STATE OF MAINE
COUNTY OF YORK
CITY OF SACO

I. CALL TO ORDER – On Monday, August 6, 2018 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: Roger Gay, William Doyle, Lynn Copeland, Alan Minthorn, Micah Smart and Nathan Johnston. Councilor Marshall Archer was excused this evening. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL
A. TREE CITY USA

Mayor Lovell introduced Bonita Pothier, representing U.S. Senator Angus King and invited her to do her presentation.

Recently, the news was released that the City of Saco was deemed and recognized as Tree City USA for 2017. This program is over 40 years old and it is a big deal. The senator requested that a special senate certificate be presented to the city.

The certificate says: Congratulations, on receiving Tree City USA recognition for 2017. This program is over 40 years old and recognizes cities across the country that meet core standards for tree care. I want to join with you to celebrate this achievement. In Maine, we know better than anyone how vital trees are to healthy vibrant communities. Thank you for all you have done to ensure that Maine and especially your community continues to be such a special place to call home.

Ms. Pothier recognized Mayor Lovell and the Council, because for this to happen that direction comes from all of you elected officials here in Saco. It is also important to recognize the staff. I believe your trees are taken care of by your Parks & Recreation staff. It is their diligence, commitment, attention to detail and their love of the city which made this possible. Congratulations to you all.

Mayor Lovell noted that he was on the council when the city first earned the designation about 8 years ago. The city Parks & Recreation Director Ryan Sommer appreciated the recognition and stated they would do their best to be a Tree City USA.

B. NATIONAL NIGHT OUT

National Night Out will be in the playing fields behind Burns School tomorrow evening between 6:00 p.m. – 9:00 p.m. Everyone is invited to attend the event.

SCHOOL BOARD MEMBERS

Mayor Lovell noted that all 4 incumbent school board members have taken out nomination papers. These seats are up for election in November and will be for 3-year terms.

SEA RISE

There will be a discussion of sea level rise on Thursday in the Kennebunk Town Hall Auditorium between 7 – 9 p.m. So, for those concerned with sea level rise that should be an important meeting for you.

COUNCIL WORKSHOP

There will be a council workshop on August 13th at 6:30 here in the Auditorium.

V. PUBLIC COMMENT

There were no public comments this evening.
VI. CONSENT AGENDA

Councillor Minthorn moved, Councillor Smart seconded to accept consent agenda items A, B, C, D, and E as follows:

A. Asset Forfeiture, State v. Lisa Sullivan - Be it ordered that the Saco City Council does hereby approve with reference to York County Superior Court Docket #CR-18-91-Criminal Forfeiture, of the transfer of assets to the City of Saco, pursuant to 15 M.R.S. §5824(3) and/or §5826(6). Further move to approve the order.

B. Asset Forfeiture, State v. Gang Deng Majok - Be it ordered that the Saco City Council does hereby approve with reference to York County Superior Court Docket #CR-15-288-Criminal Forfeiture, of the transfer of assets to the City of Saco, pursuant to 15 M.R.S. §5824(3) and/or §5826(6). Further move to approve the order.

C. Lease Extension for Winter Harbor Children’s House - Be it ordered that the City Council approves an extension of the lease and authorizes the City Administrator to sign the lease agreement.

D. Lease Purchase Agreement with M.S.T. Government Leasing LLC - That, under and pursuant to the provisions of Maine law and the Charter and City Ordinances of the City of Saco, Maine, the City Administrator is authorized to execute and deliver a tax-exempt lease purchase agreement with M.S.T. Government Leasing, LLC in the name and on behalf of the City of Saco, Maine (the “Issuer”), for the purpose of refunding and refinancing existing lease purchases of photocopier equipment and lease purchasing additional new and reconditioned photocopier equipment, any service agreements specifically financed in connection with certain equipment, consulting fees and related costs of issuance with an aggregate purchase price not exceeding One Hundred Fifteen Thousand Six Hundred Ninety Dollars and Eighty-One Cents ($115,690.81), at a rate of interest of not more than 3.690% per year through August 1, 2023, and otherwise in such form as the City Administrator may approve; and that the appropriate officials of the Issuer be and hereby are authorized to execute and deliver on behalf of the Issuer such other documents and certificates as may be required in connection with such tax-exempt lease purchase agreement; and that no part of the proceeds of said tax-exempt lease purchase agreement shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause the tax-exempt lease purchase agreement to be a “private activity bond” or an “arbitrage bond” within the meaning of Sections 141 and 148, respectively, of the Internal Revenue Code of 1986, as amended (the “Code”); and that the tax-exempt lease purchase agreement issued pursuant hereto be designated as a qualified tax-exempt obligation within the meaning of Section 265(b)(3)(B) of said Code; and that the City Administrator be and hereby is authorized to covenant on behalf of the Issuer to file any information report and pay any rebate due to the United States in connection with the issuance of said tax-exempt lease purchase agreement, and to take all other lawful actions necessary to insure that the interest portion of the rental payments under and pursuant to the tax-exempt lease purchase agreement will be excluded from the gross income of the owners thereof for purposes of federal income taxation and to refrain from taking any action which would cause such interest portion of the rental payments to become includable in the gross income of the owners thereof. The Issuer also authorizes the City Administrator or IT Director of the Issuer to sign the attached Contract with Specialized Purchasing Consultants, Inc. relating to acquisition of photocopying equipment for the Issuer and authorizes such persons to make any elections under the Contract not exceeding the aggregate purchase price of this authorizing Vote."

E. Edward Byrne Justice Assistance Grant – The Council supports the Police Chief’s use of the funds.

The motion passed with five (5) yeas and one (1) nay – Councillor Doyle.

VII. AGENDA

A. AMENDMENTS TO CHAPTER 64 – ANIMALS – (PUBLIC HEARING)

Councilor Copeland moved, Councillor Minthorn seconded to open the public hearing for the document titled, ‘Amendments to Saco City Code, Chapter 64 – Animals, dated July 23, 2018.’ The motion passed with six (6) yeas.

Kevin Sutherland, City Administrator – Councilor Copeland through the explanation of the background characterized why we need to do this. Specifically, what are the changes that have to be changed? Horses are one piece of it and dogs are the other piece. Horses are essentially extending the time at which no one can ride horses on the beach. This is due to some environmental needs or the birds specifically the least terns and the piping plover. For the dogs the change is that instead of just July and August where all dogs have to be on a leash from 9:00 a.m. – 5:00 p.m., all dogs would have to be on a leash at all times from April 1st through September 30th. Those are the changes being made and this is again to comply with federal requirements and so that we can get sand on the beach in Camp Ellis. Mayor Lovell stated that this does not prohibit having dogs on the beach.
Mark Gross, 87 Oceanside Drive – Spoke in support of the ordinance change. It is honorable and a good idea to when we can to support the protection of wildlife. Second argument, is the protection of humans. I think everyone realizes I hope at not all dogs are controllable by voice. Many are, and some are not. I think having the rule of having dogs on a leash at the highest use of the beach is an excellent idea for wildlife and children’s safety. I’m sure there are lot of stories. My cousin was bitten, and my granddaughter was charged by a dog and I was lucky because I was in between her and the dog. I think it is a good idea for safety and it isn’t much of a burden on dog owners who are on the beach year-round for dogs to be under some semblance of control and I hope you pass the ordinance.

Cushing Samp, 18 Park Street – Since moving to Saco 13 years ago I have always enjoyed going out to Camp Ellis. Having said that I would like to say that my first statement is “If we can do anything to support the continuation of the charming little area that is Camp Ellis” that would be my first concern. Having said that I would also like to say that the little section of beach that is Camp Ellis is very small and I cannot conceive that any birds with any brains in their heads would actually build their nest there given the large population related to the size of the beach.

I have a little 1 year old 11-pound Bichon named Phinneas. I have been taking him to the beach in the late afternoon and all the children descend on him and chase him up and down the beach. He is happy, and the parents thank me for tiring out their children. He will walk up to people sitting under their beach umbrellas and wet and sandy and nasty sit on their laps if he is invited. I walk up the beach with him talking to people I have never met before. It is such a sense of community and in intergratal part of that is that very few dogs that I have seen running around playing and just adding to the magic of the summer experience. When I came back the kids run up and down the beach saying “Phinneas is back, yeah”. In the great scheme of things, you have to weigh what is important. But it makes me sad to think that in this day and age when those kinds of experiences are disappearing that you recognize that it is a lovely thing.

