STATE OF MAINE
COUNTY OF YORK
CITY OF SACO

I. CALL TO ORDER – On Monday, June 6, 2016 at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Roland Michaud recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: David Precourt, Roger Gay, William Doyle, Kevin Roche, Alan Minthorn, Eric Cote and Nathan Johnston. City Administrator Kevin Sutherland was also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

Mayor Michaud presented the following:

“You’re invited to summer in Saco” events that the Saco Main Street Organization is hosting this summer:

- June 15th – Ice Cream Summer Social at Saco Bay Creamery
- June 15th - Help make Saco an Age Community Meeting at City Hall
- June 18th – Biddeford Ball at Mill Building #4 – Black and Tan Event – Fund Raiser
- June 25th – 46th Annual Saco Arts Festival
- July 30th – Classic Car Show
- Sept. 17th – River Jam Festival – Year 2 with Biddeford/Saco Mayor’s Ball to follow
- July 7th to Aug 11 – Music in the Park – Dyer Library/Saco Museum area

“Letter from Senator Collins - Tree City USA for 2015”

Mayor Michaud, congratulations on your community receiving the Tree City USA recognition for 2015. Mainers have always been faithful stewards of our environment because we understand its tremendous value to our way of life. Forest, landscapes, waters and wildlife are an important part of our heritage and have helped shape the economic, environmental and recreational character of the entire state. I’m delighted that Saco has been recognized for protecting its natural resources and it continues to be an environmental leader in our state. Again, congratulations on this well deserved accolade and best wishes.

Sincerely,
Susan Collins, United States Senator

Proclamation– Immigrant Heritage Month – June 2016

Whereas generations of immigrants from every corner of the globe have built our country’s economy and created the unique character of our nation;

Whereas immigrants continue to grow businesses, innovate, strengthen our economy, and create American jobs in our community;

Whereas immigrants have provided the United States with unique social and cultural influence, fundamentally enriching the extraordinary character of our nation;

Whereas immigrants have been tireless leaders not only in securing their own rights and access to equal opportunity, but have also campaigned to create a fairer and more just society for all Americans; and

Whereas despite these countless contributions, the role of immigrants in building and enriching our nation has frequently been overlooked and undervalued throughout our history and continuing to the present day:

Now, therefore, I Roland Michaud Mayor of Saco Maine, do hereby designate June 2016 as “Immigrant Heritage Month.”
V. PUBLIC COMMENT – 6 People

- John Harkins, 4 Christopher Terr. - Representing the Saco Citizens for Sensible Government group – New School & Bond Issue – The group recommends to allow the Superintendent of Schools to undertake a Master Plan for both the current and future needs of the Saco School system. The plan should include the review of all school buildings and options available to Saco with an estimate of the cost to replace and maintain our schools and the time frames and fiscal impacts on the community. The master plan should be initiated in anticipation of state funding. Supt. DePatsey should provide the Master Plan and guidance for Saco schools over the next year. I also commend the Mayor for organizing a committee to explore any overtures with Thornton Academy and its potential relationship with our school system.
- Jen Sirois, Evergreen Dr. – Young School Parent & On the School Construction Committee – Young School was replaced with the current modular’s in 2004 with a projected useful life of 5 years. Mrs. Sirois listed many short comings of the current Young School. The Construction Committee and school worked 2 years to analyze and vet a viable solution with the majority voting to move the issue forward to the ballot referendum. The option to wait for state funding was reviewed but the committee voted to take the most expeditious route to self fund the project as the school was in dire need of repair in a time frame that would not allow waiting for the state to open the list. Based on the projections of the city debt over the next several years there is a significant amount of bond debt that will be paid off and if the city approved a new bond for the construction of the school it is likely that there would be little increase to the tax rate.

- Phil Hatch, Evergreen Drive & Father to Jen Sirois who just spoke. – Addressed the school issue. The Police Dept. needed a new station so it was built and the taxpayers were okay with that. A few years later the Fire Dept. needed a new station and you built it. Young children can’t come here an advocate for themselves, that is our job as adults in the community and taxpayers, we owe it to our kids to give them a school that looks, feels and works like a school. You owe it to me as a taxpayer and all taxpayers to make that decision.

- Michael Burman, 6 Margaret Circle – New School - 3 Points: #1 We can’t wait for State money. State funding requires an open list which a Google search shows has been only opened 3 times since 2000. Even if the list does open it could be years for Saco to be selected and the school built with no guarantee. #2 Building Committee was split or what type of the consolidation of schools versus neighborhood schools but they were not split that a school was needed. #3 Citizens of Saco are smart. Let the people vote and decide.

- Robert (Brett) Roukey, Maple St – Lifelong resident of Saco. – Marijuana Moratorium - Mr. Roukey volunteered to make himself available to the city and any residents of the city who are interested in how marijuana is produced or the environments or the zoning restrictions applicable to those situations. I support the moratorium and I think that it is important to give the city planners time to decide where the businesses should be located and there are issues when it comes to how you plan a city that marijuana presents and I think we need to have that conservation and I look forward to being a part of it.

- Inga Browne, 161 Simpson Road – New School - #1 Young School – Young School is not falling down but the buildings lifespan has expired by many years. Young School is unfit for our youngest, most active, busy engaged learners. There is a dire need for a building with proper space and facilities. It is constructed with short term building materials and I’m concerned about the longevity and breakdown of that material. I would like to see the voters move this bond forward. #2 – Ecology School – The May 3rd & May 4th City violations against the Ecology School at the Ferry Beach Park Association are very troubling and raise concerns about their leadership and accountability. The Ecology School rents property from the Association and are 100% in charge of the educational programming, students numbers, accommodations, and logistics of overnight stays including the safety and well being of their students. Ms. Browne listed the violations. The school needs to follow the laws and correct the violations to ensure the safety of the students.

VI. CONSENT AGENDA

Councilor Minthorn moved, Councilor Doyle seconded to approve Consent agenda items #A, B, C, D, E, F as follows:

A. Be it ordered that the City Council approve the minutes for May 16, 2016 and May 23, 2016. Further move to approve the Order;
B. Be it Ordered that the City Council confirm the Mayor’s reappointment of Thomas Casamassa as a full member of the Saco Coastal Waters Commission, with his three-year term ending on June 6, 2019. Further move to approve the Order;
C. Be it ordered that the City Council make an exception to Chapter 4, Article VIII of the Administrative Code – Policies and Procedures – 4-40 Loaning or Selling City Property or Equipment to declare as surplus property the cruisers, mini-vans, and busses and authorize the city Administrator to dispose of the property in the most advantageous way. Further move to approve the Order.
D. Be it Ordered that the City Council grant the application for a License to operate Games of Chance as follows: Nevada Gold (2 games) and Queen of Hearts (1 game) from July 1, 2016 to September 30, 2016 as submitted by the Biddeford & Saco Elks #1597. Further move to approve the Order.

E. Be it Ordered that the City Council grant Kelly Chambers a Massage Therapist License in accordance with the Codes of the City of Saco, Chapter 138. Further move to approve the Order.

F. Be it Ordered that the City Council grant Zu-Chyun Speaker a Massage Therapist License in accordance with the Codes of the City of Saco, Chapter 138. Further move to approve the Order.

The motion passed with seven (7) yeas.

Note: The item commentaries for the above consent agenda are listed below.

B. CONFIRM THE MAYOR’S APPOINTMENT OF THOMAS CASAMASSA TO THE COASTAL WATERS COMMISSION

The Coastal Waters Commission shall be composed of seven members, to be appointed by the Mayor for a three-year term and approved by the City Council. Each Commission member shall be a resident of the city, shall be persons qualified to perform the duties of such office and shall serve without compensation.

The Mayor is recommending the reappointment of Thomas Casamassa of 11 Ferry Lane to serve on the Coastal Waters Commission for a three-year term.

C. DECLARE CITY SURPLUS PERSONAL PROPERTY

There are vehicles and equipment in the City fleet that are no longer in use or of significant value to the City, to be considered for declaring as surplus property. The vehicles include 2 police cruisers, and 3 Dodge mini-vans. The equipment includes 1 gas powered Lincoln arc welder, 1 Dayton generator, 1 large waste oil furnace, 1 old Pan Sweeper and 1 large ceiling mount furnace. The City departments responsible for each piece of equipment have determined that it is cost prohibitive to maintain, operate, store, and insure the selected property. Discontinuing the use and ownership of these items will be a cost-savings to the City, while maintaining all current levels of service in each department.

