

To: Mayor MacLellan-Ruf and Members of the Council
From: James D. Chaousis II, City Manager
Date: December 11, 2015
RE: City Manager's Weekly Report

OFFICE OF THE CITY MANAGER

- Attended the Maine Municipal Strategic and Finance Committee meeting of which I am a member. We finalized and recommended passage of the \$12M operating budget, designated project fund, and contingency reserve. We reviewed the committee 2016 work plan and reviewed the IT services update from MMA staff.
- Conducted the Department Head meeting. There we gave initial instruction to departments regarding the budget and the budget working group. We discussed the draft personnel policy and set a deadline for comments regarding the policy for December 18th, 2015. I plan to have a draft version for the City Council to review at the January regular meeting.
- I worked on preparing and drafting the personnel policy.
- I spent a majority of the week responding to inquiries, questions and generating a better working knowledge of the proposed moratorium. As the City Attorney mentioned in his legal opinion letter, the City has a legal basis to establish moratoriums. Rockland has a history establishing moratoriums recently but no experience defending them. MMA publishes information regarding moratorium and I would like to point out some focal points:
 - The principal statutory requirement for a development moratorium is that it be necessary either (1) to prevent a shortage or overburdening of public facilities (e.g., sewer, water, roads, schools, public safety), or (2) because existing plans, ordinances or regulations, if any, are inadequate to prevent serious public harm. Either of these rationales will suffice, though a municipality should cite both as justification for a moratorium if there is a factual basis for doing so. **In order to create a record for a reviewing court in the event the ordinance is challenged, every moratorium ordinance should include a preamble that recites the facts which demonstrate the necessity for the moratorium.** While factual justification is critical, courts will not second-guess a municipality's determination of necessity; a moratorium, like any other municipal ordinance, is presumed valid, and the **challenger must establish "the complete absence" of any facts supporting the need for a moratorium (Minster v. Town of Gray, 584 A.2d 646 (Me. 1990)).**
 - While the legal basis of whether the City can establish a moratorium on development is one aspect. Economic development, taxable value and appropriate level of taxation is another. Neither should be the determining factor without accompaniment from the other. I have prepared a worksheet in this report that demonstrates three paths of development forecasting. There is a minimal growth rate

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model that is based on the past ten years of growth data. It projects a tax rate of 30.10 in 2025. There is a modest growth rate model that is based on the 1990's growth data. This was a very active time for development. This projects a tax rate of 27.26 in 2025. The aggressive growth model is based on a \$40M increase splash in development in 2018. This is assuming a massive economic boom like the natural gas power plant or natural gas in the Mid-coast. The projected tax rate in 2025 in that model is 22.15. The point is not to flaunt any of the models as predictive but to illustrate that intervention in taxable value, if it is the intent of the City Council, needs to happen sooner rather than later to effect the tax rate. This data is not empirical since it draws linear assumptions. Usually, as tax rates increase economic development stalls.

- The propensity of City Council to have discussions outside public meetings is concerning to me. I have raised the subject in the past with City Councilors and individually, recently. Inadvertent quorums through email also fit the definition of restrictions in the Freedom of Access Act. This is applicable to whether the emails are grouped or not. Additionally, selective segregation of the participants leads to confusion and lack of coherent dialogue. This has a draining force on the city administration that is working at the deference of the individual Councilors. The law recently relaxed the law to recognize "coffee shop" type conversations to be excluded from public meeting law out of the impracticality of keeping small town elected officials from running into each other and "talking shop." Yet, the intent of the law is to allow the people's business to happen in front of the people. The general public has a right to witness deliberation of public business. I have included FOAA information for your review:

➤ **PUBLIC PROCEEDINGS**

➤ **What is a public proceeding?**

- The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. [1 M.R.S. § 402 \(2\)](#)

➤ **What does the law require with regard to public proceedings?**

- The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. [1 M.R.S. § 403](#)