Jane Kerns, 10 Shore Ave – I was really surprised to see that I was only aware of this only a week ago. How did all this happen without letting the people of Saco, at least the people that are down at the beach that this impacts, know that this was taking place. So, we did find out about it and one of the things I know and many of you who know Scarborough, know that they went through this same thing 5 or 6 years ago and fortunately they fought it and won. Now, I like trees, but I like people and dogs a little better than trees. There are lots of people who like to walk their dogs on the beach. I would like to know if any plovers have been harmed because the last 2 years we have had the rule that between 9 – 5 p.m. dogs need to be on leashes. Otherwise, they can run free. There are lots of dogs that enjoy running on the beach during those early times and then later on. So, have plovers been injured? The other thing is that first of all the Feds have no jurisdiction over to you. You have to vote for this to happen. They can suggest something, but they cannot tell you that you must do this. I’m sure you must know that because I’m sure you are all very educated. The other thing that bothers me is that you are saying no dogs, they have to be leashed from April 1 – September 30. Well, what are you going to do about the cats, foxes and birds. We have eagles and other birds that will be coming down on these birds. I live right there at Kinney Shores and I had to stop building for a whole month while the plovers did their thing and that was fine, and we went along with that. But, who’s going to enforce this? Here we are talking about Camp Ellis. I certainly have great empathy for the people who are in Camp Ellis. But my question is “This is not a done deal that will cure a problem in Camp Ellis. You are bringing in sand and where is the sand going?” To Kinney Shores and Pine Point and they have to dredge. Do you know what is happening to the marsh at Kinney Shores? It is being narrowed again and will eventually have to be dredged. Don’t know how that is going to happen because you can’t dredge. So, that will be something that you will be facing. I just don’t understand how this was just swept under so quickly and there wasn’t time for people to come and talk and discuss this but we are doing this now at the last moment where I’m assuming unless many of us have a lot of money that we can fight this that this is going to be a done deed. This really scares me because I think if you can do this with this what can you do with other things. So, I really want to know how come people were not made aware of this before now?

Katie Foley, Town of Scarborough - Full disclosure. I was the person who pulled petition to over-turn the Town Council’s action in Scarborough when they banned all off-leash activity town wide year-round. What I want to share with you tonight is the story of why I got involved because I think that is what is most important and relevant to me. It is not just that I love dogs, because I absolutely love dogs and I probably love most dogs more than most people. But, I also respect what an earlier speaker said about not all dog owners are responsible and they don’t all clean up after themselves and they don’t all have their dogs under full control. But what really compelled me to get involved
with the issue in Scarborough was the issue that you are dealing with here which is the dredging of our river. So, our river like yours over time has issues and needs to be dredged every 7-8 years. In order to dredge the river, the Army Corp of Engineers needs to get approval from the Dept. of Inland Fisheries and Wildlife to do so. What made me crazy was that they said they would be happy to grant them permission to dredge the river as long as you enact a stricter leash law. Tell me what dredging the river and the leash law have to do with each other. They are not related other than the way for a very large federal entity to get what they want accomplished by way of a leash law. My sister wrote the piping plovers ordinance in Scarborough. So, we are also hugebiologists and lovers of plovers and I think that if you look to Scarborough in terms of a model and what we have been able to accomplish there we have a plover monitoring program of which the dog owners of greater Scarborough have taken a huge leadership role in helping maintain on our beaches. This idea that you are required, and you have to sign this beach management agreement and that you had to do it just doesn’t fly for me because they should put that sand where your town needs it because it is the right thing to do not because they are holding something over your head. Someone mentioned protecting humans. I have a niece that is deathly afraid of dogs and I do get it. Anyone go out into a field and walk their dog this year? The ticks were unbelievable. Lyme disease is rampant. The safest place to walk your dog as a human being is at the beaches where the ticks are not. So, when you talk about protecting humans, having a compromise in place that will allow for some off-leash activity is really, really important. I urge you to take a deep breath and don’t do what we did in Scarborough and just plow forward. Maybe reevaluate where you are and if this makes sense for your town and then try to come up with a compromise because we did in Scarborough and it is working very well.

Gail Bruns, Town of Scarborough – Chairman and Representative of the Dog Owners of Scarborough – Back about 4-5 years ago we had a very similar situation in that we were asked to leash our dogs at all times on the beaches. We required a river dredging for our fisherman to get into the docks and for all the recreational boats. Needless to say, known of us wanted to prohibit that dredging from happening because it was very important to our town just as your Camp Ellis situation is very important to your town as well. I sincerely hope you can get the project going to get a permanent fix. I hope you will slow down and give maybe some alternatives and consideration. It sounds like you have already signed a beach management agreement with US Fish and Wildlife, so I don’t know if your hands are tied. But, in Scarborough we also had signed that agreement as was my understanding. It wasn’t looking very good and in fact the Town Council did go ahead and came up with a leash law that did require dogs to be leashed for 6 months out of the year from the beginning of April till the end of September which is what you folks are looking at too. In Scarborough we have a much larger beach area than you have down here in Saco and we have allot of dogs and dog owners that just love walking there. I’m sure that even Bayview and Kinney Shores are allot smaller and have people who do really enjoy walking their dogs. Hopefully, you can come up with some kind of arrangement. Perhaps, keeping part of your beaches open to off leash time for the dogs. I’m hoping for you that it is not too late. We had to have a referendum in Scarborough to over-turn that leash law. We went through quite a bit and it took about a year to get this arranged and we did manage to go ahead with our dredging even though intimidating letters had been sent from US Fish and Wildlife and from the Army Corp. of Engineers. The project did go ahead regardless of what status we had on our leash law and eventually we worked together as a community to come up with something that was a compromise and it is working quite well. We still do have dogs off leash in the morning during the piping plover season from sunrise until 9:00 a.m. That has worked well in Scarborough in my opinion and we have allot of happy dog walkers and there hasn’t been any damage done to the plovers. In fact, dogs are the least of their dangers. The big dangers are the big tides, storms, and environmental issues that are more or less out of our control. So, I hope you will slow down and give this a little more consideration and try to aggressively pursue the alternatives and come out with a happy arrangement for everybody.

Suzanne Foley-Ferguson, Town of Scarborough – Served on Town Council in the 90’s as the Ordinance Chair where I actually wrote the Piping Plover Ordinance. You would think that I would be very in favor of this and I am in favor of protecting the plovers, but I think all of these issues are very complicated. I also served on the Southern Maine Planning Commission’s Saco Bay Beach Planning Committee in the 90’s and we studied all about Camp Ellis and the jetty and we all know that the problem is the jetty. Yet we want to keep studying it instead of actually doing anything about it. So instead we do the band aids and the dredge which we need to do to save life and property. Well, I want to urge this council not to be bullied or blackmailed by the federal agencies because this is your town. They are going to dredge most likely and hopefully this Beach Management Plan you signed on June 4, 2018 it says the changes are required. I’m surprised you didn’t have a public hearing prior to signing the beach management agreement because it seems now it would be necessary for you to change the ordinance. But, there is a whole slew
of issues: 1) The biology of the bird itself which we know because of climate change they actually nest right on the sand and because of climate change it is likely these birds are going to be hard to save to begin with. Right now, your folks have the Rachel Carson Wildlife Refuge which I’m a founding member and you also have Ferry Beach State Park. You have a huge swath of beach where the birds do very well. The birds are never going to do well in Camp Ellis. You have the Army Corp. of Engineers coming in and trying to get the US Fish and Wildlife and Inland Fisheries and Wildlife to sign off on putting sand that is gradually going to move down to where the plovers actually are because they are not going to be at Camp Ellis. Really what you are allowing the federal government to do is bully you to create your own ordinance. In this state we have home rule. Where else are they going to put the sand if you really think about it. Are they going to ship it over Scarborough or somewhere miles away? If would be way more expensive. They are pressuring you and I don’t understand the pressure that you felt for it. I frankly think they wouldn’t put it anywhere else except right over the jetty at Camp Ellis where it makes sense to help with the property. I urge you to think again. My whole life has been about balance and I study biology, but I think people and property are more important as is balance. You have the Rachel Carson huge swath of beach where no dogs are allowed anyway. I think you could give some off-leash time as other people mentioned and there are other options instead of just bowing to the federal agencies.

