hereunder may be revoked if the Harbor Master determines that any portion of a permit holder's application contains false or misleading information. Any revocation may be appealed as set forth herein. **[Added 2-3-2014]**

I. ~~No trash, gear or bait barrels may be left unattended on the pier.~~

J. ~~Use of the floats attached to the pier shall be prioritized to their designated status, for example:~~

(1) ~~Charter vessels have priority use of the charter vessel floats.~~

(2) ~~Maintenance of vessels shall occur on the maintenance floats, or on the downriver floats after 7:00pm.~~

~~K. Floats are intended for loading and unloading of crew, passengers, gear, cargo, or product. No vessel may be left unattended on any float without express permission of the Harbor Master. Failure to obtain permission will result in a \$150 fine.~~

§ 118-25 Camp Ellis Pier and Parking Lot Fund.

- A. Purpose. The City of Saco operates and maintains a parking and docking facility at Camp Ellis for the benefit of the general public. The purpose of this section is to create a special revenue fund into which all the proceeds derived from the pier and parking lot shall be deposited. ~~A transfer of funds allocated~~ to this account shall be budgeted each year by the City, in whatever amount is suitable for the maintenance and expansion of public facilities at the Camp Ellis pier, parking lot, and other marine related uses as deemed necessary by the Harbor Master or the Public Works Director, recommended by the Coastal Waters Commission, and approved as part of the annual budget process by the City Council.
- B. Source of revenues. All revenues derived from the pier and parking lot, including but not limited to fees for parking cars and fees for mooring and docking, shall be deposited into this account.
- C. Use of revenues. Funds in the Camp Ellis Pier and Parking Lot account shall be used for the expansion and maintenance of the Camp Ellis parking lot, pier, floats, City-owned moorings, waterways and other marine-related uses, as recommended by the Saco Coastal Waters Commission and approved by the Director of DPW or the Saco City Council.

§ 118-26 Pier use permits.

- A. There shall be ~~three-four~~ types of pier use permits.
 - (1) Commercial vessel pier use.
 - (2) Charter vessel pier use.
 - (3) Recreational vessel pier use.
 - ~~(4) One day pier use (not to be used for unloading commercial catch).~~
- B. Establishment of permit limitations. The Harbor Master will establish the maximum number of pier use permits to be granted within each type, described above. A waiting list will be established for persons desiring a pier use permit when the maximum number has been reached.
- C. Pier use by mooring permit holders. A mooring permit holder who wishes to maintain a vessel at the pier shall obtain a pier use permit.

D. Charter vessel users shall provide at the time of ~~execution~~ application for ~~of~~ a pier use permit a current certificate of insurance showing a minimum liability coverage of \$1,000,000, which policy must name the City of Saco as an additional insured. Said insurance must remain in effect prior to and during all commercial activity. [Added 2-3-2014]

E. Pier use permits may not be utilized by the permit holder to assist another vessel owner land their catch in order to avoid payment of the fee for a daily pier use permit. Such action may result in revocation of the pier use permit.

~~D-F.~~ One day pier use permits must be obtained prior to pier use. Failure to pay the fee for a one day pier use permit may result in a fine equal to the fee for a commercial vessel pier use permit.

§ 118-27 Traffic and parking regulations.

A. The City of Saco has constructed a launching ramp and parking lot, for use by the public, on the shore of the Saco River at Bay Avenue in Camp Ellis, between the extension of North

Avenue and East Avenue. There are no existing ordinances to control traffic and regulate parking for the public good and safety of the public which will be using these facilities. The following rules and regulations are hereby adopted, and the Chief of Police is hereby authorized and directed to erect the proper signs and controls to enable the enforcement of these rules and regulations.

B. Public lot and public landing rules and regulations shall be: [Added 2-3-2014]

(1) Diagonal parking within marked spaces only.

(2) No parking after 1:00 a.m. until 5:00 a.m. from May 1 through September 30 and from 10:00 p.m. to 5:00 a.m. from September 30 through May 1, except for pier user permit holders who are aboard their vessels and have duly notified the Dock Steward or the Harbor Master of their intent to be at sea overnight. Crew members must obtain the proper receipt for overnight parking and notify the Dock Steward or the Harbor Master. Any other overnight parking constitutes storage, which is prohibited by § 118-20.

(3) Five-miles-per-hour speed limit.

~~(4)~~ No parking in front of launching ramp.

~~(4)(5)~~ No parking on the pier unless actively loading or unloading.

~~(5)(6)~~ Boat trailers are to be parked only in designated areas.

~~(6)(7)~~ Camping is not ~~permissible~~ permitted.

~~(7)(8)~~ Parking violators shall be towed away at the owner's expense.

~~(8)(9)~~ All cars and trucks parked in the parking lot shall prominently display a current pier user sticker or seasonal parking sticker issued by the City, unless they are paying the daily parking fee. A seasonal parking permit or the elderly residents permit is only transferable to other vehicles registered in the City by the resident. A commercial vessel pier use permit stays with the permit holder and is transferable to another vehicle.

Article V

Bay View Parking Lot

§118-28. Bayview Parking Lot Fund.

A. Purpose. The City of Saco operates and maintains a parking facility at Bayview Beach for the benefit of the general public. The purpose of this section is to create a special revenue fund into which all the proceeds derived from the parking lot shall be deposited. A transfer of funds to this account shall be budgeted each year by the City, in whatever amount is suitable for the repair, maintenance, improvement and expansion of the public facilities at the Bayview parking lot and other beach-related uses as deemed necessary by the Parks & Recreation Department.

- B. Source of revenues. All revenues derived from the Bayview Parking Lot shall be deposited into the Bayview Parking Lot fund, which shall be kept as a separate account.
- C. Use of revenues. Funds in the Bayview Parking Lot account shall be used for the improvement, expansion, repair, and maintenance of the Bayview Parking Lot, the Bayview Beach, and associated facilities as recommended by the Parks & Recreation Department and as approved by the Finance Director or the Saco City Council.

§118-29. Traffic and parking regulations.

- A. The City of Saco has constructed the Bayview Parking Lot, for use by the public, at the intersection of Bayview Road and Route 9. There are no existing ordinances to control traffic and regulate public use of these facilities. The following rules and regulations are hereby adopted, and the Chief of Police is hereby authorized and directed to erect the proper signs and controls to enable the enforcement of these rules and regulations.
- B. Public lot rules and regulations shall be:
- (1) No parking after 1:00 a.m. until 5:00 a.m. from May 1 through September 30 and from 10:00 p.m. to 5:00 a.m. from September 30 through May 1.
 - (2) Five-miles-per-hour speed limit.
 - (3) Boat trailers and campers are not permitted.
 - (4) Camping is not permissible.
 - (5) Parking violators shall be towed away at the owner's expense.
 - (6) All cars and trucks parked in the parking lot shall prominently display a current Bayview seasonal parking sticker issued by the City, unless they are paying the daily parking fee. A seasonal parking permit or the elderly residents permit is issued to individual residents and is not transferable.

Article VI

Enforcement, Legal Actions and Appeal

§ 118-~~28-30~~ Violations and penalties; manner and method of service; appeals.

