

ANIMALS AND FOWL

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ARTICLE I. IN GENERAL

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ARTICLE III. BEEKEEPING

Chapter 3

ANIMALS AND FOWL

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CODE OF ORDINANCES

Chapter 3

ANIMALS AND FOWL*

 * **Cross reference(s)**--Swine and hogs, generally, § 10-2; animals and fowl on premises of food service establishments, § 14-182.

ARTICLE I. IN GENERAL

Sec. 3-1. Authority to impound animals.

Any police officer, animal control officer or person exercising police power under the provisions of this chapter shall have the authority to impound animals, that are in violation of this chapter.

(Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

Sec. 3-1A. Definitions.

Unless the context otherwise indicates, the following definitions shall apply in the interpretation and enforcement of this chapter.

At large shall mean off the premises of the owner, and not under the control of the owner or any other person whose personal presence and attention would reasonably control the conduct of the animal, either by leash, cord, chain or otherwise.

Chicken Pen shall mean a wire enclosure connected to a henhouse for the purpose of allowing chickens to leave the henhouse while remaining in an enclosed, predator-safe environment.

Dangerous dog shall mean a dog which shall cause reasonable fear of bodily injury to any person by attacking or threatening to attack such person.

Domesticated animal shall include but not be limited to dogs, cats, ferrets, wildlife hybrids or livestock.

Henhouse shall mean a structure for the sheltering of female chickens. An existing shed or garage can be used for this purpose if it meets the standards contained in Article II. Domesticated Chickens, including the required distance from property lines.

Immediate Voice Control shall mean that when called at the request of any police officer or animal control officer, the owner or keeper is able to demonstrate control such that the dog responds by immediately returning to the owner or keeper at the first calling or signaling.

Kennel shall mean one pack or collection of dogs kept under one ownership in a single premises for breeding, boarding, hunting, show, training, field trial and exhibition purposes.

Owner or Keeper shall mean any person or persons, firm, association or corporation owning, keeping, controlling, or harboring a dog or other animal. The owner or keeper may be a minor child.

Park shall mean a public area of land, usually in a natural state, having facilities for rest and/or recreation, or providing public open space, and shall include but not be limited to all beaches and the Greenbelt Walkway, and all of the parking facilities adjacent to those locations.

Under restraint shall mean that a dog is controlled by a leash, or by immediate voice control by an owner or keeper and obedient to that person's commands or on or within a vehicle being driven or parked on the streets or within the property limits of its owner or keeper.

(Code 1966, §§ 6-5-2.2, 6-5-2.2.3, 6-5-2.2.8; Ord. No. 9-67, § 1, 9-18-67, Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 12-05/06, 11/07/05 [Fiscal Note: Less than \$1000]; Ord. No. 4-07/08, 9/5/07 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: less than \$1000])

State law reference(s)--Kennel defined, 7 M.R.S.A. § 3907.

Sec. 3-2. Impoundment fees.

Any animal impounded pursuant to this chapter may be reclaimed as provided by section 3-3 upon payment by the owner of the following fees:

- (a) For each animal, first impoundment\$15.00
- (b) For each animal, second impoundment30.00
- (c) For each animal, third and all subsequent impoundments \$50.00

Board shall be charged in accordance with the fees of the animal shelter currently designated by the city to receive impounded animals.

(Code 1966, § 6-5-2.2.5.1; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 13-67, 10-16-67; Ord. No. 5-70, 2-2-70; Ord. No. 13-01/02, 7/1/02 [Fiscal Note: Less than \$1000])

Sec. 3-3. Reclaiming impounded animals.

Any animal, impounded under the provisions of this article may be reclaimed by the owner upon payment of the impoundment fees required in section 3-2 and any required license fees. To reclaim a domesticated animal, the owner must also comply with any applicable license provisions of state law.

(Code 1966, § 6-5-2.2.5; Ord. No. 5-70, 2-2-70, Ord. No. 12-97/98, Passed 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-4. City authorized to transfer title to animals detained.