Councilor Copeland moved, Councilor Minthorn seconded to close the public hearing and further move to set the second and final reading for August 20, 2018. The motion passed with six (6) yeas.

Amendments to Saco City Code, Chapter 64 – Animals
July 23, 2018

(Article I: Keeping of Animals

Section 64-3 - Horses prohibited on beaches; exception.

Between May 1 and September 30, no person shall ride or drive any horse upon the public beaches of the City or upon any beach to which the public has access, nor shall the owner of the horse permit it to be so ridden. This section shall not apply to persons using horses or teams to clean the beach of any refuse or seaweed, provided that the horses or teams shall be properly attended at all times.

Article II: Dogs

Section 64-8 - Running at large.

[Amended 9-4-2012]

A. A dog, while on any public way or place, shall be under restraint, within the meaning of this article, if it is controlled by leash or voice control beside a competent person and obedient to that person's commands or on or within a vehicle being driven or parked on the streets or within the property limits of its owner or keeper.

B. The following restrictions apply to dogs on beaches:

1. During the months of July and August, no dog shall be present on any beach between the hours of 9:00 a.m. and 5:00 p.m., unless it is leashed by its owner. All dogs should be leashed and under control of their owners at all times from April 1 through September 30th on beaches where piping plovers or least terns are present or have traditionally nested. Dogs should be prohibited on these beaches from April 1 through September 30 if, based on observations and experience, dog owners fail to keep pets leashed and under control.

B. RENEWAL APPLICATION FOR A SPECIAL ENTERTAINMENT PERMIT – TOWNHOUSE PUB – (PUBLIC HEARING)
Townhouse Management Inc. d/b/a Townhouse Pub 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 Johnston moved, Councilor Minthorn seconded to open the Public Hearing. The motion passed with six (6) yeas.

There were no public comments.

Councilor Johnston moved, Councilor Smart seconded to close the Public Hearing and “Be it ordered that the City Council grant the renewal application submitted by Townhouse Management Inc. d/b/a Townhouse Pub 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 six (6) yeas.

C. EXTENSION OF PREMISE FOR RUN OF THE MILL (RIVER JAM FESTIVAL) – (PUBLIC HEARING)

This request appears before the City Council since a portion of this parking surface is owned by the City of Saco. The Annual River Jam Festival events will be occurring September 14-15, 2018. This event features collaborative community-wide celebration with events occurring in both cities, Saco and Biddeford. Saco Main Street Inc. and Heart of Biddeford organize and host this event. The landlord, Saco Island West, LLC has consented to the use of this space and Dirigo Management Company will be notifying residents and tenants of the space, prior to the event so they are aware. Upon City Council approval, the City Clerk, Michele Hughes will request consent of the State of Maine Bureau of Alcoholic Beverages Division of Liquor Licensing and Enforcement. The schedule of events for River Jam Festival can be found on the event’s website.

Councilor Johnston moved, Councilor Minthorn seconded to open the Public Hearing. The motion passed with six (6) yeas.

There were no public comments.

Councilor Johnston moved, Councilor Minthorn seconded to close the Public Hearing and “Be it Ordered that the City Council grant a Temporary Extension of Premise Permit to allow Island Brewing LLC d/b/as The Run of the Mill to sell beer and food off premise on the parking surface on Saco Island adjacent to The Run of the Mill on September 15th from 4:00 PM to 11:00 PM”. Further move to approve the order. The motion passed with six (6) yeas.

D. BUDGET AMENDMENT #1 – ADMINISTRATION – (FIRST READING)

As part of the Administrator’s negotiated contract, several account lines need to be amended to reflect the expected expenditures for Fiscal Year 2019.

Council action to utilize $ from the fund balance would have no further impact on the property tax amount for Fiscal Year 2019.

Councilor Smart moved, Councilor Johnston seconded “Be it Ordered that City Council approves the first reading of ‘Budget Amendment #1 FY2019’ and moves to schedule a second and final reading for August 20, 2018.” Further move to approve the order. The motion passed with five (5) yeas and one (1) nay – Councilor Doyle.
E. CHARTER AMENDMENT #1 – STAGGERED THREE-YEAR COUNCIL TERMS – (FIRST READING)

The City Council endeavors to make a few amendments to the Charter. As described in MRSA, Title 30A, Chapter 111, Section 2104, the process for making amendments to the Charter requires a Public Hearing before a vote by Council. Additionally, if approved by the Council, the item would be voted in referendum by the public in November.

This particular change is meant to create staggered terms for City Council and extend the service time from two years to a three-year term. This will afford the community an opportunity to change the makeup of Council on an annual basis.

Councilor Johnston moved, Councilor Minthorn seconded “Be it ordered that the City Council approve the first reading of the Charter Amendments included in the document titled, ‘Saco City Charter Amendment #1: Staggered Three-Year Council Terms, dated August 6, 2018’. Further move to schedule a public hearing for August 20, 2018 before a vote to add to the November referendum.

Amendment – Councilor Doyle moved, Councilor Minthorn seconded that Ward 1, Ward 3, and Ward 6 will run for a two-year term; Ward 4, and Ward 5 will run for a three-year term; and Ward 2 and Ward 7 as well as the Mayor will run for a four-year term as a one-time fix and then go to three-year terms. The motion passed with three (3) yeas.

Mayor Lovell called for a vote on the main motion with the amendment. The motion passed with six (6) yeas.
F. CHARTER AMENDMENT #2 – MAYOR PRESIDES OVER BOTH THE CITY COUNCIL AND SCHOOL BOARD – (FIRST READING)

Councilor Minthorn moved, Councilor Johnston seconded. Vote: 6-0

The City Council endeavors to make a few amendments to the Charter. As described in MRSA, Title 30A, Chapter 111, Section 2104, the process for making amendments to the Charter requires a Public Hearing before a vote by Council. Additionally, if approved by the Council, the item would be voted in referendum by the public in November.

This particular change is meant to provide greater communication between the City Council and the School Board. Having the same person preside over both elected bodies also creates a level of consistency in governance.

Councilor Minthorn moved, Councilor Johnston seconded “Be it ordered that the City Council approve the first reading of the Charter Amendments included in the document titled, ‘Saco City Charter Amendment #2: Mayor Presides Over Both the City Council and School Board, dated August 6, 2018’. Further move to schedule a public hearing for August 20, 2018 before a vote to add to the November referendum. The motion passed with six (6) yeas.

Saco City Charter Amendment #2: Mayor Presides Over Both the City Council and School Board, dated August 6, 2018

Article II: Mayor and City Council

Section 2.07 – Powers and Duties of the Mayor.

b. The Mayor shall preside at all meetings of the City Council and the School Board and shall vote only in case of a tie.

Section 4.01 - School Department and School Board.

g. The Mayor shall sit as member of preside over the School Board but shall have no vote except in the case of a tie. The Mayor may not make motions, but may request matters be added to an agenda for School Board consideration.

G. CHARTER AMENDMENT #3 – REVISION OF NECESSARY DEPARTMENTS – (FIRST READING)

The City Council endeavors to make a few amendments to the Charter. As described in MRSA, Title 30A, Chapter 111, Section 2104, the process for making amendments to the Charter requires a Public Hearing before a vote by Council. Additionally, if approved by the Council, the item would be voted in referendum by the public in November.

This particular change is meant to provide some flexibility in determining the organizational structure of Saco as several of the departments listed in Charter are duties currently performed by other departments.

Councilor Minthorn moved, Councilor Smart seconded “Be it ordered that the City Council approve the first reading of the Charter Amendments included in the document titled, ‘Saco City Charter Amendment #3: Revision of Necessary Departments, dated August 6, 2018’. Further move to schedule a public hearing for August 20, 2018 before a vote to add to the November referendum. The motion passed with four (4) yeas and two (2) nays – Councilors Minthorn and Doyle.

Saco City Charter Amendment #3: Revision of Necessary Departments, dated August 6, 2018

Article V: Departments, Offices, and Agencies

Section 5.02 - City Council Power.
H. CHARTER AMENDMENT #4 – CLARIFICATION ON PUBLISHING NOTICE FOR PUBLIC HEARING ON THE BUDGET – (FIRST READING)

The City Council endeavors to make a few amendments to the Charter. As described in MRSA, Title 30A, Chapter 111, Section 2104, the process for making amendments to the Charter requires a Public Hearing before a vote by Council. Additionally, if approved by the Council, the item would be voted in referendum by the public in November.