<table>
<thead>
<tr>
<th>Unit</th>
<th>Date in Service</th>
<th>Spec - Company</th>
<th>Spec - Vehicle Make</th>
<th>Spec - Vehicle Model</th>
<th>Spec - Body Type</th>
<th>Current Miles</th>
<th>Unit Serial Number</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>S228 (Automobiles) Main Shop</td>
<td>9/14/2011</td>
<td>Police Dept</td>
<td>Ford</td>
<td>Crown Victoria</td>
<td>Sedan</td>
<td>84,343</td>
<td>2FABP7BV8BX180795</td>
<td>Mold in vehicle interior. Can't remove.</td>
</tr>
<tr>
<td>S235 (Automobiles) Main Shop</td>
<td>6/5/2002</td>
<td>Police Dept</td>
<td>Plymouth</td>
<td>Voyager</td>
<td>Minivan</td>
<td>75,995</td>
<td>2P4FP2530XR247020</td>
<td>Rust issues. Won't pass state inspection.</td>
</tr>
<tr>
<td>S608</td>
<td>2008</td>
<td>Parks/Rec</td>
<td>Plymouth</td>
<td>Grand Caravan</td>
<td>Mini van</td>
<td>78,000</td>
<td>2B4GP24R1XR363354</td>
<td>Major rust issues. Engine noise</td>
</tr>
<tr>
<td>Lincoln arc welder</td>
<td>?</td>
<td>Public Works</td>
<td>Lincoln</td>
<td>Welder</td>
<td></td>
<td></td>
<td></td>
<td>Don’t use. Obsolete for parts</td>
</tr>
<tr>
<td>Waste oil furnace</td>
<td>?</td>
<td>Public Works</td>
<td>Clean Burn</td>
<td>CB-2500</td>
<td>Furnace</td>
<td>CB-525-S2</td>
<td></td>
<td>Don’t use.</td>
</tr>
<tr>
<td>Generator</td>
<td>?</td>
<td>Treatment Plant</td>
<td>Dayton</td>
<td>4W117</td>
<td>Generator</td>
<td>860952</td>
<td></td>
<td>Obsolete</td>
</tr>
<tr>
<td>Sweeper</td>
<td>?</td>
<td>Public works</td>
<td>Pan Sweeper</td>
<td>Pan Sweeper</td>
<td></td>
<td></td>
<td></td>
<td>Beyond Repair</td>
</tr>
</tbody>
</table>
D. APPLICATION FOR A LICENSE TO OPERATE A GAME OF CHANCE, BIDDEFORD SACO ELKS #1597

Biddeford & Saco Elks #1597 has applied for a License to operate Games of Chance as follows: Nevada Gold (2 games) and Queen of Hearts (1 game) from July 1, 2016 to September 30, 2016.

The applicant has submitted their application in accordance with the provisions of Title 17 M.R.S.A. Chapter 13-A, and in accordance with the Rules and Regulations promulgated by the Chief of the State Police governing the operation of Beano/Bingo or Games of Chance.

E. MASSAGE THERAPIST LICENSE APPLICATION: KELLY CHAMBERS

Kelly Chambers who is located at The Carriage House, 66 North Street has applied for a Massage Therapist License.

The applicant has paid all applicable permit fees and has provided a copy of her State of Maine Massage Therapist License in compliance with Chapter 138, Sub-section §138-9 Basic proficiency.

F. MASSAGE THERAPIST LICENSE APPLICATIONS: ZU-CHYUN SPEAKER

Zu-Chyun Speaker who is located at Peak Performance Therapeutic Massage, 334 Main Street has applied for a Massage Therapist License.

The applicant has paid all applicable permit fees and has provided a copy of her State of Maine Massage Therapist License in compliance with Chapter 138, Sub-section §138-9 Basic proficiency.

VII. AGENDA

A. SACO MAINE STREET UPDATES

This item was postponed for 2 weeks.

B. AUTHORIZE THE CITY ADMINISTRATOR TO PREPARE A BOND QUESTION FOR SCHOOL CONSTRUCTION AND RENOVATION

Over the past several years, there has been a lot of discussion regarding the future of a new Young School and the necessary repairs at Fairfield School. On February 3, 2016, the Saco School Board voted to recommend moving forward with two separate elementary schools, with the motion as follows: “Construction of a new 370 +/- student, pre-kindergarten through 2nd grade school on the existing Young site, and construction of additions to the existing Gov. John Fairfield School and associated renovations to support a 330 +/- student, pre-kindergarten through 2nd grade school with accommodations to provide similar learning spaces to those that will be provided in the new Young School at the November 2016 General Election.”

In order to move this onto a public vote in November, the City Council will need to determine if the City of Saco should move forward in the preparation of a bond question at this time, or to wait. If the City Council authorizes the City Administrator to begin the bond process, then the schedule with be as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 20th</td>
<td>Workshop</td>
</tr>
<tr>
<td>July 5th</td>
<td>1st Reading</td>
</tr>
<tr>
<td>July 16th</td>
<td>Advertise a Legal Ad for Bond Question “Public Hearing”</td>
</tr>
<tr>
<td>Aug. 1st</td>
<td>Public Hearing</td>
</tr>
<tr>
<td>Aug. 20th</td>
<td>Advertise a Legal Ad for Bond Question “2nd &amp; Final Reading”</td>
</tr>
<tr>
<td>Sept. 6th</td>
<td>2nd &amp; Final Reading &amp; Order to place question on the November ballot.</td>
</tr>
<tr>
<td>Sept. 7th</td>
<td>Order Ballots</td>
</tr>
<tr>
<td>Oct. 7th</td>
<td>Absentee Voting Starts (at least 30 days before the Election)</td>
</tr>
<tr>
<td>Nov. 8th</td>
<td>Election Day</td>
</tr>
</tbody>
</table>
Councilor Roche moved, Councilor Gay seconded “Be it ordered that the City Council authorize the City Administrator to prepare a bond question following the School Board’s recommendation of the construction of a new Young School and to renovate the existing Governor John Fairfield School.” Further move to approve the order. The motion passed with seven (7) yeas.

C. AUTHORIZE THE CITY ADMINISTRATOR TO SIGN A CONTRACT EXTENSION WITH PINE TREE WASTE

The Curbside Municipal Solid Waste (MSW) and Recycling Collection contract with Pine Tree Waste expires June 30, 2016. The existing contract has increased annually by changes to the CPI, fuel cost adjustments, and new growth within the City. The annual CPI increase has ranged from 1.43% to 3.04% over the past 5 years with an average of 31 new homes added to the contract annually as well. Public Works has negotiated a three-year contract extension with Pine Tree Waste for flat rate increases (FY17- 0%, FY18- 2%, FY19- 2%), no fuel surcharge provision, and no additional growth additions.

Councilor Doyle moved, Councilor Precourt seconded “Be it ordered that the City Council authorize the City Administrator to sign a contract extension with Pine Tree Waste to provide curbside municipal solid waste and recycling collection for an additional three (3) years.” Further move to approve the order. The motion passed with six (6) yeas and one (1) nay – Councilor Cote.
Contract: Shall mean the City’s Request for Proposal, any Contract Specifications, this Contract and referenced exhibits and any addenda or changes to the foregoing documents agreed to, in writing alone, by the City and the Contractor.

Contractor: Casella Resource Solutions, d/b/a Pine Tree Waste, Inc. of Scarborough, Maine.

Disposal Site: The disposal site for both MSW and Recyclable Materials is ecomaine, located at 64 Blueberry Rd, Portland, ME 04101

Execution Date: Shall mean the date this document is executed by the City Administrator following approval and vote by the City of Saco City Council.

Existing Contracts: The current agreement between the parties dated July 1, 2009.

Flow Control: An ordinance enacted by the City regulating the collection and disposal of solid waste.