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- **When does a meeting or gathering of members of a public body or agency require public notice?**
- Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)
- **What kind of notice of public proceedings does the Freedom of Access Act require?**
- Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. [1 M.R.S. § 406](#)
- **Can a public body or agency hold an emergency meeting?**
- Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same or faster means used to notify the members of the public body or agency conducting the public proceeding. [1 M.R.S. § 406](#) The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. [1 M.R.S. § 403](#)
- **Can public bodies or agencies hold a closed-door discussion?**
- Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. [1 M.R.S. § 405\(1\)-\(5\)](#)
- **Can the body or agency conduct all of its business during an executive session?**
- Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the FOAA, such as the following: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to the FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. [1 M.R.S. § 405\(2\), \(6\)](#)
- **What if I believe a public body or agency conducted improper business during an executive session?**
- Upon learning of any such action, any person may appeal to any [Superior Court](#) in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. [1 M.R.S. § 409\(2\)](#)
- **Can members of a body communicate with one another by e-mail outside of a public proceeding?**
- The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the FOAA. [1 M.R.S. § 401](#)
- E-mail or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any

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functions affecting any or all citizens of the State..." [1 M.R.S. § 402](#) The underlying purpose of the FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. [1 M.R.S. § 401](#) Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. [1 M.R.S. § 403](#) In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

- Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.
- Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. [1 M.R.S. § 402\(3\)](#) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.
- **Can I record a public proceeding?**
- Yes. The FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the FOAA. [1 M.R.S. § 404](#)
- **Do members of the public have a right to speak at public meetings under the Freedom of Access Act?**
- The FOAA does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.
- **Is a public body or agency required to make a record of a public proceeding?**
- Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.
- The FOAA also requires that public bodies and agencies make a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. [1 M.R.S. § 407\(1\), \(2\)](#)
- If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. [5 M.R.S. § 8002\(1\); 5 M.R.S. § 9059](#)

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- **Is the agency or body required to make the record or minutes of a public proceeding available to the public?**
- Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, [1 M.R.S. § 403](#) , [407](#); [5 M.R.S. § 9059 \(3\)](#)

- *I need to report that the initial decision to suspend the hanging of Christmas wreaths was based on poor information. In September, Rockland Main Street contacted me to coordinate the ordering of the Christmas wreaths. I had been working with Councilor Pritchett and the Energy Committee since June to coordinate the streetlight project. In September, the scope of work regarding streetlights was imminent from the Energy Committee so it seemed probable in the near future. I conferred with Councilor Pritchett and made an operational decision to not order Christmas wreaths. I met with Rockland Main Street and explained the decision. They understood the practicality of operations versus decoration. Yet, to this day we have not ordered the light poles. On top of ordering and delivery, there is coordination with CMP for removal, wiring contractors and reinstallation. Since efficiency savings were used to budget the cost of the replacement I fear that the budget will not be sufficient. The multi-town collaborative to replace streetlights has places another burden on the budget. Streetlights may not be replaced in this fiscal year and the City will not be looked favorably for the Christmas wreath decision when lights are not replaced this winter.*

OFFICE OF THE LIBRARY DIRECTOR

- I attended the Agenda Setting meeting of the City Council, and the Department Heads' meeting.
- The technician from Eastern Fire performed a test of the system, happily before the Library opened,
- Keith Drago offered Drop-in Tech Help—this is available on Monday evenings; patrons may also make appointments for individual assistance.
- Catinka Knoth's Children's Art Class drew Hanukkah and Christmas tree designs, while the Adult classes created calligraphic style wreaths and ribbons (as cards) using doubled up colored pencils.
- A Camden Conference Discussion was held on Tuesday. December's topic is "War and Reconciliation– Africa's Dilemma." Participants will have the opportunity to be part of a lively discussion based on selected readings and videos, which can be found at www.camdenconference.org.
- Wednesday Storytime was led by guest presenter Judith Andersen, who read I Know an Old Lady who Swallowed a Fly (read and sung twice, by popular

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acclaim), *Mo Willem's Waiting is not Easy*, and *I want my Light On*, among other titles. Judith was joined by Steve Seekins and therapy dog Faelan. Jean Young is on vacation for a couple weeks; there was no craft offering on Wednesday.