This particular change is meant to provide clarity on when the public hearing for the budget should be held. The intent of the original language was meant to reflect what is shown in Section 6.06 of the Charter, but the way it is currently written makes it difficult to meet a specific day when the information needs to be published requiring duplication and costing the City money.

Councilor Smart moved, Councilor Gay seconded “Be it ordered that the City Council approve the first reading of the Charter Amendments included in the document titled, ‘Saco City Charter Amendment #4: Clarification on Publishing Notice for Public Hearing on the Budget, dated August 6, 2018’ Further move to schedule a public hearing for August 20, 2018 before a vote to add to the November referendum. The motion passed with six (6) yeas.
I. CHARTER AMENDMENT #5 – GENDER NEUTRALITY THROUGHOUT CHARTER – (FIRST READING)

The City Council endeavors to make a few amendments to the Charter. As described in MRSA, Title 30A, Chapter 111, Section 2104, the process for making amendments to the Charter requires a Public Hearing before a vote by Council. Additionally, if approved by the Council, the item would be voted in referendum by the public in November.

This particular change is meant to make the Saco City Charter an inclusive and gender-neutral document. It would replace all references all references to masculine singular pronoun with its third person plural pronoun and replace the associated verb form to complement the replaced pronoun.

Councilor Copeland moved, Councilor Gay seconded “Be it ordered that the City Council approve the first reading of the Charter Amendments included in the document titled, ‘Saco City Charter Amendment #5: Gender Neutrality Throughout Charter, dated August 6, 2018’. Further move to schedule a public hearing for August 20, 2018 before a vote to add to the November referendum. The motion passed with six (6) yeas.

Saco City Charter Amendment #5: Gender Neutrality Throughout Charter, dated August 6, 2018

Article II: Mayor and City Council

Section 2.03 – Eligibility

a. Mayor. The Mayor shall be a resident and qualified voter of the City of Saco, and shall remain so during his/her term of office otherwise the office shall be declared vacant.

Section 2.04 – Limitations; Mayor and City Council

a. Holding Other Office. A person who holds an appointive office in the City government or is an employee of the City shall be eligible to be a candidate for an elective office in the City government, but shall not take elective office unless he/she resigns from the appointive offices or City employment prior to the start of the term of office for which he/she was elected, except as otherwise provided by law. However, a person holding a City elective office shall be eligible, during his/her term of office, to become a candidate for the same or another City elective office. In the event such person is elected to the second City office, a vacancy shall exist in the first City office when such person qualifies for the second City office. No person shall be a candidate for more than one City elective office in the same municipal election. No person shall concurrently hold more than one City elective office. No former Mayor or Councilor shall hold any compensated appointive City office or City employment until one year after the expiration of the term for which he/she was elected.

b. Appointments and Removals. The Mayor, the City Council or any of its members shall not in any manner direct the appointment or removal of any City administrative officer or employee whom the City Administrator or any of his/her subordinates are empowered to appoint, but the Mayor and the Councilors may express their views and freely discuss with the City Administrator anything pertaining to appointment and removal of such officers and employees.

Section 2.06 – Vacancies, Forfeiture of Office, Filling of Vacancies

b. Forfeiture of Office. The Mayor or a City Councilor shall forfeit his/her office if he/she:

1. Lacks at any time during his/her term of office any qualification for the office prescribed by this Charter or by law.
2. Violates any express prohibition of this Charter.
3. Is convicted of a crime or offense involving moral turpitude.
4. Fails to attend three consecutive regular meetings of the City Council without being excused by the City Council.

Section 2.07 – Powers and Duties of the Mayor.

c. The Mayor shall have the power to veto any appropriations order, or any severable portion of any appropriation order without effecting the validity of the remainder of the order.

If the Mayor vetoes any such measure, such measure, with his/her written objections, shall be returned at the next regular meeting of the City Council, and the City Council shall proceed to reconsider the same. If, upon reconsideration, it shall be passed by a vote of not less than five (5) members of the City Council, it shall have the same validity as if signed by the Mayor.

f. The Mayor shall, by frequent conferences with the City Administrator, keep himself/themselves and the City Council informed as to the progress on all City Council directives, the general financial standing of the City, the current status of all negotiations, Administrative proposals for future City plans, and recommendations for City Council action. He/She will request any information and supporting documents he/she feels are necessary for himself/herself and the City Council in order to make reasoned and informed decisions on matters coming before the City Council or its member Committees.

Section 2.11 - Authentication and Recording; Codification; Printing.

a. Authentication and Recording. The City Clerk shall authenticate by his/her signature, and record in full, in a properly indexed book for the purpose, all ordinances, orders and resolves adopted by the City Council.

Article III: City Administrator

Section 3.01 – Appointment; Qualification; Compensation

The Mayor and the City Council shall meet jointly to review all applications for the position of City Administrator. After consultation, the Mayor shall appoint and the City Council may confirm a City Administrator for a term of three (3) years, and the City Council shall fix his/her compensation. The City Administrator shall be appointed solely on the basis of his/her executive and administrative qualifications, with special reference to his/her experience in, or his/her knowledge of, accepted practice in respect to the duties of his/her office, as herein set forth. He/She need not be a resident of the City or the State at the time of his/her appointment. He/She may reside outside the City while in office only with the approval of the City Council.

Section 3.02 - Reappointment, Termination, Removal for Cause.

a. Reappointment and Termination. Six months prior to the end of the City Administrator’s term, the Mayor and the City Council shall notify the City Administrator in writing that they will or will not reappoint him/her for another term. He/She shall reply in writing within ten (10) days of receipt of the City Council’s letter of intent, whether or not he/she wishes to be reappointed.

b. Removal for Cause. The City Council may remove the City Administrator from office in accordance with the following procedure:
1. The City Council shall adopt by affirmative vote of the majority of all its members a preliminary resolution which must state the reason or reasons for removal, and may suspend the City Administrator from duty for a period not to exceed forty-five (45) days. A copy of the preliminary resolution shall be served on the City Administrator promptly.
2. Within five (5) days after the copy of the preliminary resolution has been served on the City Administrator, he/she may file with the City Council a written request for a public hearing. This hearing shall be held at a City Council meeting not earlier than fifteen (15) days nor later than thirty (30) days after the request is filed. The City Administrator shall file with the City Council a written reply not later than five (5) days before the hearing.
3. The City Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five (5) days from the date when a copy of the preliminary resolution was served on the City Administrator.
Administrator if he-they has-have not requested a public hearing, or any time after the public hearing, if he-they has-have requested one.

4. The City Administrator shall continue to receive his-their salary until the effective date of a final resolution of removal.

Section 3.03 - Acting City Administrator.

During any vacancy in the office of City Administrator and during the temporary absence or disability of the City Administrator, as determined by vote of the Council, the Council may designate a properly qualified person to perform the duties of City Administrator and fix such person’s compensation. While so acting, such person shall have the same powers and duties as those given to and imposed on the City Administrator. This person shall not be the Mayor or City Councilor, or a former Mayor or City Councilor, unless he-they has-have been out of office for at least a year.

Section 3.04 - Powers and Duties of the City Administrator.

The City Administrator shall be the chief administrative officer of the City. He-They shall be responsible to the Mayor and the City Council for administration of all City affairs placed in his-their charge by or under this Charter. He-They shall have the following powers and duties:

a. He-They shall appoint, suspend or remove, subject to consultation with the Mayor and confirmation by the City Council, all department heads provided by or under this Charter, except as otherwise provided for by law or this Charter. All other employees shall be appointed by the City Administrator upon recommendation of the heads of their respective departments and their appointment, suspension or removal shall be as provided for by personnel rules adopted pursuant to this Charter. The City Administrator may authorize any department head who is subject to his-their direction and supervision to exercise these powers with respect to subordinates in that officer’s department, office or agency.

b. He-They shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.

c. He-They shall attend all City Council meetings, unless excused by the City Council, and shall have the right to take part in discussion but may not vote.

d. He-They shall see that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by him-themselves or officers subject to his-their direction and supervision, are faithfully executed.

e. He-They shall prepare and submit the annual budget and the capital program to the Mayor and the City Council.

f. He-They shall submit to the Mayor and the City Council and make available to the public a complete report on the financial and administrative activities of the City as of the end of the fiscal year. The time for filing the Annual Report may be extended by the City Council, for good cause, for an additional period, not to exceed forty-five (45) days.

g. He-They shall prepare and submit to the Mayor and the City Council such reports and shall perform such duties as they may require and shall make such recommendations to the Mayor and the City Council concerning the affairs of the City on a quarterly basis or more frequently if requested.