Hazardous Waste: Waste with inherent properties which make such waste dangerous to manage by ordinary means, including, but not limited to, chemicals, explosives, Pathological Waste, radioactive waste, toxic wastes and other wastes defined as hazardous or “special” at any time during the term of this Agreement by the State of Maine or under the Resource Conservation and Recovery Act to 1976, as amended, or other Federal State or local laws, regulations, orders, or other actions promulgated or taken at any time and from time to time; or any material which, if transported and disposed, would be deemed hazardous at any time during the terms of this Agreement by the State of Maine or under the Resource Conservation and Recovery Act of 1976, as amended, or other Federal, State or local laws, regulations, orders, or other governmental actions promulgated or taken at any time and from time to time.

Initiation Date: Shall mean the date upon which the Contractor begins the performance of collections hereunder, which date shall be fixed for the purposes of this Contract as July 1, 2016.

Insolvency: Shall mean a party’s inability to pay its debts as they mature.

Overflow: Waste set out for collection that exceeds the capacity of City supplied containers; but shall only apply to those residential uses within the service area.

Pathological Waste: Waste consisting of human and/or animal remains, body parts, tissues, organs, blood, excrements, secretions or bodily fluids, and/or so-called red bag or biomedical wastes or products, waste which contains infectious materials, waste which contains any disease producing or carrying agent, material or organism, isolation wastes, cultures and stock of etiological agents, waste generated by surgery or autopsy performed on any animal or human, sharps, dialysis waste and any wastes that were in contact with pathogens, waste biological such as vaccine materials, animal agents or bedding or equipment or other equipment, parts or specimens and fomites, any disease causing material whether or not defined as an etiological agent. Pathological waste shall be defined as all of the above regardless whether such materials have been treated, pre-treated, sanitized, disinfected, auto-claved, irradiated, microwaved or otherwise rendered inert, it being the express intent of the parties that no such waste be collected.

Recyclable Materials: All paper, metals, glass and plastics identified in the City’s mandatory recycling program.
Residential Uses: For the purpose of both curbside solid waste collection and for recycling collection, residential uses shall include single family, duplex and multi-family dwellings of up to and including six (6) units which are located on public ways, any condominium association having a valid collection agreement with the City, and residential private roads that have been approved by the City and entered into agreements for access with the Contractor.

Service Area: The Service Area shall include all public rights of ways within the geographical limits of Saco, private roads whom sign an access agreement with the contractor, and condominium associations/trailer parks with pre-existing collection agreements with the City.

Unacceptable Waste: All waste listed below:

1. Abandoned or junk vehicles, trailers, agricultural equipment, boats and parts thereof.
2. Tires
3. Hazardous Waste as defined above
4. Demolition or construction debris
5. Putrefied Waste
6. Pathological Waste as defined above
7. Water treatment residues or by products of any kind.
8. Tree stumps
9. Universal Waste including electronics, mercury or lead containing waste, agricultural pesticides that have been recalled or banned from use, nickel-cadmium or lead-sealed batteries, lamps (fluorescent, neon, high density discharge, mercury vapor, metal halide, and high pressure sodium) cathode ray tubes (television and computer monitors), mercury thermometers and thermostats.
10. Those wastes listed as unacceptable pursuant to the City’s Contract dated July 1, 2007 with ecomaine, a copy of which has been provided to the Contractor.

ARTICLE II: SPECIFIC TERMS

Term: This contract shall run for a term of three (3) years, and will expire on June 30, 2019. The Initiation Date shall mark the yearly anniversary of the Contract, as well as the date upon which payment obligations shall be set for each year of the Contract. Following the execution of this Contract, the Parties shall remain bound by the terms and conditions of their existing Contract until July 1, 2016. The Initiation Date shall mark the time at which the terms and conditions of this Contract shall first take effect, and the time at which the Existing Contract shall forever cease to bind the parties.

Extension of contract: This Contract may be extended upon an affirmative vote of the Saco City Council and agreement from the Contractor.

Price: For performance of the services and covenants contained and set forth herein, City shall pay Contractor the sum of six hundred and fifty-one thousand dollars ($651,292) per annum for municipal solid waste and recycling collection subject to the price adjustment set forth below.

Said fee shall be payable on a monthly basis payable through the submission of invoices as detailed hereunder.

Basic Method of Payment: The Contractor shall bill the City within thirty (30) days of the end of each contract month for an amount calculated at one-twelfth (1/12) the annual contract rate. The City shall remit payment within thirty (30) calendar days of the invoice date.

Price Adjustment: The price paid to Contractor hereunder shall be increased annually on July 1st by 2% beginning July 1, 2017.

The parties will negotiate reasonable contract modifications, including modifications of cost, should the City alter the scope or definition of the “residential services”; should the ecomaine facility close operations or become unavailable for disposal of the City’s waste for any reason; or should the parties determine the methods of collection described herein are not advantageous to the City or the Contractor.

Additional Streets: Additional households on existing or new streets that are added after the start date of this contract extension shall be incidental to annual contract price, regardless of level of growth.
Fuel Surcharge: There will be no fuel surcharge added to the contract price during this 3-year extension period.

Exclusive Title: During the term of the Contract and as long as Contractor is not in default, title to all solid waste and recyclables collected pursuant to these terms and this Contract shall remain with the City until such material is tipped and disposed of at the facility designated by the City for such disposal.

Compliance with Applicable Laws: The Contractor shall fully comply with all applicable federal, state and municipalities laws, statutes, ordinances, acts, regulations and permits, including the City’s Flow Control Ordinance.

Change in Ownership: In the event that the Contractor’s business assets are sold, the City maintains the right to terminate this Agreement without fee, penalty or condition. Such decision is solely within the discretion of the City.

Bankruptcy: The parties agree the Contractor’s insolvency, voluntary or involuntary bankruptcy, shall constitute repudiation, unwillingness and inability to perform hereunder and an immediate default of this Agreement. The default shall not be abated until the Contractor provides adequate assurances and guarantees sufficient to the City that all required performances hereunder shall be met on a regular and timely basis.

Force Majeure: Neither Contractor nor the City shall be liable for the failure to perform their duties nor for any damage, loss, etc. if such failure is caused by a catastrophe, riot, war, governmental order or regulation, act of God or other similar contingency beyond the reasonable control of the Contractor or City.

If such circumstances persist for more than ten (10) days or if after their cessation the Contractor is unable to render substantial performance for a period of thirty (30) days, the City may terminate the Contract upon written notice, and all obligations hereunder shall cease.

Indemnity: The Contractor will defend, indemnify and hold harmless the City, as well as its officials, officers, agents and employees, from any and all suits, actions, legal proceedings, claims, causes of action, demands, damages, and costs, including but not limited to attorney’s fees, related to, arising from, or in any way pertaining to Contractor’s performance of this contract or its obligations hereunder.

Insurance: The Contractor shall maintain in full force and effect throughout the term of this Contract and throughout any extension or renewal thereof the following types of insurance in at least the limits specified below:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employer’s Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>General Liability</td>
<td>$2,000,000 (in the aggregate)</td>
</tr>
<tr>
<td>Bodily Injury</td>
<td></td>
</tr>
<tr>
<td>Property Damage</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Bodily Injury</td>
<td></td>
</tr>
<tr>
<td>Property Damage</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

All insurance will be placed with insurers acceptable to the City and authorized to do business in the State of Maine. Prior to the commencement of work, the Contractor shall furnish the City with certificates of insurance or other satisfactory evidence that such insurance has been produced and is in force. The City shall be carried as a named, additional insured on all applications and policies.

Impermissible Collection: Contractor may not collect or commingle any solid waste or recyclables gathered within the service area with waste, solid waste, recyclables or any other materials, from outside the service area, or from any other municipality, town or city. The tipping of any such commingled waste shall constitute a breach of this Contract and shall be subject to the agreed upon liquidated damages.

1. First Offense $500.00
2. Second Offense $1,000.00
3. Any Offense Thereafter $5,000.00

Upon the third offense, the City reserves the additional right to terminate the Agreement.

**Damaged Carts:** Pine Tree will compensate the City for carts that are damaged during the term of the Contract due to negligence.

**ARTICLE III: SERVICES, OPERATIONS, AND PERFORMANCE**

**Service Provided:** The Contractor shall provide curb-side collection of solid waste and recyclable materials for all eligible residential units within the service area on a weekly basis, or by such other times and methods as may be approved by the City and the Contractor. It shall be the resident’s responsibility to place City-provided containers (or bags as described further herein) by 6:00 a.m. on the collection day.