- A. Penalties. Whoever violates any of the provisions of this chapter is guilty of a separate offense for each day, or part of a day, during which the violation is committed or, continued. Unless stated elsewhere, each offense, upon conviction, is punishable by a civil penalty of not less than \$100 and not more than \$2,500 for each offense. In addition, revocation of the applicable permit violated may occur.
- B. Each day, if the offense is repeated, shall constitute a separate violation. If the violation relates to damages caused, said party, if found responsible, shall bear reasonable costs of repair in addition to any fines and fees assessed hereunder.
- C. Manner and method of service. Notice to owner or to persons responsible for a violation of this order shall be made in the following manner and method:
- (1) Unless specifically addressed elsewhere in this chapter, at the discretion of the acting authority, a warning will first may be issued verbally, followed by a written warning from the Harbor Master served by certified mail, or in writing, so long as such warning is recorded and made available for future reference.
 - (2) If, in the discretion of the acting authority, a citation is deemed necessary, such citation will be issued in the following manner:
 - (a) The citation shall include the name of the responsible person and/or owner, the date and time of the violation, a general reference location for the violation, a description of the violation and the location of and date of appearance at the local court having jurisdiction; if such date is required by the Court system.

- (b) The citation used is authorized and accepted by the District Court of the State of Maine;
 - (c) Service of the citation is made upon the violator by a person authorized under law to make such service; and
 - (d) The completed citation is properly recorded in the District Court of the State of Maine having jurisdiction over the violation.
- D. Notice as to permit holders shall, in all cases be sent by certified mail to their address of record on their permit application.
- E. Appeals. Any appeal of a decision of the Harbor Master, except as to citations, herein shall be made to the Coastal Waters Commission as set out in § 4-39 of this Code, or its successor. Citations shall be solely addressed and resolved via the Court and as set out under Maine law.

G. CHAPTER 230 – ZONING, SITE PLAN AND SUBDIVISION ORDINANCE – (FIRST READING)

On February 20, 2018, the City Council voted to adopt the 2018 update of Saco’s Comprehensive Plan. The 2018 Comp Plan update was the result of nearly two years of review and discussion by the ad-hoc committee and City Staff. The community’s next step was to update the Zoning Ordinances to align with the City’s land use vision: The most forward-thinking land use policies in the State of Maine that ensure financial stability, environmental sustainability, and provides opportunities and accessibility to all.

The City Council formed the Zoning Ordinance Revision Steering Committee on October 15, 2018. After a competitive RFP process in Fall 2018, the City contracted with planning consultants TZM Planning and EF | Design & Planning, LLC to update Saco’s Zoning Ordinance. In January 2019, the City and the consultants initiated an online survey of Saco’s residents and property owners, soliciting input on zoning-related topics that warrant further discussion by stakeholders. A total of 1,088 people participated in the survey. A public charrette was held on February 7 at the People’s Choice Credit Union, where over 70 people participated.

Based on the public input, feedback, and direction from the Steering Committee, City Council, Planning Board, Historic Preservation Commission, Conservation Commission, other City boards and committees, and City Staff from all departments, Draft 2 of the land use ordinances were completed late August 2019.

The ZOR Steering Committee and the Planning Board held individual work sessions and a joint work session, to review the Draft 2 documents. The City Council held a workshop on September 9, 2019. The City also hosted two public forums on September 10th and September 11th. About a dozen residents attended each open-house style meeting and provided valuable input. Feedback from these forums and City boards and committees was compiled and integrated into a final draft that is now scheduled for a formal public hearing and adoption process with the Planning Board and City Council. The Project Completion Timeline, revised through October 2nd (Exhibit 1), outlines the schedule of key dates in the process, including public hearings for the Planning Board and Historic Preservation Commission on Tuesday, October 22nd, and City Council public hearing on Monday, November 4th.

Draft 3 of the Zoning Ordinance, Site Plan Review Ordinance, and Subdivision Ordinance is posted online [here](#). Links to the specific Ordinances and proposed zoning map are following:

[Zoning Ordinance \(Draft 3 updated with legal edits 10/18/19\)](#)

[Zoning Map \(Draft 3 - 10/2/19\)](#)

[Site Plan Review Ordinance \(Draft 3 updated with legal edits 10/18/19\)](#)

[Subdivision Ordinance \(Draft 3 updated with legal edits 10/18/19\)](#)

The attached exhibits detail the major changes in the land use ordinances, including summarizing a list of outstanding topics to be addressed in future updates.

Councilor Johnston moved, Councilor Smart seconded “The City of Saco hereby approves the first reading of the proposed amended Zoning, Site Plan, and Subdivision Ordinances, and further moves to schedule a public hearing date of November 4, 2019.” The motion passed with seven (7) yeas.

Land Use Ordinances Revisions

Summary of Major Changes

Zoning Ordinance

Structure and Organization

- Document is much more user friendly.
- Reformatted and consolidated tables, uses, and definitions.
- Summary sheets for each zoning district.

Zoning Districts

- Several zones have been consolidated. City will go from 25+ zones to 18 zones.
- Resource Protection District will become an overlay district, with underlying zoning dictating the lot size and dimensional requirements except where determined otherwise by the resource protection provision.
- All districts have been renamed.
- In some limited cases, zone boundaries have been slightly altered.

Dimensional Requirements

- Dimensional requirements in Rural Residential, Low Density Residential, Seaside Residential, West Residential, and Medium Density Residential will have reduced lot size requirements for minimum lot area per dwelling unit.
- In most cases within these districts, proposed maximum lot coverage will be increased.
- The minimum setback from protected water resources is removed throughout the Dimensional Standards Table, instead using the setback consistent with the State's shoreland zoning requirements.
- Fewer nonconforming lots throughout the City.

Permitted and Conditional Use Table

- Uses have been consolidated, coordinated with new district names.
- Uses are organized by applicable categories.
- Municipal uses will be permitted throughout all districts.
- Commercial solar arrays will be conditional uses in the Rural Residential and Portland Road Districts.

Stormwater Infrastructure

- Stormwater infrastructure design requirements increased.

Expirations of Approvals

- In most cases, recommendation has been to extend the time period of approvals from six months or one year to two years with additional time period for extension approval(s).

Accessory Dwelling Units

- Attached and detached accessory dwelling units are allowed as an accessory use to a residence.

Historic Preservation

- Allows new vinyl siding to replace existing vinyl, but otherwise prohibited.
- Encourages the preservation of historic wooden window sash where feasible.
- Guards against the careless repointing of historic masonry.

Site Plan Ordinance

Sidewalks and Connectivity

- Sidewalks and connectivity will be required for site plan design.

Design Review

- Design review standards will be applicable if 25% of the street-facing façade is changed.

Master Planned Development

- Provisions for higher density, mixed-use, and walkable development nodes in the Portland Road district.

Subdivision Ordinance

Cluster Development

- Provisions for subdivisions on tracts larger than 10 acres and situated west of I-95 to incorporate a cluster design.

Land Use Ordinances Revisions

Items to be Addressed in Subsequent Amendments

Zoning Ordinance

Parking

- Parking standards in the final draft will revert to current standards and be updated in a subsequent amendment.