Article V: Departments, Offices, and Agencies

Section 5.01 - City Administrator, Chief Administrative Officer.

All departments, offices and agencies under the direction and supervision of the City Administrator shall be administered by an officer appointed by and subject to the direction and supervision of him-them except as otherwise provided in this Charter. With the consent of the City Council, the City Administrator may serve as the head of one or more such departments, offices or agencies except the Police and Fire Departments, or may appoint one person as the head of two or more of them, except the Police or Fire Departments.

Article VI: Financial Procedures

Section 6.09 - Amendments After Adoption.

e. Reduction of Appropriations. If at any time during the fiscal year it appears probable to the City Administrator that the revenues available will be insufficient to meet the amounts appropriated, they shall report to the City Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him-them and his-their recommendations
as to any other steps to be taken. The City Council shall then take such further action as it
deems necessary to prevent or minimize any deficit and for that purpose it may reduce one
or more appropriations.

Section 6.11 - Administration of Budget.
a. Payments and Obligations Prohibited. No payment shall be made or obligation incurred
against any allotment or appropriation except in accordance with appropriations duly made
and unless the City Administrator or his/her designee first certifies that there is a sufficient
unencumbered balance in such allotment or appropriation and that sufficient funds
therefrom are or will be available to cover the claim or meet the obligation when it becomes
due and payable. Any authorization of payment or incurring of obligation in violation of the
provisions of this Charter shall be void and any payment so made illegal. Such action shall be
cause for removal of any officer who knowingly authorized or made such payment or
incurred such obligation, and he/she shall also be liable to the City for any amount so paid.
However, except where prohibited by law, nothing in this Charter shall be construed to
prevent the making or authorizing of payments or making of contracts for capital
improvements to be financed wholly or partly by the issuance of bonds or to prevent the
making of any contract or lease providing for payments beyond the end of the fiscal year,
provided that such action is made or approved by vote of the City Council.

Section 6.12 - Purchasing.

Bidding and purchasing procedures shall be established by ordinance by the City Council for
purchases in excess of limits established by the City Council. The City Administrator shall make
necessary administrative purchasing rules in accordance with the ordinances as he/she deems
necessary. The purchasing agent shall contract for and purchase all supplies, materials, and
equipment required by any office, department or agency of the City, unless otherwise specified by
State Law.

Section 6.13 - Accounting Procedure.

The Auditor shall establish such rules and procedures as he/she deems necessary for account by
offices, departments, agencies, boards and commissions of the City in the form approved by the
State auditor.

Article VII: Elections

Section 7.02 - Candidates.
b. Nomination by Petition. The nomination of candidates for Mayor shall be made by
nomination petition. A candidate for Mayor shall become qualified by filing a nomination
petition signed by 200 qualified voters in the City. The nomination of candidates for the
elective offices of councilor, School Board member, warden, and ward clerk shall be made
by nomination petition.

A candidate for nomination to the elective office of councilor, warden, ward clerk and
School Board member shall become qualified by filing a nomination petition signed by 35
qualified voters from his/her particular ward. Signature of City residents living outside
the applicable ward of the candidate shall not be counted towards the required total of 35.
Nomination petition shall be filed in the office of the City Clerk at least 60 days prior to the
date of the municipal election. The nomination and election of these offices shall be non-
partisan.

Section 7.03 - Determination of Results.
a. Plurality. The candidate receiving the greatest number of votes shall be deemed elected
provided he/she qualifies as required herein.

Article VIII: General Meetings, Initiative and Referendum Recall

Section 8.03 - Recall.
c. Petition for Recall. The City Clerk shall thereupon prepare petition blanks for such removal
with a copy of said affidavit and general statement printed thereon or attached thereeto,
which shall contain the signature of said City Clerk, his/her official seal, shall be dated,
addressed to the City Council, and contain the name or names of the person or persons
whose removal is sought. The City Clerk shall file said petition blanks and shall, during office
hours for 20 business days thereafter, keep the same open for signatures by qualified voters
of the City and no such petition blanks shall be signed or presented for signature at any place
other than the City Clerk’s office.
e. Certification by Clerk. At the expiration of said 20 days, the City Clerk shall declare the petition closed and shall within 10 days thereafter ascertain whether or not the petition has been signed by the requisite number of voters and shall attach thereto his/her certificate showing the result of such examination.

f. Calling of Election. If the petition shall be certified by the City Clerk to be sufficient, he-they shall submit the same with his/her certificate to the Council at its next regular meeting and shall notify the member or members whose removal is sought of such action. The City Council shall thereupon, within 10 days of the receipt of the City Clerk’s certificate, order an election to be held not less than 40 nor more than 60 days thereafter; provided that, if a regular municipal election is to occur within 90 days after the receipt of said certificate, the City Council may in its discretion provide for the holding of the recall election on the date of such other municipal election. The recall election shall be called and held and nomination made as in other elections under the Charter, except for the specific limitations of this section.

Article IX: General Provisions

Section 9.01 - Personal Financial Interest.

Any City officer or employee who has a substantial financial interest in any contract with the City or in the sale of land, material, supplies or services to the City or to a contractor supplying the City shall make known that interest and shall refrain from voting upon or otherwise participating in his/her capacity as a City officer or employee in the making of such sale or in the making or performance of such contract. In the absence of actual fraud, no City official, officer or employee shall be deemed to have a substantial direct or indirect financial interest merely because he-they is are an official, officer, employee or stockholder of a private corporation to which the question relates or with which the City contracts, unless the City official, officer or employee is directly or indirectly the owner of at least ten per cent (10%) of the stock of the private corporation. Any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this Section shall be guilty of malfeasance in office or position and shall forfeit his/her office or position. Willful violation of this Section by the person or corporation contracting with or making a sale to the City, shall render the contract or sale voidable.

Section 9.02 - Limitations.

a. Activities Limited.
1. No person holding any compensated, appointed City position shall orally, by letter, or otherwise, solicit or assist in soliciting any assessment, subscriptions or contributions for any political party or political purpose whatever.
2. No person who holds any compensated appointed City position shall: make, solicit or receive any contribution to the campaign fund of; or participate actively as a member of a campaign committee in any capacity; for any political party or any candidate for public office, but he-they may exercise his/her right as a citizen to express his/her opinions and to cast his/her vote.

b. Penalties. In addition to any criminal penalties to which he-they might be subjected, any person who by himself-themselves or with others willfully violates any of the provisions of Subsection a shall be guilty of a civil violation and upon conviction thereof shall be punished by a fine of not more than $500.00. Any person convicted under this Section shall be ineligible for a period of five years thereafter to hold any City office or position, except as otherwise provided by law.

Section 9.03 - Judge of Qualifications.

[Amended 11-2-2010; 11-4-2014]
The City Council shall be the judge of election and qualifications of the Mayor, the City Councilors, and of the grounds for forfeiture of their offices. The City Council shall have the power to subpoena witnesses, administer oaths and require the production of evidence in accordance with the provisions of Section 9.04. A member charged with conduct constituting grounds for forfeiture of his/her office shall be entitled to a public hearing upon a written request made within 10 days of the filing of the charge with the City Clerk. Such hearing shall be held within 30 days of the filing of the charge and notice of such hearing shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the City Council under this section shall be subject to review by the Courts. The Saco School Board shall be the judge of election and qualifications for School Board members. The School Board shall have and exercise the same standards, duties and powers described hereinabove in this section as are applicable to the City Council.
VII. ADMINISTRATIVE UPDATE

City Administrator Kevin Sutherland provided the following updates:

➢ Downtown District - The city received word this afternoon we have been awarded our Downtown Development District. The Commissioner still needs to sign.
➢ Union Negotiations – We are still working on union negotiations and continue to move forward. I will likely have 2 more for council review in executive session on August 20th.
➢ Army Corps of Engineers – They have revised their draft report. Our Saco Bay Erosion Working Group has been meeting regularly to review those documents and to provide commentary for our letter of support with some caveats. I think this council will have to start looking at addresses some of those issues in the months to come.
➢ Budget Process – My intent for a workshop next week involves a budget retreat. I would like to spend some time working with Glenys and the Council to have a structured conversation about components of the budget process this past year and how we can improve for next year. Ideas about what kind of documentation you want to see. The type of presentations that you want from staff etc. So, we will be looking to get other ideas and thoughts next week that are constructive and help us better prepare you for next year.
➢ Unit 91 – They has an extension through July due to title issues. The document is likely to be signed on August 10th and we can remove ourselves from this project. The council will be receiving more information in an executive session. The sale will be contingent on us purchasing the Claire parcel on the Portland Road.