The Contractor may refuse to collect: Any items placed in a recycling container that are not recyclable materials as defined by the disposal facility (ecomaine). When the Contractor refuses to collect any recyclable materials, the Contractor shall leave a written notice attached to the container explaining why any particular items went uncollected.

The Contractor may also refuse solid waste which is unacceptable waste as defined hereinabove, or is sufficiently contaminated with unacceptable waste that such collection disposal would violate the terms of this Contract and the City’s agreement with ecomaine.

**Hours of Collection:** The Contractor’s hours of collection shall run from 6:00 a.m. to 5:00 p.m. Monday through Friday. Extensions passed 5:00 p.m. may be made when the Contractor has reasonably determined that an exception is necessary to complete collection of an existing route due to holidays, unusual circumstances or upon the mutual agreement of the City and the Contractor.

**Disposal Site:** The Contractor shall only deliver solid waste and recyclables to disposal facilities designated by the City. On the yearly anniversary of the Contract the City shall provide written notice to Contractor as to its designated disposal site(s) for solid waste and for recyclables.

**Routes and Schedule of Collections:** The Contractor shall provide the City with maps and schedules of residential collection routes. In the event of changes approved by the Public Works Director in routes or schedules that will alter the day of pick-up, the Contractor shall publish two (2) local newspapers of general circulation notice of the change prior to implementing.

Not less than three (3) days after commencing service, the Contractor agrees to furnish for the City’s approval the initial schedules and maps of all routes to be used in service area. Any changes in routes and/or schedules will also be subject to the City’s approval.

**Holidays:** The following holidays will be observed as non-collection days by the Contractor: Thanksgiving Day, Christmas Day, New Years Day. By June 30th of each contract year, the Contractor shall provide the City with a plan detailing the holiday pickup schedule for the upcoming contract year. This plan shall be approved by the Public Works Director or his/her designee before the Contractor implements it.

The suspension of collection services on any holiday in no way relieves the Contractor of its obligation to provide collection service at least once per week for all residents. If the Contractor chooses not to provide collection services on any other holiday, the Contractor shall so advertise these changes in at least two (2) newspapers of general circulation in the community.

**Overflow:** The Contractor shall not be obligated to collect overflow, provided however it shall be required to collect overflow on the first collection day following the Thanksgiving holiday and Christmas holiday.

**Storms/Emergencies:** In the event of a qualifying storm or emergency as declared by Saco’s Public Works Director, and following consultation with Contractor, Contractor shall institute contingency plans to collect as soon as feasible any solid waste that went uncollected during the storm or emergency including placing extra trucks on routes, extending hours of operation, and any other reasonable steps to minimize disruption of normal services.
Complaints: The Contractor shall receive and respond to all complaints regarding services provided under this Contract including those for missed collections. Any complaints received by the City will be directed to the Contractor’s office. Should a complaint go unresolved for longer than three (3) days, the City will have the right to demand an explanation or resolution to its satisfaction.

Reporting: The Contractor shall report daily or weekly issues to the City by email to the Public Works designee. Reports shall include:
- Breakdowns
- Missed Collections
- Unacceptable materials and rejected containers

Notification of Residents: The Contractor shall inform all residents as to complaint procedures, services provided for as set forth in this Contract, and day(s) for scheduled refuse collection by public notice as provided above in the section Routes and Schedule of Collection.

Collection Equipment: An adequate number of vehicles shall be provided by the Contractor. The vehicles shall be equipped with industry-standard, American-style, semi-automated lifters for the purpose of emptying City-provided containers purchased specifically for solid waste and recycling collection. Said vehicles will be licensed in the State of Maine within ten (10) days of the date the vehicle is put in service and shall operate in compliance with all applicable state, federal, and municipal regulations.

All vehicles and other equipment shall be kept in proper repair and sanitary condition. Each vehicle shall bear, at a minimum, the name and phone number of the Contractor plainly visible on both cab and doors. Each vehicle shall be uniquely numbered in lettering at least six (6) inches high and four (4) inches wide. The letter shall be in a color which sharply contrasts with the color of the truck. Each truck shall have at least one broom and shovel to clean up solid waste that may be spilled or otherwise scattered during the process of collection. All vehicles shall be sufficiently secured so as to prevent any littering of solid waste and/or leakage of fluid. No vehicles shall be willfully overloaded.

The City shall supply to all residents within the service area containers that are compatible with Contractor’s current collection equipment.

Personnel: The Contractor shall require his employees to be courteous at all times, to work quietly and not to use loud or profane language. Each employee shall wear clothing clearly labeled with the name of the company and employee. Clothing will be as neat and clean as circumstances permit. Shirts will be required at all times. All personnel shall wear reflective vests or clothing when working in city streets.

The Contractor’s employees shall follow the regular walks for pedestrians while on private property, shall not trespass or loiter on private property, shall not cross property to adjoining property, and shall not meddle or tamper with property which does not or should not concern them.

Each employee assigned to drive a vehicle shall, at all times, carry a valid driver’s license for the type of vehicle he is driving.

The City shall have the right to make a complaint regarding any employee of the Contractor who violates any provision hereof or who is wanton, negligent, or discourteous in the performance of his duties.

Handling of waste containers shall be done with respect to private property. At no time shall containers be thrown, tossed or skidded. Containers once empty, shall be placed upright in the Contractor’s preferred location for collection.

Office: The Contractor shall maintain a local office or other facility, not necessarily within City limits, through which the Contractor can be contacted, where service may be applied for, and complaints can be made. Such office or facility shall be equipped with adequate telephone communications (including a local phone number), shall have at least one (1) responsible person in charge and present during collection hours, and shall be opened during regular business hours.

ARTICLE IV: SPECIAL COVENANTS AND SEVERABILITY
Notice: A letter properly addressed and sent by certified mail to any party at the
addresses provided below shall constitute sufficient notice whenever written notice
is required for any purpose of this agreement. Notice will be considered sent
either when received at the appropriate address or deposited in the United States
mail.

Address for notices to City:         Address for notices to Contractor:
City of Saco                        Pine Tree Waste Inc.
Public Works Director               87 Pleasant Hill Road
300 Main Street                    Scarborough, Maine 04074
Saco, ME  04072

Illegal and Invalid Provisions: Should any term, provisions or other part of this
Contract be declared illegal it shall be and modified to conform to the appropriate
law or regulations or excided from said contract. Should any term, provision or
portion thereof be reformed in accordance with applicable laws or regulations. In cases of illegal and invalid provisions, the remainder of the
Contract shall stay in full force and effect.

Amendment of the Contract: No modification or amendment of the terms of the
Agreement shall be effective unless they are in writing and signed by the
authorized representatives of each party.

Binding Effect: The provisions, covenants, and conditions in the Contract shall
bind the parties, as well as, their heirs, representatives, successors and assigns.

Merger Clause: This agreement, and those documents described in the definition
of "Contract", above constitute the final, complete and total agreement and
understanding between the parties. All prior and contemporaneous agreements
and understandings, whether oral or written, are to be without effect in the
construction of any provisions or terms of this Contract, and shall not bind the
parties hereunder.

Waivers: A waiver by either party of any breach of any provisions hereof shall
not be taken or held to be a waiver of any succeeding breach of such provision or
as a waiver of any other provision or breach. No payment or acceptance of full
or partial compensation for any period subsequent to breach shall be deemed a
waiver of any rights.

Assignment of Contract: No assignment of this Contract or any right accruing
under this Contract shall be made in whole or in part by the Contractor without
express written consent of the City.

Nondiscrimination: The Contractor, including all its agents, employees,
personnel shall not discriminate against any person because of race, sex, age,
creed, color, religion or national origin.

Permits, License, and Taxes: The Contractor shall obtain and assume the cost
of all licenses and permits (other than the license and permit granted by the
Contract) and promptly pay all taxes required by the City.