Shoreland Zoning

- The proposed draft converts the Resource Protection District to an overlay district, but additional changes are needed to update Saco's ordinance to be more compliant with updated DEP Shoreland Zoning guidelines.

Signage

- Minor changes to signage have been proposed in this update, including allowing signage to be measured per side, and removal of the integrated sign plan provision. Additional changes will be needed to holistically update these provisions.

Impact Fees

- Impact fees will be addressed more holistically in a subsequent amendment.

Contract Zone Reconciliation

- Staff will work to dissolve as many existing contract zones as possible, once this zoning ordinance revision is complete. This process may involve subsequent amendments to the Zoning Ordinance.

Tiny Homes

- Tiny Homes is an area that merits further review, research, and may involve a subsequent amendment.

Subdivision Ordinance

Private Streets

- Option to allow subdivisions to build on private streets will be a future review item.

Technical Standards Guidebook

- A supplemental Technical Standard Guidebook will be created and referenced in the Subdivision Ordinance.

H. BUDGET AMENDMENT 3 – INCREASE POLICE DEPARTMENT STAFFING – (FIRST READING)

This amendment will increase the number of Saco Police Department sworn officers from 35 to 37. The police department has not added any patrol officer positions since 2000 and the city has grown approximately 16% over that period. Approval of this budget amendment affords the police department the opportunity to adequately respond to community concerns, traffic complaints, and improve employee retention.

Councilor Johnston moved, Councilor Copeland seconded “Be it ordered that City Council approves the first reading of Budget Amendment #3 FY2020 and move to schedule a second and final reading for November 4, 2019”. Further move to approve the order. The motion passed with seven (7) yeas.

City of Saco
FY 2020 Budget Amendment Request Form
Revenue & Appropriation
Amendment # 3 - Increase PD Staffing by 2 Officers

10/16/2019

Date


Department

Summary					
Change in Expense	\$154,433	Change in Revenues	\$154,433	Balance	\$0

Type	Org	Object	Project	Account Name	Current Budget	Actual YTD	Adjustment Requested	Amended Budget
Exp	10460	500106	00000	Police Patrolmen	\$1,372,725	\$287,337	\$102,627	\$1,475,352
Exp	10600	500215	00000	Dental/Optical	\$43,304	(\$9,772)	\$650	\$43,954
Exp	10600	500287	00000	Mepers (Retirement)	\$646,643	\$128,047	\$8,210	\$654,853
Exp	10600	500288	00000	Health & Basic Life Insurance	\$2,147,036	\$670,378	\$16,786	\$2,163,822
Exp	10600	500289	00000	Fica Taxes	\$776,718	\$250,032	\$7,851	\$784,569
Exp	10600	500290	00000	St/LI Disability	\$67,876	\$873	\$976	\$68,852
Exp	10386	500370	00000	Filing Fees/Licenses/Permits	\$84,039	\$42,048	\$436	\$84,475
Exp	10386	500317	00000	Minor Equipment	\$16,150	\$15,063	\$1,650	\$17,800
Exp	10462	500322	00000	Tuition/Training	\$31,000	\$18,387	\$6,000	\$37,000
Exp	10462	500324	00000	Uniforms/Safety Equipment	\$28,400	\$9,020	\$9,247	\$37,647
Rev	10350	300800	00000	Budgeted Use Of Surplus	\$257,402	\$0	\$154,433	\$411,835

Notes: By making use of existing equipment, the PD is able to save taxpayers \$51,960 on this budget amendment. This includes firearms, radios, and vehicles. Specifically, the PD has made changes to the fleet so that there is no need to purchase a new vehicle. Although paid out of fund balance in FY2020, this item will be added to the PD budget in FY2021 and funded out of the tax commitment.

Finance Director certifies that funds are available:


 Glenys Salas, Finance Director

10/16/2019

Date

I. CREDIT ENHANCEMENT AGREEMENT BETWEEN THE CITY OF SACO, MAINE AND FORESITE REALTY, LLC FOR BUSINESS OPERATING AS BIDDEFORD SACO DENTAL ASSOCIATES – (FINAL READING)

A Credit Enhancement Agreement (CEA) for Foresite Realty, LLC. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #15 Downtown Omnibus Municipal Tax Increment Financing District. The Credit Enhancement Agreement will be for 14 years, with the following terms: in years one (1) through five (5), Foresite Realty, LLC. will receive 50% of the TIF revenues, and the City will receive 50% of TIF revenue. In years six (6) through ten (10) of the Credit Enhancement Agreement, the Company will receive 45% of the TIF revenue, and the City will receive 55%. In years eleven (11) and twelve (12), the Company will receive 25% and the City will receive 75%. In years thirteen (13) and fourteen (14), the City will receive 100%. For any remaining years of the District, the City will continue to receive 100% of the TIF revenue. The CEA will have a cap of TIF revenue going to Foresite Realty, LLC, in the amount of \$396,000. The City will retain funds from TIF revenues to use for project costs outlined in the Development Program.

The CEA was reviewed by the Economic Development Commission at their September 9, 2019 meeting; recommended to go to the City Council for the first reading and public hearing. The CEA was also reviewed at the City Council Workshop held on September 9, 2019. The Council Order for this Credit Enhancement Agreement,

which will be part of the First Reading (held on October 7, 2019), Public Hearing (held on September 16, 2019) and Second and Final Reading (to be held on October 21, 2019) will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with Foresite Realty, LLC. in substantially the form as presented to the City Council.”

Councilor Smart moved, Councilor Minthorn seconded “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Foresite Realty, LLC in substantially the form as presented to the City Council.”

Amendment - Councilor Johnston moved, Councilor Gay seconded to that the Credit enhancement will have a cap of \$200,000 and be for a 10-year period. The motion failed with two (2) yeas and five (5) nays – Councilors Archer, Doyle, Copeland, Minthorn, and Smart.

Mayor Lovell called for a vote on the main motion. The motion passed with five (5) yeas and two (2) nays – Councilors Gay and Johnston.

CREDIT ENHANCEMENT AGREEMENT

**between
CITY OF SACO, MAINE
and
FORESITE REALTY, LLC**

**DATED: October 21, 2019
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THIS CREDIT ENHANCEMENT AGREEMENT, made and entered into as of October 21, 2019 by and between the **City of Saco** (the “City”), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and **Foresite Realty, LLC** (the “Developer”), a Maine limited liability company with an address of 485 Main Street, Saco, Maine 04074;

WITNESSETH THAT

WHEREAS, the City designated the Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Municipal (the “District”), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the “Development Program”) on February 21, 2017. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the “Department”) on August 7, 2018; and

WHEREAS, on February 19, 2019, the City approved the First Amendment to the District (the “First Amendment”) and such First Amendment was submitted to the Department on February 26, 2019; and

WHEREAS, the First Amendment was approved by the Department on April 23, 2019; and

WHEREAS, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer’s project costs; and

WHEREAS, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer’s Project (as hereinafter defined) that will be returned to the Developer; and

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by the Development Program; and

WHEREAS, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on October 7, 2019 at which the provisions of this Credit Enhancement Agreement were approved;

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein

specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

“Commissioner” means the Commissioner of the Department of Economic and Community Development.

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1st of each Tax Year during the term of this Agreement.