IX. COUNCIL DISCUSSION AND COMMENT

➢ Councilor Gay – Thanked everyone for working and participating in the car show. There was a really good turn-out. I would also like to thank the people who are donating to 90 Temple Street, the HPC really appreciates it.
➢ Councilor Doyle – I would like to bring to your attention that this Friday and Saturday I was inundated with e-mails and phone calls regarding blasting that took place yet again in Lombard Estates off the Ross Road on Friday afternoon. Residents of Ward 3 and Saco received notification via mail on Friday, August 3rd when the blasting was supposed to take place. Yet, the letter was dated for August 1st. So, they are receiving their blasting notification after the blasting has commenced. Many people were very upset by this and very upset they weren’t notified prior to that. With that said, if you look back to the Planning Board for the Lombard Estates subdivision you will find in there that Joe Laverriere sends a memo to the Planning Board saying “Due to the hard bedrock that we found in Trailside Circle when building that you should really look at the law for quarry blasting when you look at this”. The quarry blasting law if you look it up is 2,500 feet for pre-blast service. I can assure you that wasn’t done. Allot of folks are very disenfranchised with the process and the city because of our lack in fixing this issue. Therefore, in March I presented to this Council and to the Planning Board a Blasting Ordinance and at this point it has been given 15 minutes of consideration before the Planning Board in a workshop in May or June. I do know that tomorrow it is before the Planning Board again. While this blasting ordinance would not affect the Lombard Estates subdivision because they were approved prior to the ordinance going in the residential and commercial growth in this community is expanding at great lengths. So, I would wonder why it is taking so long to get this blasting ordinance on the books so that we can protect our residents and homes. Rather than being overly amenable to the developers in the community as we have seen the administrative being overly friendly to them for a long time. Hence, why we get into some of the situations we get into with developers coming back before the city and not meeting their goals and requirements. So, therefore I would ask this Council and Planning Board not to
approve any projects that require blasting until the blasting ordinance has been put in place. Where ever that blasting ordinance is as far as being completed I would like to put that out there and I hope this Council and Planning Board adhere to it. City Administrator Kevin Sutherland stated that the ordinance would be going before the Planning Board tomorrow night and then will come back to the Council and I will have staff comments and discussion.

➢ Councilor Minthorn – Asked the City Administrator for potential language to put a moratorium on any blasting until this ordinance is completed. I received a few calls from Councilor Doyle’s ward as well from people that I had talked to in the past from different public events. As Councilor Doyle stated people literally got rocked in their house before they had gone to the mailbox and then when they got the notice in their mailbox it kind of threw salt in the wound.

X. EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Copeland seconded “Be it Ordered that the City Council enter into executive session, Pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405(6):

C. Update on disposition of Unit 91
C. Update on property purchase for fire station annex
C. Review and approval of property purchase for public works”

The motion passed with six (6) yeas. Time: 8:05 p.m.

XI. REPORT FROM EXECUTIVE SESSION

Councilor Doyle moved, Councilor Gay seconded to come out of Executive Session at 8:45 p.m. The motion passed with six (6) yeas.

Mayor Lovell, all the Councilors and the City Administrator were present.

Councilor Doyle provided the following updates:

   c. Update on Disposition of Unit 91 – Councilor Doyle state there was no report.
   c. Update on property purchase for fire station annex – Councilor Doyle stated there was no report.
   c. Review and approval of property purchase for public works – Councilor Doyle moved, Councilor Johnston seconded “Be it Ordered that the City Council authorize the City Administrator to sign the purchase and sale agreement dated July 26, 2018 between Sweetser and the City of Saco for the city to purchase approximately 42 acres in the vicinity on Industrial Park Road for construction of a new Public Works Facility and Industrial Land Development at an agreed upon cost of $700,000”. Further move to approve the Order.

Councilor Copeland noted for the record that half of the money is coming from a bond and the other half from a TIF. This is not going to increase taxes.

Mayor Lovell called for a vote on the motion. The motion passed with six (6) yeas.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made as of July 26, 2018 (the “Effective Date”), by and between SWEETSER, a Maine nonprofit corporation with a mailing address of 50 Moody Street, Saco, Maine 04072 (“Seller”), and the CITY OF SACO, a municipal corporation existing under the laws of the State of Maine, with a mailing address of 300 Main Street, Saco, Maine 04072 (“Buyer”).

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey and Buyer agrees to purchase the following property (collectively referred to herein as the “Premises”):

   Approximately 42+/acre of land, including any improvements thereon, shown with highlighted green boundaries on a plan entitled “Proposed Acquisition Area, Figure 1” prepared by Stantec, which is attached hereto as Exhibit A and incorporated herein, and being a portion of certain lots or parcels of land located off Moody Street, Interstate 195 (I-195), and Industrial Park Road in Saco, Maine, identified as Saco Tax Map 42, Lot 1 (variously the “Property” or “Premises”). Being a portion of the land shown on a plan entitled “Sweetser Children’s Services, Parcel Located at Moody Street and Industrial Park Road, Saco, Maine” dated June 7, 1999 and prepared by Dow & Coulombe, Inc.
Notwithstanding the foregoing, the parties shall agree in writing to modify the final boundaries of the land to be conveyed from Seller to Buyer based on a survey to be obtained by Buyer, provided that any such modification does not result in a material change in the location or total acreage of land being conveyed by the Seller.

Buyer also may elect to take title in the Premises via two (2) separate deeds, thereby creating two (2) parcels of land conveyed to Buyer. Buyer shall notify Seller at least forty-five (45) days prior to Closing (defined below) if Buyer elects to take title in separate deeds. In the event Buyer elects to take title in two separate deeds, Buyer shall prorate the Purchase Price (defined below) between the two parcels based upon the final area/acreage of each parcel. Buyer shall be responsible for all survey and legal work required to create the final boundaries and legal descriptions of the two parcels, and shall cause its surveyors and/or attorneys to forthwith deliver all draft plans and documents (in both electronic and printed form) to Seller and Seller’s counsel, provided, however, that Buyer shall not be deemed to have certified the same to Seller.

2. Deposit and Purchase Price. The total Purchase Price for the Property is Seven Hundred Thousand Dollars ($700,000) (the “Purchase Price”), payable as follows:

   a. Within ten (10) days of the Effective Date of this Agreement, Buyer shall deliver to Seller’s attorney the sum of Ten Thousand Dollars ($10,000.00), hereinafter referred to as the “Deposit,” in the form of a certified, cashier’s, treasurer’s, or town check made payable to Seller, such Deposit to be held by Seller’s attorney (said attorney being the “Escrow Agent”). The Escrow Agent shall place the Deposit in a non-interest bearing account. It shall be applied as credit to the purchase price at Closing or disposed of as set forth herein. In the event of a dispute over the return or forfeiture of any deposit held by the Escrow Agent, the Escrow Agent shall continue to hold the deposit until it has received a written release from the parties consenting to its disposition, or until a final order. Regardless of its representation of any party to this Agreement, Escrow Agent shall not, as Escrow Agent, have any responsibility or liability to any party beyond the proper disposition of the escrow funds actually paid over to it. All parties agree to indemnify and hold the Escrow Agent harmless from any and all costs, actions, or claims for action or omission, or for refusal to act, so long as said actions are made in good faith and are not a result of willful misconduct, including any defense costs or attorney’s fees. The Escrow Agent shall incur no liability in acting upon any signature, notice, request, waiver, consent or other document believed by the Escrow Agent to be genuine. The Parties hereby consent to the Escrow Agent’s continued representation of Seller, absent a partition action commenced by Escrow Agent, and

   b. The Purchase Price less the Deposit to be paid to Seller at Closing by certified, cashier’s, treasurer’s, or City check or by electronic wire transfer in accordance with the instructions provided by Seller, subject to the adjustments provided for in this Agreement.