- I submitted my comments regarding the draft of the City Personnel Policies Manual to Laurie Bouchard
- Jessie Blanchard and Mary Jane Martin met with Carol Bachofner, for the first of the Committee planning the upcoming Poetry Month Rockland
- The Thursday Evening Arts and Cultural Event was Camden Conference Talk: *Shrinking the Hunger Gap: Agro-ecology in sub-Saharan Africa*. Guest speaker, Alex Dryer, is an international agricultural consultant specializing in agro-ecology and the link between agriculture and nutrition.
- Jessie attended the Annual Cornerstones of Science meeting; as she has been a regular borrower of the Science Trunks for programs, which COS lends to libraries, Jessie was asked to do a workshop on the Blood & Bones Science Trunk.
- Mary Jane Martin presented Saturday Storytime and craft program.
- Upcoming: Community Paint Day—participate in the creation of the Library's new RASA-created and designed mural! Also, the next series of Family Place™ Library workshops, for parents/caregivers of children newborn to 3 years old.

OFFICE OF THE FIRE CHIEF

Over the past week, in addition to the response to 36 Fire and EMS calls, conducting apparatus checks, daily cleaning, routine repairs and maintenance to the fleet and of the quarters, the following occurred:

- On Saturday Home Depot presented our personnel with a donation of 50 smoke detectors to disseminate as needed throughout the community. The Rockland and Portland stores were the only two in Maine to be awarded these to present to local FD's.
- I prepared the six month billing data for EMS mutual aid and delivered it to the Finance Director to send to the individual communities. The six month period covering the Summer/Fall represents the busiest time for us and resulted in just over \$40,000 in billable calls, which does not include patient billing.
- The City received the Emergency Management Performance Grant that we applied for to partially fund EMA activities conducted by the Fire Chief for the period from October 1st, 2014 to September 30th, 2015. This is a competitive grant process available to all EMA's in the State and we've been very fortunate to have been awarded this numerous times in the past. Utilizing the EMPG program communities can see anywhere from 50 to 100% of their EMA budgets reimbursed. Unfortunately, just after submitting the paperwork for this year's activities we learned that the State funding for this program has been drastically reduced, thus the competition will be much greater and after discussing the process with Knox County EMA director Ray Sisk, I'm fairly skeptical we'll be awarded this grant for the current cycle as the limited time I have to spend on EMA duties doesn't allow for setting and attaining new EMA goals, thus reducing our chances at success.
- CEO Root and I conducted a walk-through at a local business looking to split office space on an upper level.

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- John and I also conducted annual license inspections for the Elks Lodge and the Strand.
- The bid packages for a new ambulance were sent out Tuesday with a fairly quick turn-around just before the New Year.

OFFICE OF THE CHIEF OF POLICE

Officers responded to 178 calls for service. Rockland Police Officers responded to 6 motor vehicle crashes and 4 animal complaints. Eighteen (18) traffic stops and traffic violations were conducted. Officers charged or made arrests of 12 individuals for various offenses, to include Warrants of Arrest, Traffic offenses, Obstructing Government Administration, Domestic Assault, Drug violations and Operating under the Influence.

Administration

- Deputy Chief Young with the City Manager to discuss the implementation of the new Safety Committee and the status of the 1 Park Dr. Condo Association.
- Met with the coordinator of an upcoming road race to discuss safety and sign the permit.
- Met with a local Girl Scout coordinator to discuss an upcoming scavenger hunt and police participation in providing a safety speech/lesson to the girls.
- Continued to update the city's safety manual to bring it in line with the new structure of the safety committee.
- Reviewed Region 8 Vocational School lockdown policy and will be testing it in the near future.
- Reviewing two grant opportunities to enhance the city's public safety equipment and technology capabilities.
- Working with the Personnel Board in preparation for a hiring process to fill a vacant position within the Police Department.