“Department” shall have the meaning given such term in the recitals hereto.

“Developer” shall have the meaning given such term in the first paragraph hereto.

“Developer Project” means the health services facility and related site improvements to be constructed by Developer at Developer Property and originally consisting of a facility of approximately 15,000, square feet and any addition thereto during the Term.

“Developer Project Cost Subaccount” means the subaccount within the Development Program Fund in which the Developer Tax Increment Revenues shall be deposited.

“Developer Property” means the property identified as 485 Main Street (City Tax Map as Map 33, Lot 007).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Municipal TIF Development Program Fund described in section IV(D) of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund shall consist of a Project Cost Account with at least one subaccount: the Developer Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto.

“Effective Date” shall mean the date of execution of this Agreement.

“Financial Plan” means the financial plan described in section IV of the Development Program.

“Fiscal Year” means July 1st to June 30th of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that Tax Year.

“Original Assessed Value” means zero dollars (\$428,400), the taxable assessed value of the Developer Property as of March 31, 2020 (April 1, 2019), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed Value as of April 1, 2018, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the

Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

“Property Tax” means any and all *ad valorem* property taxes levied, charged or assessed against real property located in the District by the City, or on its behalf.

“State” means the State of Maine.

“Tax Increment Revenue Cap” shall have the meaning given to such term in Section 2.3.

“Tax Payment Date” means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) are actually paid by or on behalf of the Developer to, and received by, the City.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1st to March 31st.

“Term” shall mean all Tax Years in the period beginning from April 1, 2020-March 31, 2021 through April 1, 2033-March 31, 2034, but not beginning before the Effective Date.

“City” shall have the meaning given such term in the first paragraph hereto.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City has created and established a segregated fund in the name of the City designated as the “Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) to be funded by tax payments actually made by properties located within the District, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund described in section 2.1 hereof or any funds therein, other than the interest in favor of the Developer hereunder in and to the amounts on deposit; provided, however, that nothing herein shall prohibit the creation of property tax liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.

- (a) For each Tax Year of the Term, the City shall retain in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

Tax Year	Retained Percentage
2020	50%
2021	50%
2022	50%
2023	50%
2024	50%
2025	45%
2026	45%
2027	45%
2028	45%
2029	45%
2030	25%
2031	25%
2032	0%
2033	0%

- (b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within five (5) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

- (c) Notwithstanding the foregoing provisions of this Section 2.3, no deposits shall be made to the Developer Project Cost Subaccount to the extent such deposits would cause the aggregate amount of deposits to such Fund to exceed the Tax Increment Revenue Cap (as hereinafter defined). For purposes of this Agreement, the “Tax Increment Revenue Cap” means an amount initially equal to \$396,000.

- (d) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City’s general fund without further action or concents required by the Developer.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to Developer described in Articles II and III hereof.

Section 2.5. Monies Held in Segregated Account.

All monies paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of the Developer in a segregated account. The City shall never be under any obligation to deposit into the Developer Project Cost Subaccount, any funds other than Developer Tax Increment Revenues received by the City from Developer, the City’s obligations under this Agreement extending only to funds that are Developer Tax Increment Revenues actually paid by Developer to the City. Interest earnings thereon shall be retained by the City for the City’s own use.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Developer Payments.

(a) The City agrees to pay Developer, within thirty (30) days following each Tax Payment Date during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; *provided, however*, the City shall have no obligation to make payment while any mechanics' liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics' liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.

Section 3.2. Failure to Make Payment.

If the City should fail or be unable to make any of the payments at the time and in the amount required under the foregoing provisions of this Article III; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's payment obligations hereunder.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove, for the Developer's own use and benefit so long as such use is consistent with the requirements of the Act, by check drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the Obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Developer Tax Increment Revenues pledged therefor under this Agreement and actually received by the City from or on behalf of the Developer. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues actually deposited by City from taxes paid by Developer into the Developer Project Cost Subaccount of the Development Program Fund and payable to Developer hereunder. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City's obligation to levy property taxes upon the Developer Project and the pledge established under this Agreement of the Developer Tax Increment Revenues received by the City from Developer.

**ARTICLE IV
PLEDGE**

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount

Development Program Fund.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary the City shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate State offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City's responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The City shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City, and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the Town with respect thereto) shall be borne exclusively by the Developer.

Section 4.4. No Disposition of Development Program Fund.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Development Program Fund and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All non-confidential books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost Subaccount shall at all reasonable times be open to inspection by the Developer, its agents and employees.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to deposit into the Developer Project Cost Subaccount of the Development Program Fund on a timely basis, funds the City receives from the Developer that the City is required under this Agreement to deposit into the Development Program Fund;
- (c) Any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof;
- (d) Any failure by the Developer to pay when due, any real or personal property taxes lawfully assessed by the City to Developer; and
- (e) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer;
- (f) Developer's failure to commence construction of Developer's Project by July 1, 2020 or the termination of manufacturing activities at Developer Property after Developer's Project is completed.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party provided the Event of Default is not cured within such 30 day period.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.11 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Nothing in this Agreement shall be deemed to excuse any non-payment of municipal taxes by Developer, or to limit in any way, the City's rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer's share of the tax increment revenues. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

**ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION**

Section 6.1. Effective Date and Term.

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

**ARTICLE VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The City agrees to execute and deliver any other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as the Developer or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. Any obligation of the City under this section shall be conditioned upon pledgee or assignee's or Developer's satisfaction of Developer's obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City's obligation to Developer hereunder.

Section 7.2. Pledge, Assignment or Security Interest.

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or the Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest; No Partnership or Joint Venture.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Developer any right,

remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Developer. This Agreement is not intended to create any form of partnership or joint venture between the City and the Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City; No Waiver of Maine Tort Claims Act.

No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.* Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney's fees in the event of litigation, incurred by the City as the result of the City's participation in this Agreement or in the TIF Development Program that is the subject of this Agreement, other than costs and fees incurred in connection with a breach by City of its obligations hereunder.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law; Venue for Suits

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Any suit to construe or enforce the provisions of this Agreement must be brought in the District or Superior Courts of York County, Maine; and otherwise shall be void. Developer expressly waives any claim to jurisdiction of the United States District Court over disputes arising under this Agreement, whether on account of diversity of citizenship or federal subject matter.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given on the third business day after mailing by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City Administrator
City of Saco
300 Main St.
Saco, ME 04072

With a copy to:

Director of Planning and Development
City of Saco
300 Main St.
Saco, ME 04072

If to the Developer:

Foresite Realty, LLC
485 Main Street
Saco, ME 04072

With a copy to:

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Benefit of Assignees or Pledges.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer's right, title and interest herein. No such assignment or pledge shall limit in any way, Developer's obligations hereunder.

Section 8.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.11. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys' fees incurred in enforcement of such obligations.