Failure to Perform: If the Contractor fails to perform, or fails to perform in a
satisfactory manner, or fails to perform according with applicable laws, statutes,
ordinances, regulations and permits, or performs in such a manner as to cause a
suspension of the City's right to deliver to it's designated disposal site(s), the
City may demand, in writing, adequate assurance from Contractor that steps be
taken to correct and abate the problem or non-performance. The Contractor
must within five (5) days of receipt of such demand meet with the Public Works
Director to explain and resolve the failure, non-performance, delay, or
substandard performance. If the Public Works Director deems the Contractor's
explanation and assurances insufficient, he shall advise the Contractor in writing,
of such insufficiency and declare a default hereunder.

Termination Provision: A party may terminate this contract for cause (breach of
a material condition herein such as non-performance by the Contractor or non-
payment by City) provided, however, that the defaulting party has had 30 days to
remedy or cure the default and such breach remains or has not been cured.

Dispute Resolution: Any controversy or claim arising out of or relating to this
agreement, its interpretation, or breach thereof, may be settled by mediation. If
however, mediation fails, then said dispute shall be resolved by binding
arbitration.

IN WITNESS WHEREOF, the parties have executed this agreement on the
_ _ Day of  ___, 2018

WITNESS:

Michelle Hughes                   CITY OF SACO:
City Clerk                        Kevin L. Sutherland
                                      City Administrator

WITNESS:

CASELLA WASTE SYSTEMS:

Brian Oliver                     Regional Vice President
D.  ZONING ORDINANCE AMENDMENT, ARTICLES 9, 10, AND 11 – (SECOND & FINAL READING)

The Bill Dodge Nissan site plan was approved by the Planning Board on June 25, 2013. An abutting property owner appealed a decision regarding a minor plan amendment, and issuance of the Certificate of Occupancy for the building. Both the Planning Board and the Zoning Board of Appeals determined that they had no jurisdiction over the matter. York County Superior Court upheld the decisions by both boards. The appeal then went to the Maine Supreme Court, which concluded that the appeals should have been heard by both Boards.

The Court also found that the procedures for appeals, and the handling of minor or major changes to approved site plans outlined in the Zoning Ordinance were ambiguous and unclear. The City Attorney has reviewed the existing language related to conditional uses, the ZBA, and site plan review and drafted a number of amendments in response to the Court’s concerns.

The Planning Board reviewed the amendments and held a public hearing on both March 15 and April 5, 2016. The Board recommends that the amendments be adopted as proposed. Councilor Cote provided amendments to Article 11 on June 1, 2016 which are provided in Exhibit 1 below.

Councilor Cote moved, Councilor Doyle seconded “Be it ordered that the City Council approves the Second and Final Reading of the document titled, “Amendments to Articles 9, 10 and 11 of the Zoning Ordinance, Amended June 1, 2016” Further move to approve the order. The motion passed with seven (7) yeas.

Note: Only the sections of Articles 9, 10, & 11 that actually had changes are included below. The rest of the verbiage remains the same.

Article 9 - Conditional Uses and Variances

Article 9
Conditional Uses and Variances
(Amended 6/18/87)

Section 901. Conditional Uses

901-1. CONDITIONAL USE PERMIT REQUIRED (Amended 11/6/89; 10/4/93)
A building, structure or parcel of land may be employed for a conditional use, as defined in Article 3, if the Planning Office finds the use meets the application standards of Section 901-12 below, or if the Planning Board finds that the use meets the standards of Section 901-4, that it meets any special standards of the zoning ordinance, and is of one of the following four types of conditional uses:

1. The conditional use is specifically listed in the regulations governing the zoning district in which the use is proposed; or
2. A parcel of land in single ownership as of the effective date of this Ordinance is transected by a zoning boundary line, in which case extensions penetrating no more than 100 feet into a more restrictive zone may be approved as a conditional use in accordance with Section 404-2; or
3. A change from one non-conforming use to another use equally or more appropriate to the zoning district and meeting the standards of Section 503-4 and this Section.
4. Certain conversions of buildings to multifamily use as described in Section 412-6.

901-2. APPLICATION FOR CONDITIONAL USE PERMIT

1. The applicant shall submit building and site plans in ten (10) copies, drawn to a scale of not less than one inch equals twenty feet (1" = 20’). The building plans shall show at a minimum the first floor plan and all elevations, with indication of the proposed construction material. The site plan shall include the following information.

   a. A map of the site with reference to surrounding areas and existing street locations.
   b. The name and address of the owner and conditional use permit applicant, together with evidence of sufficient right, title or interest in the premises to permit the applicant to undertake the use for which conditional use permit approval has been requested.
   c. The names and addresses of the owners of all properties within two hundred (200) feet of the property in question when the property is located in the R-3, business (B) or MU zones and within six hundred (600) feet when the property
in question is located in the conservation zone, any industrial district or the R-1, R-2 and R-4 districts, as shown by the most recent tax records of all municipalities in which such properties lie. (Amended 10/3/11)

d. A plan of the area showing lot line dimensions, applicable zone or zones, and
the normal high water mark, if applicable.

e. Location of all existing and proposed buildings and structures, streets,
  easements, driveways, entrances and exits on the site and within one hundred
  (100) feet thereof.

f. All setbacks from bodies of water and lot lines.

g. All existing physical features on the site and within two hundred (200) feet of
the site, including streams, watercourses and existing woodlands. Soil
conditions as reflected by a medium intensity survey (such as wetlands, rock
ledge, and areas of high water table) shall be shown, and the Planning Office or
Planning Board may require a high intensity soils survey where necessary. The
applicant shall provide, as part of the application, a narrative and sketch
sufficient to describe trees and other vegetation located on the site. The
Planning Office or Planning Board may require mapping of trees proposed to
be preserved as part of site and landscaping plans presented for approval.

h. Topography showing existing and proposed contours at five (5) foot intervals
  for slopes averaging five percent (5%) or greater and at two (2) foot intervals
  for land of lesser slope. A reference benchmark shall be clearly designated.

  Where variations in the topography may affect the layout of buildings and
  roads, the Planning Office or Planning Board may require that the topographic
  maps be based on an on-site survey.

i. Parking, loading and unloading areas shall be indicated with dimensions,
  traffic patterns, access aisles and curb radii.

j. Improvements such as roads, curbs, bumpers and sidewalks shall be indicated
  with cross sections, design details and dimensions.

k. Location and design of existing and proposed stormwater systems, sanitary
  waste disposal systems and potable water supply, and methods of solid waste
  storage and disposal.

l. Landscaping and buffering plan showing what will remain and what will be
  planted, indicating botanical and common names of plants and trees,
  dimensions, approximate time of planting and maintenance plans.

m. Lighting details indicating type of fixtures, location, radius and intensity of
  light.

n. Location, dimensions and details of signs.

o. Proposed use of all floor area.

2. The application for conditional use permit review for business, commercial and
industrial uses shall also include:

a. A written description of the proposed operations in sufficient detail to indicate
  the degree to which the operations will create traffic congestion, noise, toxic or
  noxious matter, vibration, odor, heat, glare, air pollution, waste, and other
  objectionable effects, along with engineering and architectural plans for
  mitigating such effects.

b. The proposed number of shifts to be worked and the maximum number of
  employees of each shift.

c. A list of all hazardous materials to be hauled, stored, used, generated or
  disposed of on the site, and any pertinent state or federal permits required.

3. Where the Planning Board (or the Planning Office in case of minor conditional uses
as provided below in Section 901-12) finds that, due to special circumstances of a
particular plan, the submission of required exhibits is not necessary or is
inappropriate because of the nature of the proposed development, it may waive such
requirements subject to appropriate conditions. The Planning Board or Planning
Office may require submission of such additional information as it deems necessary
for proper review. A written request for such a waiver shall accompany the
application.