C.I.D

- Det. Neal and Firefighter Whytock attended a week long Arson Investigation School together. They will use a team approach to investigating crimes of arson that occur in the city.
- Continued to work criminal investigations as needed.

Patrol Division –

- Reports that the traffic light at Park and Main has been replaced.
- Dayshift Officers continue to perform daily school visits.
- Two local businesses provided the police department with \$30.00 gift cards for each officer. These gift cards were then turned over to New Hope for Women to help assist domestic violence victims, to the South School to assist with their backpack for home food program and the City's General Assistance program to be used as needed.
- Sgt. Finnegan consulted on an OUI investigation that occurred in another county, involving technical aspects and medical issues concerning horizontal gaze nystagmus.
- Radar details have been conducted at various locations throughout the city including school zones.

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OFFICE OF THE MUNICIPAL FISH PIER DIRECTOR

- The last roll off, roll on bait cooler has been removed from the pier for the winter.
- All current user applications have been reviewed and a letter of acceptance has been mailed. The pier will have all four lobster buyer stations filled along with a bait dealer. A herring carrier large and herring carrier small have been permitted again. The pier has no permitted spots available except for a transient herring carrier.
- The pier now has two scallop boats working from the pier.
- Attended the City Manager's department head meeting.
- The price per pound for scallops is currently \$12.50 per pound.
- The price per pound for lobster has dropped to \$3.90 a pound.

OFFICE OF THE FINANCE DIRECTOR

- I wish to thank all of the city's personnel for the very warm welcome I have received since taking on the job of the city's new finance director. I know that I have some very big shoes to fill. I'm very hopeful that once I'm up to speed with all that is going on in the city's financial world that I will make a positive impact in the finance office, and we can move forward in continuing to provide the best possible service to the city and its residents.
- I've spent time getting to know the MUNIS accounting system, since I've spent the last five years or so using the TRIO financial software system, and prior to that the financial software package provided by Northern Data Systems. I have noticed that the city's financial software package does not include software that would be beneficial to the city clerk's office. In order to safeguard the city's assets, and to provide the best quality product to the citizens, I believe it is imperative to address this issue. I will be assessing the financial software needs of the finance and clerk's offices, and hope to meet with software representatives in the near future to explore the city's options.
- I'm getting up to speed with the multitude of reserve funds the city has invested with Bar Harbor Trust Services, and getting familiar with the city's finances overall. There are a number of grant projects to get up to speed on, as well as getting up to date with the city wide construction projects. In the coming months I will be making application to the Maine Municipal Bond Bank on the city's behalf, seeking \$1.6 million as the city's portion of the Old County Road Construction project. The city was able to procure two Municipal Partnership (MPI) agreements with the state of Maine that will bring in an additional \$1 million (\$500,000 each) to the project.
- The cash flow is where it should be at this time of year; however, the next few months may require the city to borrow in anticipation of taxes. Prior to Mr. Luttrell leaving the city's employ a bid was awarded to Androscoggin Bank for a tax anticipation note. We will tap into those approved funds when/if we need to.
- This past week we welcomed the auditors to the city; they will be auditing the financial records of the city for the fiscal year ended June 30, 2015. It will be a good opportunity for me to converse with the auditors and learn first-hand from

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them about the city's financial status as of the end of the last fiscal year. Background information and historical data will only help me as we move forward into the coming budget season; which is not that far away. I have asked the auditors to help us "clean up" some accounts for projects, and the accounts for reserve funds, as well as the investments. Some of these accounts have been carrying negative balances, and we need to take care of these "housekeeping" issues as we move ahead.