Section 8.12. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

CITY OF SACO

By: _____

Name: _____

Its: City of Saco City Manager

Duly Authorized by the City Council at its meeting on October 21, 2019

FORESITE REALTY, LLC

By: _____

Name: _____

Its: _____

Duly Authorized

Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Foresite Realty - TIF Model								
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	Captured Valuation @100% of Value Captured	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Developer Project Account	Captured Revenue to Municipal Project Account	
1	2020	\$3,650,000	\$3,650,000	0.01959	\$71,493	\$35,746	\$35,746	
2	2021	\$3,650,000	\$3,650,000	0.01980	\$72,256	\$36,128	\$36,128	
3	2022	\$3,650,000	\$3,650,000	0.02001	\$73,028	\$36,514	\$36,514	
4	2023	\$3,650,000	\$3,650,000	0.02022	\$73,808	\$36,904	\$36,904	
5	2024	\$3,650,000	\$3,650,000	0.02044	\$74,596	\$37,298	\$37,298	
6	2025	\$3,650,000	\$3,650,000	0.02066	\$75,393	\$33,927	\$41,466	
7	2026	\$3,650,000	\$3,650,000	0.02088	\$76,198	\$34,289	\$41,909	
8	2027	\$3,650,000	\$3,650,000	0.02110	\$77,012	\$34,655	\$42,357	
9	2028	\$3,650,000	\$3,650,000	0.02132	\$77,834	\$35,026	\$42,809	
10	2029	\$3,650,000	\$3,650,000	0.02155	\$78,666	\$35,400	\$43,266	
11	2030	\$3,650,000	\$3,650,000	0.02178	\$79,506	\$19,876	\$59,629	
12	2031	\$3,650,000	\$3,650,000	0.02202	\$80,355	\$20,089	\$60,266	
13	2032	\$3,650,000	\$3,650,000	0.02225	\$81,213	\$0	\$81,213	
14	2033	\$3,650,000	\$3,650,000	0.02249	\$82,081	\$0	\$82,081	
14-Year TIF Total		\$51,100,000	\$51,100,000		\$1,073,439	\$395,852	\$677,587	
					Percent of Total	37%	63%	

Prepared by Camoin Associates, www.camoinassociates.com

Financials based on 50% of new revenues returned to developer in years 1-5; 45% in years 6-10; 25% in years 11 & 12; and 0% in years 13 & 14.

J. CREDIT ENHANCEMENT AGREEMENT BETWEEN THE CITY OF SACO, MAINE AND BAXTER & CUTTS, LLC (FOR BUSINESS OPERATING AS QUINCE) – (FINAL READING)

A Credit Enhancement Agreement (CEA) for Baxter & Cutts, LLC. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #15 Downtown Omnibus Municipal Tax Increment Financing District. The Credit Enhancement Agreement will be for 20 years, with the following terms: in years one (1) through fifteen (15), Baxter & Cutts, LLC. will receive 60% of the TIF revenues, and the City will receive 40% of TIF revenue. In years sixteen (16) through twenty (20) of the Credit Enhancement Agreement, the City will receive 100% of the TIF revenue, and the Company will receive 0%. In any remaining years of the District, the City will continue to receive 100% of the TIF revenue. The CEA will have a cap of TIF revenue going to Baxter & Cutts, LLC, in the amount of \$225,000. The City will retain funds from TIF revenues to use for project costs outlined in the Development Program.

The CEA was reviewed by the Economic Development Commission at their September 9, 2019 meeting; recommended to go to the City Council for first reading and public hearing. The CEA was also reviewed at the City Council Workshop held on September 9, 2019. The Council Order for this Credit Enhancement Agreement was part of the First Reading (held on September 16, 2019), Public Hearing (held on October 7, 2019) and Second and Final Reading (to be held October 21, 2019) will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Baxter & Cutts, LLC. in substantially the form as presented to the City Council.”

Councilor Smart moved, Councilor Minthorn seconded “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Baxter & Cutts, LLC in substantially the form as presented to the City Council.”

Councilor Johnston moved, Councilor Gay seconded a Credit enhancement cap to \$112, 500 for a period of 10 years. The motion failed with two (2) yeas and five (5) nays – Councilors Smart, Minthorn, Copeland, Doyle, and Archer.

Mayor Lovell called for a vote on the main motion. The motion passed with five (5) yeas and two (2) nays – Councilors Gay and Johnston.

CREDIT ENHANCEMENT AGREEMENT
between
CITY OF SACO, MAINE
and
BAXTER & CUTTS, LLC
DATED: October 21, 2019

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THIS CREDIT ENHANCEMENT AGREEMENT, made and entered into as of October 21, 2019 by and between the **City of Saco** (the “City”), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and **Baxter & Cutts, LLC** (the “Developer”), a Maine limited liability company with an address of 22 Monument Square Suite 602 Portland, Maine 04101;

WITNESSETH THAT

WHEREAS, the City designated the Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Municipal (the “District”), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the “Development Program”) on February 21, 2017. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the “Department”) on August 7, 2018; and

WHEREAS, on February 19, 2019, the City approved the First Amendment to the District (the “First Amendment”) and such First Amendment was submitted to the Department on February 26, 2019; and

WHEREAS, the First Amendment was approved by the Department on April 23, 2019; and

WHEREAS, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer’s project costs; and

WHEREAS, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer’s Project (as hereinafter defined) that will be returned to the Developer; and

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by the Development Program; and

WHEREAS, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on October 7, 2019 at which the provisions of this Credit Enhancement Agreement were approved;

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

“Commissioner” means the Commissioner of the Department of Economic and Community Development.

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1st of each Tax Year during the term of this Agreement.

“Department” shall have the meaning given such term in the recitals hereto.

“Developer” shall have the meaning given such term in the first paragraph hereto.

“Developer Project” means the redevelopment of Cutts Mill Building 7 on Saco Island to be completed by Developer at Developer Property and originally consisting of a facility of approximately 9,440, square feet and any addition thereto during the Term.

“Developer Property” means the property identified as Cutts Mill Building 7 on Saco Island (City Tax Map as Map 037, Lot 001).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Municipal TIF Development Program Fund described in section IV(D) of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund shall consist of a Project Cost Account with at least one subaccount: the Developer Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto.

“Effective Date” shall mean the date of execution of this Agreement.

“Financial Plan” means the financial plan described in section IV of the Development Program.

“Fiscal Year” means July 1st to June 30th of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that Tax Year.

“Original Assessed Value” means zero dollars (\$284,400), the taxable assessed value of the Developer Property as of March 31, 2020 (April 1, 2019), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed Value as of April 1, 2019, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

“Property Tax” means any and all *ad valorem* property taxes levied, charged or assessed against real property located in the District by the City, or on its behalf.

“State” means the State of Maine.

“Tax Increment Revenue Cap” shall have the meaning given to such term in Section 2.3.

“Tax Payment Date” means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) are actually paid by or on behalf of the Developer to, and received by, the City.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1st to March 31st.

“Term” shall mean all Tax Years in the period beginning from April 1, 2020-March 31, 2021 through April 1, 2039-March 31, 2040, but not beginning before the Effective Date.

“City” shall have the meaning given such term in the first paragraph hereto.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this

Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**ARTICLE II
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

Section 2.1. Creation of Development Program Fund.

The City has created and established a segregated fund in the name of the City designated as the “Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) to be funded by tax payments actually made by properties located within the District, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund described in section 2.1 hereof or any funds therein, other than the interest in favor of the Developer hereunder in and to the amounts on deposit; provided, however, that nothing herein shall prohibit the creation of property tax liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.