4. The purpose of these provisions is to ensure that all required information is
presented to the Planning Board or Planning Office when it initially reviews an
application. However, an application is not deemed to be complete until declared to
be so by decision of the Planning Office in the case of minor conditional use
applications as provided below in Section 901-12, or by vote of the Planning Board,
which may, in any case, request additional information and materials beyond those
described in subsection 1.
901-3. HEARING REQUIRED (Amended 10/4/93)

1. For each application for a conditional use permit except those reviewed pursuant to Section 901-12 the Planning Board shall conduct a public hearing.
2. The Planning Board shall cause public notice to be posted and published in both the city building and at least one newspaper of circulation in the area, of any public hearing which the Board shall conduct, indicating the property involved, the nature of the appeal, and the time and place of the public hearing.
3. The Board shall also cause to have notified all property owners of within six hundred (600) feet of the property when the applicant's property is located in the Conservation District, any Industrial District or R-1, R-2, and R-4 Districts and within two hundred (200) feet when the applicant's property is located in the R-3 District or any Business District. The Board shall cause a list of such property

901-5. ADDITIONAL STANDARDS IN RESOURCE PROTECTION, SACO RIVER AND SHORELAND AREAS

For conditional use permit applications within RP, SR, and SO Districts, the Planning Board, in addition to the standards for a conditional use permit, shall find that the proposed conditional use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as in accordance with the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities in a Marine Business and Residential District;
8. Will avoid problems associated with floodplain development and use; and
9. Is in conformance with the provisions of Section 7.1-3 Land Use Standards;
10. If located in a structure, the structure is located in an approved subdivision and will not violate any other local ordinance or regulation or any State law which Saco is responsible for enforcing. (Amended 4/3/02)

901-6. CONDITIONS OF APPROVAL

The Planning Board, and in the case of minor conditional uses the Planning Office, may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation, specified sewage disposal and water supply facilities, landscaping and planting screens, period of operation, operational controls, professional inspection and maintenance, setback, deed restrictions, restrictive covenants, type of construction, or any other reasonable conditions necessary to fulfill the purposes of this Ordinance.

901-7. LIMITS ON CONDITIONAL USE PERMITS

Work or construction, or occupancy if no construction is involved shall commence within twelve (12) months of the Planning Board's issuance of a conditional use permit. If work or occupancy is not commenced within this period, the conditional use permit shall be null and void. The deadline may be extended for one additional six (6) month period by the Planning Board, or the Planning Office in the case of minor conditional uses, upon the written request of the applicant. The written request for an extension must be submitted before the date of expiration of the conditional use permit. After the conditional use permit has expired or an extension is denied by the Planning Board, the applicant may reapply for a conditional use permit at any time without prejudice.

Requests for extensions shall be approved unless one or more of the following occurs:

The Planning Board shall approve the request for an extension unless the Board has become aware of one of the following:

a. additional information that indicates that the plan does not meet the conditional use standards;

b. failure to meet a condition of approval;

c. an amendment in the Zoning Ordinance that prohibits or alters the proposed conditional use.

901-8. REAPPLICATION

If the Planning Board shall deny a conditional use permit is denied, a second request of a similar nature shall not be resubmitted before the Board within two years from the date of the first request, unless in the opinion of the majority of the Planning Board, (or by the Planning Office in the case of minor conditional use) substantial new evidence
can be brought forward, or unless the Board or the Planning Office finds, in its sole judgment, that an error of law or misunderstanding of facts has been made, or unless amendment has been made to the Zoning Ordinance which changes the status, circumstances, or conditions of the application which was originally submitted or which was brought before the Board.

901-9. EXPIRATION DURATION OF CONDITIONAL USE PERMIT
Provided all conditions and standards of approval are met, including Section 901-7 and/or Section 901-12, a conditional use permit issued under this Article authorizes only the particular activity for which it was issued and based upon a plan for such activity which was approved by the Planning Board. The conditional use permit shall automatically expire and cease to be of any force or effect if such use is discontinued for a period of 12 consecutive months. (Amended 9/18/89; 10/4/93)

901-10. APPEALS
Decisions on minor conditional uses made by the Planning Board may be appealed by an aggrieved party to the Planning Board within 30 days of the date of the decision. This appeal by the Planning Board shall be de novo and may include new evidence and testimony. A decision by the Planning Board regarding a minor conditional use application or regarding an application for a conditional use permit may be appealed by an aggrieved party in writing to the Zoning Board of Appeals within 30 days of the Planning Board's decision. The Zoning Board of Appeals may reverse the Planning Board's decision only upon finding that there has been an abuse of discretion, an error of law or that there are not substantial facts leading to the record to support the decision of the Planning Board were erroneous. The review shall not be de novo.

901-11. NON-CONFORMANCE
Conditional uses are permitted in buildings which are legally non-conforming in respect to the standards of Table 412-1 of this ordinance upon a decision of the Planning Office. An application for a conditional use that is non-conforming does not cause the use to violate any of the conditional use standards or special standards of Article 7 for certain conditional uses. (Amended 10/4/93)

901-12. MINOR CONDITIONAL USES
In order to process applications more efficiently, certain conditional uses, due to the limited nature of the proposed use, may be reviewed by the Planning Office, as authorized in M.R.S.A. Title 30-A § 4353. The Planning Office may, however, decline to review an application that requires approval for a minor conditional use and forward such application to the Planning Board. Only uses that meet all of the following applicability standards may be reviewed as minor conditional uses:

1. Applicability
   This article shall apply to:
   a. Home occupations in which there is no point of purchase for retail merchandise at the home. Phone and mail order businesses, wholesale businesses, and other similar businesses may be reviewed as minor conditional uses.
   b. Home occupations in which the required number of parking spaces for all uses on the lot does not exceed four (4) spaces.
   c. Home occupations in which there are not significant exterior alterations to the building or site.
   d. Two family dwellings (Amended 2/19/02)

2. Administration
   a. Application Contents
      An application for a minor conditional use shall include four (4) copies of the information required under Section 901-2-1, except the items required under paragraphs c. g. h and j, which may be required by the Planning Office if deemed warranted.
   b. Notice and Public Comment
      Upon receipt of an application for minor conditional use, the Planning Office shall send a notice of the application, including the name of applicant, address of the applicant, the nature and address of the proposed use, to all property owners within two hundred (200) feet. The notice shall also include a deadline for comment on the application, to be ten (10) calendar days from the date of the notice.
   c. Time Frame for Decisions
      The Planning Office shall act upon all applications for minor conditional uses, approval, or referral to the Planning Board, within five (5) days of the close of the public comment period.

3. Criteria for Approval
   Minor Conditional Use applications shall be approved, or approved with conditions, by the Planning Office unless the proposed use does not satisfy the approval criteria in Section 901-4, or other relevant sections of the Zoning Ordinance, or other local, State and federal laws. Notice of decisions by the Planning Office shall be provided to those parties detailed above in Section 901-12 (2). If in the opinion of the Planning Office an application does not meet the approval applicability criteria set out in Section 901-12 (1), then the application shall be referred to the Planning Board for a full conditional use review.
Article 10
Board of Appeals

Section 1001. Organization

1001-1. CREATION OF BOARD.
The City of Saco Zoning Board of Appeals, hereinafter the “Board”, is hereby created (“the Board”), which Board shall consist of seven regular members and two alternates, who shall be appointed by the Mayor, subject to confirmation by the City Council, none of whom shall hold any elective office or any other appointive position in the City government. The Board shall elect a chairman and a secretary from its members. (Amended 10/3/88)

1001-2. QUORUM.
A quorum shall consist of four (4) members, at least two of whom shall be regular members. All decisions concerning Board action shall consist of a simple majority vote by the members present at a meeting, but under no circumstances shall fewer than three (3) members constitute a majority vote. Alternates shall vote only in the absence of regular members. In the event of absence of a regular member or member(s) the alternate who has served the longest time shall fill the first vacancy and the alternate who has served the second longest time shall fill the second vacancy. In the event that both alternates shall have served the same period of time, selection of an alternate to fill the vacancy shall be by lot. (Amended 10/3/88)

1001-3. QUALIFICATIONS
1. Only residents of Saco may serve as a member of the Board.
2. There shall be no more than two members on the Board who are residents of the same ward.
3. No City Council member, nor any spouse of a City Council member, may be a member of the Board.

Section 1002. Terms of Office; Vacancies

1002-1. TERMS.
The term of the appointive members shall be five years and terms shall be staggered with twelve (12) month intervals. Any vacancy during the unexpired term of an appointive member shall be filled in the same manner for the remainder of the term.