OFFICE OF THE PUBLIC SERVICES DIRECTOR

- Met with Lauren Swett from Woodard & Curran and Mike Vannah from CMP to review the cell development/landfill closure. One set of the CMP's utility lines will be having new poles installed to elevate the power supply lines crossing the landfill. We also discussed how we will work waste placement in the North end by the Limerock Street bridge as well as incorporating in the material that will be generated from the Old County Rebuild project.
- Attend department head meeting as well as reviewed the proposed personnel policy.
- Met with the knitting volunteers known as the Knit Wits. The Knit Wits historically have used the Community Building as a place to meet each Wednesday. It has been proposed that they begin to use City Hall as a meeting place starting January 1st. The volunteer group liked the idea of meeting at City hall and has decided to move forward with the change.
- Reviewed the Eco Maine recycling cost benefit analysis completed by Lissa Bittermann and submitted it to the City Manager.
- Received and began reviewing Old County Road rebuild plans.
- Submitted Monthly Pretreatment report and sampled and mailed out samples for analytical testing.
- Safety rail build on Grace Street to protect the public from falling in the Brook.
- Performed ditching work on 79 Acadia Drive.
- Performed Shouldering work on Old County Road and Park Street.
- Truck 10 had to be delivered to O'Connor GMC for recall work.
- Installed and repaired silt fence for snow dump at Transfer Station.
- Repaired Brook fence/guardrail at Gay Street and Willow Street.
- Picked up cold patch in Windsor and began street cold patch repair.
- Performed ditching on upper Pleasant Street.
- Shoulder repair at Broadway, Pleasant, Industrial Park & Thomaston Street.
- Finalized the City's Sanding Route study with La Branch Survey.
- Scheduled MDOT and Shawn Bennet formally from the town of Pownal to provide brine application training to the Public Services Crew next Monday.
- Replaced driveway culvert at 289 Talbot.
- Worked on replacing water line valves at the Transfer Station.
- Continued picking up leaves around the City, we are almost done.

OFFICE OF THE WASTEWATER TREATMENT FACILITY DIRECTOR

- Average flows though the plant were 2.3 Million Gallons per Day (MGD).

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- There were no Combined Sanitary Overflow (CSO) events.
- Annual pretreatment testing of Significant Industrial Users was completed this week.
- Three employees attended training on sewer main cleaning and relining given by the Maine Rural Waster Association.
- Removed and inspected number two pump at the Waldo Avenue Pump Station.
- The I&I crew completed camera inspection of 4,000 linear feet of sewer main on Pleasant St., Belvedere St., and New County Rd.
- The Valve replacement project in the Vortex pump room was completed this week.
- Responded to a dig safe request on Orange St. for Maine Water.
- Removed and inspected pump at Industrial Park Pump Station.
- Repairs to the number four aeration continued. Cianbro completed repairs to the number four sluice gate and plant operators adjusted and inspected aeration diffusers and wired and set FMC influent pumps.
- Completed Interstate Septic's Annual Pretreatment inspection.

OFFICE OF THE CODE ENFORCEMENT OFFICER

- John attended the City Council Agenda Setting Meeting 12/7/15 and the Dept. Head Meeting 12/8/15.
- John met with a representative of the St. Peters Episcopal Church to discuss replacing an off premise sign that was removed when the City replaced a fence around the playground on the corner of Limerock and White Streets.
- The Code Office received a Site Plan Review Application from a property owner on Thompson Meadow Road to construct a 256 sq.ft. Nature/Wildlife Observatory. This review is in accordance with the Rockland Shoreland Zoning Ordinance for development in a Resource Protection Zone. The Planning Board will review this application at its meeting December 15, 2015.
- The Code Office received a Home Occupation Application from a property owner on Nevelson Street to fabricate composite snowmobile parts and sell them via internet/ mail order. The Planning Board will review this application at its meeting January 5, 2015.
- License inspections were done at The Elks Lodge and The Strand Theatre.
- There were no complaints filed this week.
- The following permits were received by the Code Office this week:
 - 5 Building permits
 - 1 Demo permit
 - 3 Electrical permits
 - 4 Plumbing permits
 - 1 Sidewalk Display permit