(a) For each Tax Year of the Term, the City shall retain in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

Tax Year	Retained Percentage
2020	60%
2021	60%
2022	60%
2023	60%
2024	60%
2025	60%
2026	60%
2027	60%
2028	60%
2029	60%
2030	60%
2031	60%
2032	60%
2033	60%
2034	60%
2035	0%
2036	0%
2037	0%
2038	0%
2039	0%

(b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within five (5) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

(c) Notwithstanding the foregoing provisions of this Section 2.3, no deposits shall be made to the Developer Project Cost Subaccount to the extent such deposits would cause the aggregate amount of deposits to such Fund to exceed the Tax Increment Revenue Cap (as hereinafter defined). For purposes of this Agreement, the "Tax Increment Revenue Cap" means an amount initially equal to \$225,000.

(d) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City's general fund without further action or consents required by the Developer.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to Developer described in Articles II and III hereof.

Section 2.5. Monies Held in Segregated Account.

All monies paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of the Developer in a segregated account. The City shall never be under any obligation to deposit into the Developer Project Cost Subaccount, any funds other than Developer Tax Increment Revenues received by the City from Developer, the City's obligations under this Agreement extending only to funds that are Developer Tax Increment Revenues actually paid by Developer to the City. Interest earnings thereon shall be retained by the City for the City's own use.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Developer Payments.

(a) The City agrees to pay Developer, within thirty (30) days following each Tax Payment Date during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; *provided, however*, the City shall have no obligation to make payment while any mechanics' liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics' liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.

Section 3.2. Failure to Make Payment.

If the City should fail or be unable to make any of the payments at the time and in the amount required under the foregoing provisions of this Article III; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's payment obligations hereunder.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove, for the Developer's own use and benefit so long as such

use is consistent with the requirements of the Act, by check drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the Obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Developer Tax Increment Revenues pledged therefor under this Agreement and actually received by the City from or on behalf of the Developer. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues actually deposited by City from taxes paid by Developer into the Developer Project Cost Subaccount of the Development Program Fund and payable to Developer hereunder. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City's obligation to levy property taxes upon the Developer Project and the pledge established under this Agreement of the Developer Tax Increment Revenues received by the City from Developer.

**ARTICLE IV
PLEDGE**

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount Development Program Fund.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary the City shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate State offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City's responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The City shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow

agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City, and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the Town with respect thereto) shall be borne exclusively by the Developer.

Section 4.4. No Disposition of Development Program Fund.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Development Program Fund and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All non-confidential books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost Subaccount shall at all reasonable times be open to inspection by the Developer, its agents and employees.

**ARTICLE V
DEFAULTS AND REMEDIES**

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to deposit into the Developer Project Cost Subaccount of the Development Program Fund on a timely basis, funds the City receives from the Developer that the City is required under this Agreement to deposit into the Development Program Fund;
- (c) Any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof;
- (d) Any failure by the Developer to pay when due, any real or personal property taxes lawfully assessed by the City to Developer; and
- (e) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer;
- (f) Developer's failure to commence construction of Developer's Project by July 1, 2020 or the termination of manufacturing activities at Developer Property after Developer's Project is completed.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take

whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party provided the Event of Default is not cured within such 30 day period.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.11 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Nothing in this Agreement shall be deemed to excuse any non-payment of municipal taxes by Developer, or to limit in any way, the City's rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer's share of the tax increment revenues. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The City agrees to execute and deliver any other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as the Developer or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. Any obligation of the City under this section shall be conditioned upon pledgee or

assignee's or Developer's satisfaction of Developer's obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City's obligation to Developer hereunder.

Section 7.2. Pledge, Assignment or Security Interest.

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or the Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest; No Partnership or Joint Venture.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Developer. This Agreement is not intended to create any form of partnership or joint venture between the City and the Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City; No Waiver of Maine Tort Claims Act.

No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.* Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney's fees in the event of litigation, incurred by the City as the result of the City's participation in this Agreement or in the TIF Development Program that is the subject of this Agreement, other than costs and fees incurred in connection with a breach by City of its obligations hereunder.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law; Venue for Suits

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Any suit to construe or enforce the provisions of this Agreement must be brought in the District or Superior Courts of York County, Maine; and otherwise shall be void. Developer expressly waives any claim to jurisdiction of the United States District Court over disputes arising under this Agreement, whether on account of diversity of citizenship or federal subject matter.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given on the third business day after mailing by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:
City Administrator
City of Saco
300 Main St.
Saco, ME 04072

With a copy to:
Director of Planning and Development
City of Saco
300 Main St.
Saco, ME 04072

If to the Developer:
Baxter & Cutts, LLC
22 Monument Square Suite 602
Portland, ME 04101

With a copy to:
Ryan FitzGerald
51 Morning St. Apt. 4
Portland, ME 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Benefit of Assignees or Pledgees.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer's right, title and interest herein. No such assignment or pledge shall limit in any way, Developer's obligations hereunder.

Section 8.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.11. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys' fees incurred in enforcement of such obligations.

Section 8.12. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise

all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

CITY OF SACO

By: _____
 Name: _____
 Its: _____
 Duly Authorized by the City Council at its meeting on October 21, 2019

BAXTER & CUTTS, LLC

By: _____
 Name: _____
 Its: _____
 Duly Authorized

Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Baxter & Cutts - TIF							
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	Captured Valuation @100% of Value Captured	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Municipal Project Account	Captured Revenue to Developer Project Account
1	2020	\$1,000,000	\$1,000,000	0.01959	\$19,587	\$7,835	\$11,752
2	2021	\$1,000,000	\$1,000,000	0.01980	\$19,796	\$7,918	\$11,878
3	2022	\$1,000,000	\$1,000,000	0.02001	\$20,008	\$8,003	\$12,005
4	2023	\$1,000,000	\$1,000,000	0.02022	\$20,221	\$8,089	\$12,133
5	2024	\$1,000,000	\$1,000,000	0.02044	\$20,437	\$8,175	\$12,262
6	2025	\$1,000,000	\$1,000,000	0.02066	\$20,656	\$8,262	\$12,393
7	2026	\$1,000,000	\$1,000,000	0.02088	\$20,876	\$8,350	\$12,526
8	2027	\$1,000,000	\$1,000,000	0.02110	\$21,099	\$8,440	\$12,659
9	2028	\$1,000,000	\$1,000,000	0.02132	\$21,325	\$8,530	\$12,795
10	2029	\$1,000,000	\$1,000,000	0.02155	\$21,552	\$8,621	\$12,931
11	2030	\$1,000,000	\$1,000,000	0.02178	\$21,782	\$8,713	\$13,069
12	2031	\$1,000,000	\$1,000,000	0.02202	\$22,015	\$8,806	\$13,209
13	2032	\$1,000,000	\$1,000,000	0.02225	\$22,250	\$8,900	\$13,350
14	2033	\$1,000,000	\$1,000,000	0.02249	\$22,488	\$8,995	\$13,493
15	2034	\$1,000,000	\$1,000,000	0.02273	\$22,728	\$9,091	\$13,637
16	2035	\$1,000,000	\$1,000,000	0.02297	\$22,971	\$22,971	\$0
17	2036	\$1,000,000	\$1,000,000	0.02322	\$23,216	\$23,216	\$0
18	2037	\$1,000,000	\$1,000,000	0.02346	\$23,464	\$23,464	\$0
19	2038	\$1,000,000	\$1,000,000	0.02371	\$23,715	\$23,715	\$0
20	2039	\$1,000,000	\$1,000,000	0.02397	\$23,968	\$23,968	\$0
20-Year Total		\$20,000,000	\$20,000,000		\$434,155	\$244,062	\$190,093
					Percent of Total	56%	44%
Prepared by Camoin Associates, www.camoinassociates.com							
Financials based on 100% of value captured and 60% of incremental revenues returned to developer for 15 years and 0% in years 16-20.							