The Deposit shall be held in escrow by Seller’s attorney pending the closing of the transaction contemplated herein. At Closing, or if this Agreement is terminated due to a breach of this Agreement by Buyer, the Deposit shall be delivered to Seller as damages for the breach, it being understood that this payment is not Seller’s exclusive remedy, and that nothing in this sentence shall preclude the Seller from exercising any other legal remedies available. If this Agreement is terminated due to a title contingency, or material breach by Seller of Seller’s representations in “Sellers’ Representations” below, the Deposit shall be returned to Buyer, it being understood that return of the Deposit is not Buyer’s exclusive remedy.

3. Adjustments and Costs. The following items shall be prorated, adjusted, and paid as follows:

   (a) All applicable real estate taxes, utility charges and other charges and assessments affecting the Premises shall be apportioned between Seller and Buyer as of the Closing Date (as defined below). Seller shall be responsible for all such items for the period prior to and including the Closing Date, provided, however, that nothing in this sentence shall be construed to create any obligation of Seller to pay taxes, utility charges, or any other fees not otherwise attributable to Seller.

   (b) To the extent any transfer tax is due, each party shall be responsible for one-half of the Maine real estate transfer tax to the extent the party is subject to transfer tax.

   (c) Each party shall pay all costs and expenses incurred by such party in connection with the transactions contemplated by this Agreement not adjusted as set forth in this Section or otherwise provided for in this Agreement. Buyer shall be responsible for surveying the boundaries and preparing a legal description of the Premises for conveyance.

4. Title. Seller shall convey the Premises to Buyer by Deed(s) with Quitclaim Covenant pursuant to 33 M.R.S.A. Sec. 766 (the “Deed”), for which Deed title in the Premises shall be both good and insurable, but without a strict requirement for marketable title (it being understood that insurable title may be achieved via title insurance, including, without limitation, by way of affirmative coverage provided by national underwriter); provided, however, that any title defect that impairs Buyer’s intended use of the Premises, in Buyer’s sole discretion, shall not be deemed good.

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Buyer shall be responsible for the cost of any title insurance premium imposed in connection with any title insurance policy issued to Buyer.

5. Due Diligence Deliverables. Within ten (10) days of the Effective Date, Seller shall provide Buyer with copies of any and all surveys, title insurance policies, environmental reports, leases, and other contracts, agreements, or instruments, provided, however, that Buyer shall be obligated to disclose any facility leases or license agreements related to the Moody Street campus, provided that Seller shall agree to represent to Buyer that no such lease encumbers the Premises for more than the expiration of the existing lease or other agreement must be provided hereunder. Seller shall be entitled to redact financial and other protected, confidential, or otherwise sensitive information in the same manner as conducting such inspection to Buyer.

6. Inspection Contingency. Buyer’s obligation to purchase the Premises as per this Agreement are subject to the following contingencies, which, if not met after good faith efforts of the Buyer (within the timeframes set forth in the sub-sections below), shall entitle Buyer to terminate this Agreement and recover the Deposit. (The date of termination prior to the expiration of the time period specified, in which event the Deposit shall be refunded to Buyer and neither party shall be under any further obligations under this Agreement:

(a) The approval and ratification of this Agreement by the City of Saco by vote of the City Council to approve and ratify this Agreement (the “Approval Date”), which shall occur not later than August 31, 2018.

(b) Buyer or its agent conducting an inspection of the physical condition of the Premises, including environmental conditions, which inspection shall have results acceptable to Buyer, in its discretion, within ninety (90) days from the Approval Date, but in no event later than 5 p.m. EST on November 30, 2018.

(c) Buyer or its agent conducting an inspection of the condition of the title to the Premises, including but not limited to access, easements, restrictions, and covenants, which review shall have results acceptable to Buyer, subject to the title condition set forth in Section 4 above, within thirty (30) days from the Approval Date, but in no event later than 5 p.m. EST on August 31, 2018.

(d) Buyer being able to obtain an easement for access and utilities over any third-party lands to construct an access road to the Premises from Industrial Park Road, as shown on Exhibit A by January 1, 2019.

(e) Buyer being able to obtain all necessary permits and other governmental approvals for the construction of its proposed improvements, with conditions satisfactory to Buyer, in its discretion, at least thirty (30) days prior to Closing.

After the Approval Date, Buyer and its agents shall have the right to enter upon the Premises at reasonable times and after reasonable prior notice to Seller to undertake such inspections. Any such entry shall be at Buyer’s own risk and Buyer agrees to indemnify and hold Seller harmless from any property damage to the Premises, or personal injury or claim or lien against suffered by any individual as the direct result of Buyer’s access or inspection, or by that of Buyer’s representatives or agents, excluding any damages, injury, or harm which is (or are) the proximate cause of Seller’s intentional acts or gross negligence.

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7. Further Encumbrances. Seller covenants and agrees with Buyer that between the Effective Date and the Closing, Seller shall not dispose of any interest in the Premises, enter into any new leases directly affecting the Premises, or enter into any other agreement directly related to the Premises that would survive the Closing contemplated hereby, it being understood that Seller may not execute any such agreements as it would in the ordinary course of business that do not adversely impact the title or future use of the Premises, and provided further that this restriction shall not apply to any rights accruing to any forester hired to log the Premises in advance of sale, otherwise contemplated below.

8. Closing.

(a) The consummation of the transactions contemplated hereby (the “Closing”) shall take place at the office of Buyer’s attorney or title company on or before the one (1) year anniversary of the Effective Date of this Agreement, (the “Closing Date”).

(b) Possession of the Premises shall be delivered to Buyer at Closing free and clear of all leases, tenancies, or other third-party rights of any kind.

(c) The following shall occur at or before the Closing, each being a condition precedent to the other’s obligation to close (and failing which, the non-obligated party may terminate this Agreement), provided, however, that completion of the items below at closing shall have the effect of satisfying this requirement:

(i) Seller shall execute, have acknowledged, and deliver to Buyer the Deed;

(ii) Seller shall execute and deliver to Buyer an affidavit indicating that Seller is not a foreign person within the meaning of 26 U.S.C. § 1445, or in lieu thereof, Buyer shall be entitled to withhold and account for a portion of the Purchase Price as required by law unless another exemption applies;

(iii) Seller shall execute and deliver to Buyer a State of Maine REW affidavit indicating that Seller is domiciled in the State of Maine;

(iv) Seller shall execute and deliver to Buyer usual and customary title affidavits as required by Buyer’s title insurance company;

(v) Buyer shall execute and deliver to Seller an easement for access over and across the “Proposed Access Road” shown on Exhibit A and as shown on Exhibit B (which Buyer shall be obligated to construct post-closing as set forth below) (hereinafter the “Easement”). The final location of the Easement shall be dictated by the as-built location of the Proposed Access Road, which shall be determined by Buyer in its sole discretion, however, that the Proposed Access Road shall run to the common boundary line with Seller’s retained land at a point reasonably necessary to the existence of the Proposed Access Road, said Woods Road being as shown on Exhibit B hereto. The Easement shall allow for Seller’s use thereof for future access, recreational, and logging or extractive purposes, the width of which Easement shall meet the standards for road easements as promulgated under the City of Saco land use ordinance then in effect; and

(vi) Buyer shall execute and deliver to Seller an agreement to construct the Proposed Access Road within the Easement granted by Buyer to Seller, it being understood that the condition and standard of the improvements within the Easement shall at a minimum, provide

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adequate access over the easement for all purposes of the Easement, but in no event shall the Easement be approved in a location that is located below the 8½' level and below the 20' road grade. However, for the sake of clarity, nothing in this sub-section (vi) shall require development of the entirety of the Easement area, and the Parties hereby agree that the Easement shall be located within the Easement over a portion of the said Easement to be determined by Buyer; and

(vii) Buyer shall install utility “subs” on or near to the Proposed Access Road in a location determined by Buyer, and shall grant Seller easement rights to connect to said utilities for the benefit of Seller’s remaining land; and

(viii) Buyer shall countersign the deed in acceptance of a certain deed restriction requiring that any subsequent sale of the Premises (whether as one lot, or two lots, or any future subdivision) be subject to an easement on a portion of the said Easement, and that the Closing Date, including, without limitation, the use of the Premises for the cultivation, manufacturing, or processing of marijuana or any analogous chemical derivative; and

(ix) By countersigning in Section 8(c)(viii) above, the Buyer shall have accepted a requirement that – but for the road contemplated in Sections 8(c)(v) & (vii) – a buffer of trees shall remain within twenty-five (25) feet of the boundary between the Premises and the remaining land of Seller.