1002-2. VACANCIES
1. Vacancies on the Board shall be created under any of the following circumstances:
   a) a member submits his/her resignation in writing to the Mayor;
   b) a member’s official residence is no longer within the City of Saco, in which instance the secretary of the Board shall notify in writing the Mayor
   c) upon expiration of the term of a member
   d) a member fails to attend three or more consecutive hearings/meetings of the Board, without being excused by the Board

2. In the case of vacancies occurring in the manner described in paragraph (d) above, the Chairman of the Zoning Board of Appeals shall first contact the absent member to determine his/her ability to attend future hearings on a regular basis, and the Board shall then recommend appropriate action to the City Council.

3. Any vacancy during the unexpired term of an appointive member shall be filled by a person appointed by the Mayor for the unexpired term.

4. Any member of the Board may be removed for cause by the City Council provided that the member shall first be notified in writing and given the opportunity for a hearing.

Section 1003. Powers and Duties.
The Zoning Board of Appeals, after public hearing and by a majority vote of its members, shall have the following powers and duties, shall hear the following matters:

1003-1. ADMINISTRATIVE APPEALS.
To affirm, modify, or set aside the action of the Building Inspector in issuing or denying building permits or certificates of occupancy when it is alleged that the action is based on an erroneous interpretation of this Ordinance.
An aggrieved party may appeal a decision of the Code Enforcement Officer regarding a zoning violation, a building permit or a certificate of occupancy in those cases where it is alleged the Code Enforcement Officer has made an error of law, or has abused their discretion, or the evidence of record compelled a different decision. An aggrieved party may directly appeal to the Board if a permit holder has meaningfully exceeded the authority contained in their building permit or their certificate of occupancy. Any appeal filed hereunder must be provided such appeal is brought within 30 days of the alleged act or failure to act. This provision is intended to effectuate process set out by the Legislature in Title 30-A, Section 2691 (4). The appeal review shall be de novo as set out below in Section 1004-6. A decision made by the Code Enforcement Office
not to commence or file a land use enforcement action is a non appealable exercise of the Code Enforcement Officer’s prosecutorial discretion. The Board may affirm or reverse the decision of the Code Enforcement Officer and that decision may be appealed as set out in Section 1005.

1003-2. PLANNING BOARD APPEALS.
To hear appeals of decisions by the Planning Board on applications for conditional use permits, subject to the limitations of Section 901 of this Ordinance. Pursuant to Section 901-10, the appeal review shall not be de novo. The Zoning Board shall not, however, have jurisdiction or authority to hear appeals from site plan decisions made by either the Planning Board or the City Planner. Pursuant to Section 901-10, the appeal review shall not be de novo. The Board may affirm or reverse the decision of the Planning Board on appeal. Or, it can order, not more than one time, a remand to the Planning Board for further consideration.

1003-3. IN GENERAL: VARIANCES FROM DECISIONS BY CODE ENFORCEMENT.
The Board shall have authority to approve, approve with conditions, or deny applications for variances from decisions made by the Code Enforcement Officer regarding standards of this Ordinance as allowed under Section 902, the strict enforcement of the provisions of this Ordinance as they relate to the space and bulk requirements of the district regulations, according to the standards set forth in Article IX of this Ordinance. The review conducted by the Board on such variances shall be de novo as set out below in Section 1004-6. Such decisions by the Board may be appealed as set out in Section 1005.

All variances, including those described here, and in Sections 1003-4 and 1003-6 below, shall meet the requirements and conditions set out in Section 902, and to approve, approve with conditions, or disapprove appeals for variances under Section 413-13. (Amended 3/2/87)

1003-4. (Reserved)

VARIANCES FROM HISTORIC PRESERVATION CONDITIONS.
The Board shall have authority to approve, approve with conditions, or deny applications for variances as further detailed in Section 413-13 of this Ordinance. The review conducted by the Board shall be de novo as set out below in Section 1004-6 below.

1003-5. APPEALS FROM HISTORIC PRESERVATION COMMISSION.
To hear appeals of decisions made by the Historic Preservation Commission under Section 413-10-5. A decision by the Historic Preservation Commission on an application for a Certificate of Appropriateness may be appealed in writing to the Zoning Board of Appeals within 30 days of the Commission’s decision. The Board of Appeals may affirm the decision, or it may reverse the Commission’s decision only upon a finding that there has been an error of law or that the facts leading to the decision of the Commission were erroneous. The review made by the Board of Appeals shall not be de novo. (Amended 3/2/87; 3/18/91). If the Board reverses the decision of the Commission, it shall be remanded to the Commission for further consideration, but not more than once. Thereafter, the parties shall have their appeal rights as allowed under Section 1005.

1003-6. SHORELAND AND NATURAL RESOURCE DISTRICT VARIANCES
The Board shall have authority to approve, approve with conditions, or deny applications for a variance from Shoreland and Natural Resource standards set out in Section 7-1-1 of this Ordinance. The review conducted by the Board shall be de novo as set out in Section 1004-6 below.

I. Appeal Procedure
a—Making an Appeal from a decision of the Code Enforcement Officer

(1) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.

(2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
   (i) A concise written statement indicating what relief is requested and why it should be granted.
   (ii) A sketch drawn to scale showing lot lines, location of existing buildings and structures, and other physical features of the lot pertinent to the relief sought.
   (iii) A demarcation on the sketch showing low tide and mean high tide and designating the 100 year flood area.

(4) Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision.

(5) The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

b—Making an Appeal from the Planning Board

An appeal of a decision by the Planning Board shall be to Superior Court within thirty (30) days of the date of decision appealed from.

c—Standing and Time for an Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals or the Planning Board may appeal to Superior Court in accordance with State laws within thirty (30) days from the date of issuance of a written decision of the Board of Appeals or Planning Board as appropriate. (Amended 4-21-92)

Section 1004. Procedures

1004-1. DENIAL OF BUILDING PERMIT.

All applicants for building permits denied for any reason shall be advised in writing of the right of appeal.

1004-2. APPLICATION FOR A VARIANCE AND FILING OF AN APPEAL.

(1) An appeal or application for a variance shall be commenced as set forth below in Section 1004-4.

(2) Such appeal or application for a variance shall include the following information:
   (i) A concise written statement indicating what relief is requested and why it should be granted.
   (ii) A description of the regulation, ordinance provision, or permit that is subject to review or from which relief is requested.
   (iii) A sketch drawn to scale showing lot lines, location of existing buildings and structures, and other physical features of the lot pertinent to the relief sought.
   (iv) If applicable, a demarcation on the sketch showing low tide and mean high tide and designating the 100 year flood area, any applicable wetlands, shorelines, or other pertinent natural features.
   (v) If applicable, color pictures of the exterior features at issue if the appeal or variance is of, or concerns, a structure found in the Historic District.

(3) Upon being notified of an appeal or of an application for a variance, the Code Enforcement Officer and the Board Clerk shall arrange to secure and transmit to the Board all of the papers and evidence constituting the record of the decision that is to be reviewed.
1004-32. PUBLIC HEARING REQUIRED
1. For all appeals from decisions of the Code Enforcement Officer/Building Inspector, for all requests for any variance, and for for consideration of application for permits authorized by the Zoning Ordinance, or from review of the decisions of the Planning Board on applications for conditional use permits, the Board of Appeals shall hold a public hearing, but the Board shall only take and hear new evidence or testimony in those matters where de novo review is expressly permitted. The Hearing shall be held within 25 days of the receipt of an appeal or application for variance.

2. The Board of Appeals shall cause public notice to be posted and published in both the city building and at least one newspaper of circulation in the area, of any public hearing which the Board shall conduct, indicating the property involved, the nature of the appeal, and the time and place of the public hearing.

3. The Board shall also cause to have notified all property owners of within six hundred (600) feet of the property when the applicant's property is located in the Conservation District, and Industrial District or R-1, R-2, and R-4 Districts and within 200 feet when the applicant's property is located in the R-3 District or any business district. The Board shall cause a list of such property owners to be drawn off from the Assessor's records, and such notices to property owners shall be sent by mail at least seven (7) days prior to the date set for the public hearing.

4. The Board of Appeals shall not continue hearings to a future date except for good cause. Written notice of the decision of the Board shall be sent to the appellant and the Code Enforcement Officer/Building Inspector.