K. PROPOSED SENIOR CITIZEN TAX RELIEF ORDINANCE CHAPTER 175 – (FINAL READING)

The payment of property taxes is a significant challenge for senior citizens who are either retired or working less than

regular hours. In order to assist seniors in need, property tax credits are available to qualifying seniors. Due to recent changes in the Senior Citizen Tax Work-Off Program and the addition of a new program (The Senior Tax Assistance Match Program), it was necessary to implement a new ordinance. The City proposes to repeal and replace existing Section 220 of the City Code governing Tax Relief Programs for its Senior Citizens.

This Ordinance would be cited as Chapter 175 – Senior Tax Relief. It will replace in its entirety existing Chapter 220 of the City Code.

Councilor Minthorn moved, Councilor Copeland seconded to repeal Chapter 220 of the City Ordinances as a part of the enactment of the new Chapter 175. The motion passed with seven (7) yeas.

Councilor Minthorn moved, Councilor Smart seconded to amend Chapter 175 to include the revisions highlighted in Exhibit 3. The motion passed with seven (7) yeas.

**Chapter 175
SENIOR TAX RELIEF**

ARTICLE I

Senior Citizen Tax Work-Off Program

- §175-1. Purpose.
- §175-2. Definitions.
- §175-3. Criteria for Participation.
- §175-4. Application and Credit Procedures.
- §175-5. Tax Work-Off Program.

ARTICLE II

Senior Tax Assistance Match Program

- §175-6. Purpose.
- §175-7. Definitions.
- §175-8. Qualifications
- §175-9. Application and Credit Procedures
- §175-10. Senior Tax Assistance Match Program.

[HISTORY: Adopted by the City Council of the City of Saco on: . This ordinance replaces old ordinance Section 220 in its entirety, which was repealed with the enactment of this ordinance]

GENERAL REFERENCES

ARTICLE I

Senior Citizen Tax Work-Off Program

§175-1. Purpose.

The payment of real property taxes is a significant challenge for senior citizens who are either fully retired or working less than regular hours. The purpose of this ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who are homeowners in the City of Saco. To reduce the burdens of these taxes on these senior citizens, the City establishes the program whereby participants can perform vital municipal services in exchange for a reduction and off set in their real property tax bills.

§ 175-2. Definitions.

For the purposes of this Article, the following terms shall have the following meaning and definition:

HOMESTEAD: For purposes of this Ordinance, “homestead” shall have the similar meaning as defined in 36 M.R.S.A. § 5219-KK (1) (C). Generally, a homestead is a dwelling owned, (not rented), by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be a permanent residence, occupied by that person and that person’s dependents as a home.

QUALIFIED PROPERTY: Real property located in and taxable by the City of Saco owned by a qualifying and participating Senior Citizen as their Homestead.

QUALIFYING APPLICANT: A Qualifying Applicant is a person who is determined, after review of a complete application under §175.3 and §175.4 of this ordinance, to be eligible to participate in the Tax Work-Off program.

QUALIFYING SPOUSE: The legal spouse of a Senior Citizen who is qualified for and participates in the Tax Work-Off Program.

WORK-OFF HOURS: The service time that a participant and their Qualifying Spouse (if applicable) perform. A certain number of hours are required to receive a property tax credit on the participant's real property tax bill for a Qualified Property.

§ 175-3. Criteria for Participation

In order to participate in the Senior Citizen Tax Work-Off Program, an applicant must demonstrate the following:

- a. The Qualifying Applicant shall be at least 65 years of age at the time of application.
- b. The Qualifying Applicant and their Qualifying Spouse (if applicable) shall own a Qualified Property in the City as their homestead at the time of application and for the past three years.
- c. The Qualifying Applicant's household income cannot exceed the average Low-Income Limits (80%) for York County as published by the Federal Department of Housing and Urban Development.
- d. The Qualifying Applicant shall meet the application and eligibility criteria set forth in § 175-4 of this article.

§ 175-4. Application and Credit procedures

Persons seeking to participate in the Tax Work-Off Program shall submit an application to the Program administrator no later than April 1. Applications are required for every year the applicant seeks to participate in this program. The application form for the program shall be made available upon request and shall include at minimum, the applicant's name, homestead address, and contact information. Attached to all applications shall be proof of household income.

The City of Saco will establish the amount of property tax credit that will be provided to participants based on the number of service hours performed by the participant and their Qualifying Spouse (if applicable). This amount will only be applied as a property tax credit against real property taxes for a Qualifying Property; no direct wages will be paid to any party. In no case shall the City's Tax Work-Off property tax credit exceed the property taxes assessed on any participant. Only one Tax Work-Off property tax credit per household is allowed.

In no event will any party be able to exceed the maximum offset credits established under the City's existing policy then in effect; any additional service hours are not applied to this program and will not result in any additional tax credit.

Participants are responsible for all federal and state tax reporting of property tax credit benefits that accrue to them from the program. Participants will receive a W-2 form from the city to assist with tax planning purposes.

175-5. Tax Work-Off Program.

The City's Tax Work-Off Program shall be administered by a designee of the Human Resources Director and shall be governed by the ordinance established by the City Council. These policies may be amended from time to time.

The City does not guarantee, assure or promise acceptance into the Tax Work-Off Program for any party, and acceptance is not a promise or guarantee of any minimum number of service hours, or of offset credits that can be earned.

A participant in the City's Senior Tax Assistance Match Program (Article II) may not apply for or participate in this Tax Work-Off Program.

On or about May 1, the City Council will re-evaluate the program and determine the funding to be drawn from the tax commitment overlay for the ensuing fiscal year.

ARTICLE II

Senior Tax Assistance Match Program

§175-6. Purpose.

The purpose of this ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who have a homestead in the City of Saco. For those eligible, the State of Maine refunds to the citizen a portion of funds paid as local property tax or rent. The City intends, by this Ordinance, to offer a partial matching credit to those individuals who qualify as homestead beneficiaries of the State of Maine Residents Property Tax Fairness Credit pursuant to Chapter 822 of Title 36 of the Maine Revised Statutes, as may be amended from time to time and who meet the criteria established by this Ordinance.

§175-7. Definitions.

HOMESTEAD: For purposes of this Ordinance, “homestead” shall have the similar meaning as defined in 36 M.R.S.A. § 5219-KK (1) (C). Generally, a homestead is a dwelling owned or rented, by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be a permanent residence, occupied by that person and that person’s dependents as a home.