(x) Seller shall have harvested timber from the Premises, it being the intent of both parties that Seller shall forthwith schedule such harvest; and

(xi) Buyer agrees to reasonably cooperate with Seller as co-applicant on any application for subdivision submitted within twelve (12) months of Closing by Seller to the Boards of the City of Saco, as required by the City Statute and Ordinance, which subdivision plans shall show the Premises (whether conveyed as one lot or two), the Remainder Land of Seller, and any additional lot to be located near I-195 interchange, which lot is described in a certain Purchase & Sale agreement on file with Seller, provided, however, that Buyer shall not be obligated to spend more than Ten Thousand Dollars ($10,000.00) on any such efforts; and

(xii) Each party shall execute and deliver to the other a settlement statement in form and substance reasonably acceptable to the parties; and

(xiii) Each party shall deliver to the other such other documents as may be required herein or as may be necessary to carry out the obligations under this Agreement; and

(xiv) Each party shall have performed in good faith in performing hereunder.


(a) Risk of loss to the Premises prior to the Closing shall be on Seller. If between the Effective Date and the Closing any material portion of the Premises is damaged by a casualty which renders the premises or the Remainder Land of Seller uncustomary for the Premises for the purpose of Public Works, then Buyer shall have the right to terminate this Agreement and have the Deposit returned to Buyer within 30 days after the said occurrence of the casualty, failure which, any right to terminate is waived.

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(b) If Buyer does not elect to terminate this Agreement pursuant to Section 9(a), Seller and Buyer shall perform their respective obligations under this Agreement.

10. Remedies.

In the event of a breach by either party, the non-breaching party shall have all rights and remedies available at law and equity, including, without limitation, the right of specific performance.

11. Notice.

Any notice relating in any way to this Agreement shall be in writing and shall be hand delivered, or sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service which provides evidence of delivery (such as FedEx) addressed to the party to receive such notice at the address set forth for such party in the first paragraph of this Agreement, and such notice shall be deemed delivered when so delivered by hand, or when so posted or when so deposited with such overnight carrier. Either party may, by such manner as is reasonably necessary, substitute for the giving of any notices under this Agreement. Any notice given to Seller shall be sent simultaneously to Seller’s counsel, Bergen & Parkinson, LLC, Attn: Jason G. Howe, Esq., 62 Portland Rd., Suite 25, Kennebunk, ME 04043, failure which notice shall not be effective until also received by counsel.

12. Seller’s Representations.

Seller represents and warrants to Buyer that:

(a) Seller has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Seller has sufficient rights in title to the Property that it can convey at the standards set forth in this Agreement, and there are no lawsuits or other proceedings currently pending by or against the Seller or the Property or the Property that presently affect the ownership, future development, ability to finance or enjoyment of any of the Property; and

(c) to the best of Seller’s knowledge without specific investigation as to the same, Seller has not generated, released, stored, disposed of, dumped, flushed or in any way introduced into the Property oil, hazardous material, hazardous waste or hazardous substances (hereinafter collectively called “Hazardous Substances”) as those terms are defined by any applicable federal, state or local law, rule or regulation (hereinafter referred to as “Applicable Environmental Laws”), and Seller has no notice and is otherwise aware of any incident which would have required the filing of notice or notification pursuant to any Applicable Environmental Laws applicable to the Property.

It shall be a condition of Buyer’s closing to this Agreement that these representations and warranties made by Seller hereunder and, where both of the date hereof and as of the Closing, and Seller shall take all actions required to make the foregoing representations true.

13. Buyer’s Representations.

Buyer represents and warrants to Seller that:

(a) Buyer has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Buyer will reimburse to Seller any and all real property taxes assessed against the remaining portion of Tex Map 42, Lot 1 retained by Seller (“Seller’s Retained Land”) which result

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from the transaction contemplated by this Agreement, to the extent that: (i) Seller retains Seller’s
Retained Land, (ii) the use of Seller’s Retained Land does not change, and (iii) the Maine laws
governing real estate tax exemption for Maine non-profits are not changed in such a fashion as to
require that Buyer pay any increase in real estate taxes, Buyer agrees that Seller shall not be subject to any fee, levy,
penalty, assessment, or other such charge imposed by Seller which seeks to defray costs of Buyer
resulting from Seller’s continued use of the Retained Land for exempt purposes.

(d) Buyer agrees to use best efforts to create a workforce development agreement with
Sweetser to build an internship/apprenticeship program for Sweetser students within City
government or with neighboring businesses.

It shall be a condition of Seller’s obligation to close under this Agreement that these
representations and warranties made by Buyer hereunder are true, both as of the date hereof and as
of the Closing.

14. Brokers. Seller and Buyer warrant and represent to each other that they have not
employed or engaged any real estate broker or agent in connection with the transaction
contemplated by this Agreement. Each party agrees to hold the other party harmless from and
against any and all costs, expenses, claims, losses, or damages, including reasonable attorneys’ fees,
resulting from a breach of such party’s representation or covenant contained in this Section. The
provisions of this Section shall survive the Closing.

15. Miscellaneous.

(a) Any reference herein to time periods of less than seven days shall be computed to
exclude Saturdays, Sundays, and legal holidays, and any time period provided for herein which ends
on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next business day.

(b) This Agreement shall be binding upon and shall inure to the benefit of Seller and
Buyer and their respective successors and assigns. Buyer may assign this agreement to an agency or
entity wholly owned by Buyer.

(c) All understandings, agreements, warranties and representations, either oral or in
writing, heretofore between the parties hereto are merged into this Agreement. This Agreement
fully and completely expresses the parties’ agreement with respect to the transactions covered
hereby. This Agreement may not be modified in any manner except by an instrument in writing
signed by Seller and Buyer.

(d) This Agreement shall be governed by and interpreted in accordance with the laws of
the State of Maine without regard to or application of its conflicts of law principles. This
Agreement may be executed in multiple counterparts, each of which shall constitute an original, and
all of which, taken together, shall constitute a single instrument.

(e) In the event of a dispute arising out of or related to this Agreement, directly or
indirectly, the substantially prevailing party shall be entitled to recover its reasonable attorney’s fees
and costs (including paralegal fees) related to said dispute and the enforcement of any judgment
related thereto.

(f) Representations and warranties contained in this Agreement shall survive closing to
the extent necessary to effectuate the intent thereof.

(g) Time is of the essence.

(h) Each party hereby acknowledges that they have read and understand this agreement
and have had the opportunity to obtain professional (including legal) advice regarding the same.

(i) This agreement may be signed in counterpart, the combination of which counterparts
shall constitute an binding final agreement. Further, this agreement may be executed via Electronic
Signature (DocuSign, or the like), and any facsimile or scan of the signed agreement shall be
binding as if original.

(j) If any term, condition, or provision of this Agreement or the application thereof to any
person or circumstance shall, to any extent, be held invalid or unenforceable according to the law,
then the remaining terms, conditions, and provisions of this Agreement, or the application of any such
invalid or unenforceable terms, condition or provision to persons or circumstances other than those to
which it is held invalid or unenforceable shall not be affected thereby, and each term, condition, and
provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as
of the Effective Date.

SELLER:

SWEETSER

By Debra Taylor, its President & CEO
Thereunto Duly Authorized

BUYER:

CITY OF SACO

By

Its
XII. ADJOURNMENT

Councilor Smart moved, Councilor Copeland seconded to adjourn the meeting at 8:49 p.m. The motion passed with six (6) yeas.

Attest: _________________________________________

Michele L. Hughes, City Clerk