1004-34. TIME FOR APPEAL, FORMS AND FEES.
When a person is aggrieved by a decision of the Code Enforcement Officer/Building Inspector, by a decision of the Historic Preservation Commission, or by a decision of the Planning Board, if an appeal or variance application is authorized elsewhere under this Ordinance, the aggrieved person must file their appeal or variance application within thirty (30) days of the day the decision was rendered. Appeals and applications for variance must be filed with the Clerk of the Zoning Board of Appeals on the application forms provided for that purpose by the Clerk of the Zoning Board of Appeals. The Clerk of the Zoning Board of Appeals, after receiving the application and stamping the date of receipt shall transmit the application to the Board of Appeals.

Any appeal or application for variance to the Board of Appeals shall be accompanied by a fee as established by the City Council. (Amended 4-3-86)

1004-054. RULES OF PROCEDURE.
The Board shall adopt its own rules of procedure for the conduct of its business not inconsistent with this Ordinance and the statutes of Maine. Such rules shall be filed with the Board Secretary and the City Clerk. Any rule so adopted and not mandated by this Ordinance or the statutes of Maine may be waived by the Chairman of the Board for good cause shown.

1004-55. SUBMISSION OF EVIDENCE.
Provided the Board's review is not otherwise limited by this Ordinance including Section 1003-2 and 1003-5, the Board may receive any oral or documentary evidence including new evidence and testimony, but shall provide as a matter of policy for the exclusion of irrelevant, inadmissible, or unduly repetitious evidence. Every party shall have the right to present his own 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.

1004-76. ABSENCE OF BUILDING INSPECTOR/ CODE ENFORCEMENT OFFICER.
The Building Inspector/Code Enforcement Officer, unless prevented by illness or absence from the state, shall attend all hearings and shall present to the Board of Appeals all plans, photographs or other factual material that is appropriate to an understanding of the appeal.

1004-82. CONFLICT OF INTEREST.
No member of the Board shall vote on a matter in which he has they have a direct or indirect financial or personal interest. 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 either requesting a decision or who is being challenged.

1004-98. RECORDS AND DECISIONS.
Article 11
Site Plan Review

Section 1103. Administration
5. The Planning Board shall act to approve, approve with modifications or conditions, or disapprove the site plan within thirty (30) days of the close of the public hearing, or by a date mutually agreeable with the applicant.

7. MINOR SITE PLANS. (Amended 2/19/02) In order to process site plans more efficiently, site plans for the following items shall be reviewed by the City Planner rather than the Planning Board:
   a. buildings, structures or additions of less than six thousand (6,000) square feet;
   b. Private Roads;
   c. nonresidential buildings or structures in an approved industrial park, including accessory buildings and structures, having a total floor area of not more than 30,000 square feet.

   The City Planner shall approve, approve with modifications or conditions, or deny the site plan within fifteen (15) working days of receiving a complete plan. The City Planner shall consider comments from all applicable City departments during the course of plan review. If the City Planner has not acted within fifteen (15) working days the applicant may seek approval from the Planning Board, rather than the City Planner. Inaction by the City Planner does not constitute approval or disapproval of the plan. If the applicant or party is not satisfied with the determination of the City Planner, the applicant shall be permitted to have the entire application reviewed by the aggrieved party may appeal the decision to the Planning Board. The City Planner can decline review, for any reason, and forward the minor site plan to the Planning Board for site plan review. Any minor plan that also requires conditional use, subdivision, or any other review by the Planning Board, shall be reviewed by the Planning Board. The City Planner shall, within 30 days, inform the Planning Board and abutters after making a determination on a minor site plan. Any appeal from a determination of the City Planner to the Planning Board shall be governed by Section 1114 hereinbelow.

Section 1109. Changes in Plan
   Any proposed significant change to a major site plan must be reviewed and approved by the Planning Board at public hearing, and no action may be taken without all parties having notice and opportunity to present evidence and argument. Any proposed minor change to a major site plan, and any proposed changes of any nature in minor site plans, and any other decisions expressly delegated to the City Planner as part of a plan approval, may be reviewed and approved by the City Planner without further public hearing but notice of decisions by the City Planner shall be sent within 30 days to all previously noticed parties, including abutters, to assure appeal rights under Section 1114 below. Examples of minor changes include but not limited to: changes in the record owner, altering phases of development, the addition or alteration of minor site features such as lighting, signs or other similar amenities, the timing or scheduling of building or site work if necessitated by cold weather. The decision as to what constitutes a minor change shall be made by the City Planner, and the decision is presumed to be reasonable until established otherwise. Construction not performed according to the approved plan or in violation of any approved conditions placed on a plan shall be a violation of this ordinance. Any changes in the plan after approval must be approved by the Planning Board, or in the case of a minor site plan, the City Planner. Minor changes during construction can be approved by the City Planner. Construction not performed according to the approved plan or the violation of any conditions placed on the plan shall be a violation of this Ordinance.
E. MEDICAL MARIJUANA MORATORIUM - (SECOND & FINAL READING)

The City of Saco has been operating under legal opinion from 2012 that puts the burden of regulation on the state and therefore local government has no authority over them. More recently, the city’s attorney has provided a revised legal opinion that Land Use Regulation does have a role in this matter and local government can have a role in where these facilities would be located.

Currently, there is no explicit use definition for a caregiver facility. An applicable fit could be Personal Service (defined in Exhibit 4), which is not currently a permitted use in an industrial zone.

City staff recommends approval of this six-month moratorium on the permitting of medical marijuana caregiver facilities in order to give staff and the Planning Board time to develop a zoning recommendation for Council.

Councilor Roche moved, Councilor Minthorn seconded “Be it Ordered that the City Council does hereby ordain and approve the Second and Final Reading for the six-month moratorium on new permits for medical marijuana caregiver facilities”. Further move to approve the Order.

AMENDMENT – Councilor Cote moved to have the moratorium only apply to the Industrial Zones. The motion was not considered due to a lack of a second.

Mayor Michaud called for a vote on the main motion. The motion passed with six (6) yeas and one (1) abstention due to a conflict of interest - Councilor Roche.

MEMORANDUM

TO: Mayor Michaud and Saco City Council
FROM: Kevin Sutherland, City Administrator
DATE: May 18, 2016
RE: Moratorium on Medical Marijuana Caregiver Facilities

Over the past few months and weeks, the City of Saco has seen a greater interest in Medical Marijuana Caregiver Facilities looking to locate here. Legal opinion from 2012 puts the burden of regulation on the state and therefore local government has no authority over them (5/23/16 Council meeting Agenda Item E, Exhibit 2). This is the legal advice the city has followed for the past several years which has resulted in facilities being put in industrial, business, and residential zones.
The city has received an updated legal opinion due to the topic of medical marijuana continuing to grow in the state, as well as in the City of Saco. The second legal opinion was sought in April 2016, to aid in the increase of inquiries received by the code enforcement office regarding caregiver facilities. The purpose of the second opinion was to create uniform standards for future establishment of these facilities. The updated legal opinion has looked through the zoning code and determined that Medical Marijuana Caregivers Facilities fit best under personal services, ("Establishments engaged in providing services involving the care of the person or personal apparel including but not limited to barber shops, beauty shops and manicurists, tailors, Laundromats, shoe repair shops, tattoo parlors, massage therapists, and photographic portrait studios."). In addition, the state statutes do not explicitly forbid regulation of caregivers through zoning. The previous opinion took language from the statute section regarding dispensaries and applied it broadly to caregivers. The city cannot regulate a caregiver’s business or licensure more than the state can, but the city does have the power, from the state, to regulate where these facilities are located in the municipality (5/23/16 Council meeting Agenda Item E, Exhibit 3). The location of these facilities is a pressing issue for the city, due to a lack of regulation for the previous 5 years.

Currently the established Medical Marijuana Caregiver Facilities are located primarily in industrial zones. Following the most recent legal advice provided to the city, “personal services” are not a permitted or a conditional use in the I-1 zones. The city needs time to determine if “personal services” is the correct definition for these facilities, what zones and locations would be ideal for the city as well as the caregivers, and the changes that would need to occur to the zoning code (conditional uses, zoning overlays, etc.) to further the goals of cohesion between development and the zoning code.

VIII. ADJOURNMENT

Councilor Minthorn moved, Councilor Precourt seconded to adjourn the meeting 7:39 p.m. The motion passed with unanimous consent.

Attest: __________________________
Michele L. Hughes, City Clerk