HOMESTEAD EXEMPTION: The State of Maine property tax exemption for all individuals who have owned a permanent residence in Maine for twelve (12) months as of April 1. Established by the State of Maine pursuant to 36 M.R.S.A. §683, as may be amended from time to time.

SENIOR TAX ASSISTANCE MATCH PROGRAM: The program established by the City of Saco under this Ordinance, also referred to as the “Senior Tax Match Program.”

SENIOR TAX ASSISTANCE MATCH FUND: The special revenue fund established by the City of Saco under this Ordinance, also referred to as the “Senior Tax Match Fund.”

RENT CONSTITUTING PROPERTY TAXES: The amount of annual rent paid which constitutes property tax, as calculated by the State of Maine Property Tax Fairness Credit program.

QUALIFYING SENIOR CITIZEN: A person who meets the qualifications set forth in §175-8 and §175-9 and is determined to be eligible for a credit under the terms of this Ordinance.

STATE PROPERTY TAX FAIRNESS CREDIT PROGRAM: The program established by the State of Maine pursuant to 36 M.R.S.A. §5219-KK as may be amended from time to time.

§175-8. Qualifications.

To qualify for participation in the Senior Tax Assistance Match Program, an applicant must demonstrate all of the following:

- a. The applicant must reside full time in the homestead at the time of application and for the past 10 years continuously.
- b. Applicant shall be 70 years or older on or before April 1 of the program year.
- c. The applicant has received a tax refund under the provisions of the State of Maine Residents Property Tax Fairness Credit Program (36 M.R.S.A. 5219-KK).

Additionally, if the applicant is a property owner:

- d. The applicant has paid property taxes in full for the year in which the credit is requested.
- e. The applicant has applied for and received the Homestead Exemption for the year in which the credit is requested.

§175-9. Application and Credit Procedures.

Applications are required every year to participate in the Senior Tax Match Program. The program administrator will provide an application form for the program, which shall include, at a minimum, the applicants name, homestead address, and contact information. As part of the application to the City, the applicant shall authorize the City to seek documentation from Maine Revenue Services of the proof and dollar amount of the State Property Tax Fairness Credit received by applicant. The program administrator determines if applicants are eligible to participate in the program and the administrator shall determine the total amount of such eligibility. Eligibility shall be the **lesser** of the following amounts.

- a. The amount of credit qualified for under the State Property Tax Fairness Credit program; or
- b. A pro rata share of the available monies in the Senior Tax Match Fund based on the amount of one's State Property Tax Fairness Credit; or
- c. A credit of \$500.

In no case shall the City's offered credit for homeowners exceed the property taxes assessed and paid less the State Property Tax Fairness Credit. Only one qualifying applicant per homestead shall be entitled to payment under this Program each year.

The Program Administrator shall report to the City Council each year the projected amount of credits and the number of Qualifying Senior Citizens requesting assistance from the Senior Tax Match Fund. The City Council shall annually determine the number of recipients in the program.

Participants are responsible for all federal and state tax reporting of tax credit benefits that accrue to them from the program. Participants will receive an IRS Form 1099 from the City.

§175-10. Senior Tax Assistance Match Program.

The City's Senior Tax Assistance Match Program shall be administered by a designee of the Human Resources Director and shall be governed by policies established by the City Council. These policies may be amended from time to time.

A participant in the City's Tax Work-Off Program (Article 1) may not participate in or apply for the Senior Tax Assistance Match Program.

A person who qualifies for a credit under the program shall be mailed a check no later than December 31 of the year in which the application is submitted.

On or about May 1, the City Council will re-evaluate the program and determine the funding to be drawn from the tax commitment overlay for the ensuing fiscal year.

VIII. ADMINISTRATIVE UPDATE

Acting City Administrator Patrick Fox provided the following updates:

- Zoning Revision – Public meeting is going to be held on Oct. 30th from 6:30 p.m. – 8:00 p.m. here at City Hall for another chance for the public to engage on the zoning revisions.
- School Board Change in Joint Meeting Date – From Oct. 30th to Nov. 6th.
- Website – I encourage people to check the website often to find out about meetings like the zoning revisions, Route #112 updates. The hot topics with allot of movements will be put to the forefront on the front page of the website.
- Councilor Minthorn – Route #112 Impact. – Thanked the Public Works Director for wearing that hat for all the phones calls he has received about Garfield Street being closed for a left turn and you are one of them that has to change his path in the morning to get to work. So, I remind them of that when they call or e-mail that you are part of the group that is being impacted by this and I thank you for that.
- Councilor Copeland – Saco Main Street had a fantastic event with lots of kids and thousands of people. The police kept us safe and were taking pictures with kids in their costumes. I was a wonderful interaction with city staff, Saco Main Street and was a fabulous event. “

IX. COUNCIL DISCUSSION AND COMMENT

- Councilor Smart – For the public especially citizens of Ward 6 as my fellow councilors know, I have recently submitted a letter requesting my withdrawal from the upcoming race. That letter has not been accepted because of the timing and basically, we can't have ballots reprinted. But I wanted to let everybody know that my intention is to withdraw from the race. I would like to read a little bit of my letter. "This decision was not made lightly and as a result in a change in my circumstances that I believe would restrict me from giving the time and energy necessary to fulfill my duties as city councilor. The residents of Ward 6 and the city of Saco deserve a council that is fully able to dedicate itself to the important issues at hand and effectively and efficiently execute the will of the citizens. Therefore, it is with a heavy heart that I must request my withdrawal of my candidacy. I intend to remain involved in Saco as much as possible and I hope that I can continue to help Saco move forward. Please accept my sincerest apologies for any issues my late notice may have caused and I hope to be able to again serve the people of Saco in the future. Finally, and most sincerely, I want to thank the city and the staff and employees of Saco for your diligent and often thankless work in continuing the city's pursuit of excellence in service to our citizens. I truly believe that Saco is a city like no other and I'm eternally grateful for the opportunity to serve as one of the councilors. Thank you.
- Councilor Archer – I received a call from a constituent that Pat Fox has answered. I think they are starting to do surveys on the exit because I had some complaints and questions as to why all these flags were going up. It was suggested that was due to the Turnpike work. Pat Fox noted that the Turnpike is moving forward with at least preliminary design and putting in their 4-5 year work plan possible construction with additional ramps for RT #112. Any abutter to the area of the turnpike from Garfield Street and probably access to the Hillview Ave. neighborhood and direct abutter to North Street I believe received a letter from the Maine Turnpike Authority. They will be surveying to find out where the existing right of way is to get estimated and environmental permit needs. Also, if you didn't receive a notice and see flagging then that is probably on property that the turnpike already retains the rights too.
- Councilor Copeland – Thank you for the information. Would you please forward the council the letter that was sent to the residents please? Mr. Fox stated that he would.

X. EXECUTIVE SESSION

Mayor Lovell noted that the Executive Session item has been withdrawn.

XI. REPORT FROM EXECUTIVE SESSION

XII. ADJOURNMENT

Councilor Minthorn moved, Councilor Smart seconded to adjourn the meeting at 8:05 p.m. The motion passed with seven (7) yeas.

Attest: _____
Michele L. Hughes, City Clerk