The city or its duly authorized agent may transfer title of all animals held by it at its city animal shelter after the legal detention period established in section 3-5 has expired and the animal has not been claimed by its owner.

(Code 1966, § 6-5-2.2.5; Ord. No. 9-67, § 1, 9-18-67)

Sec. 3-5. Impounded animals may be destroyed, given away.

Any animal impounded under the provisions of this article and not reclaimed by its owner within the period of time established by state law may be humanely destroyed or placed in the custody of some person deemed to be a responsible and suitable owner, who will agree to comply with the provisions of this article.

(Code 1966, § 6-5-2.2.5; Ord. No. 9-67, §§ 1, 2, 9-18-67, Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-6. Health officer to direct disposition of rabid animals.

The health officer, animal control officer or a police officer shall direct the disposition of any animal found to be infected with rabies.

(Code 1966, § 6-5-2.2.10; Ord. No. 9-67, § 1, 9-18-67; Ord. NO. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

Sec. 3-7. Disposition of animals bitten by rabid animals during quarantine.

During the period of time when a rabies quarantine invoked pursuant to this chapter is in effect, every animal bitten by an animal adjudged to be rabid shall be forthwith destroyed or, at the owner's expense and option, shall be treated for rabies infection by a licensed veterinarian, or held under quarantine pursuant to quarantine provisions of state law.

(Code 1966, § 6-5-2.2.10; Ord. No. 9-67, § 1, 9-18-67, Ord. No. 12-97/98, 11/17/98 [Fiscal Note: Less than \$1000])

Sec. 3-8. Duty to surrender animals for quarantine or destruction upon demand.

No person shall fail or refuse to surrender any animal for quarantine or destruction as required by this chapter when demand is made therefor by the health officer, animal control officer, or a police officer.

(Code 1966, § 6-5-2.2.10; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/98 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

Sec. 3-9. Surrender of carcass of animal exposed to rabies.

The carcass of any dead animal exposed to rabies shall, upon demand, be surrendered to the health officer, animal control officer or a police officer.

(Code 1966, § 6-5-2.2.10; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/98 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

Sec. 3-10. Animals not permitted in streets during quarantine.

Upon the invoking of quarantine pursuant to this chapter, no animal shall be taken into the streets or be permitted to be on the streets during such period of quarantine.

(Code 1966, § 6-5-2.2.10; Ord. No. 9-67, § 1, 9-18-67)

Sec. 3-11. Depositing dead, sick or injured animals.

No person shall deposit, place or throw any dead or fatally sick or injured animal, or part thereof, on any public or private place.

(Code 1966, § 6-5-2.3; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-12. Disposal of dead animals required.

When any animal dies on the premises of the owner or person in charge of such animal, he shall dispose of such animal immediately.

(Code 1966, § 6-5-2.5; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

State law reference(s)--Depositing of dead animals, 22 M.R.S.A. § 1562.

Sec. 3-13. Conveying dead animals.

No person shall carry or convey any dead animal through or upon any street or public place unless the same is so covered that no part of it is exposed to view and no odors can emanate therefrom.

(Code 1966, § 6-5-2.4; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-14. Duty to report dead or dying animals; disposition.

When any animal is found dead or dying on the private premises of any person not the owner or person in charge of such animal, or is so found in any public street or place, any person having knowledge of the matter shall report the facts immediately to the police department, and the police department shall take charge of the animal forthwith. If by license or otherwise the owner of the animal is known to the police department, the department shall notify at once such owner, who shall immediately dispose of the body. If the owner is unknown, the department shall dispose of the animal forthwith.

(Code 1966, § 6-5-2.6; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-15. Permitting animals to run at large prohibited.

No owner or person having charge of any horse, cow, ox, swine, goat or other grazing animal shall turn or permit the same to go at large in any street or public place within the city. It is unlawful for any dog to be at large, except when used for hunting.

(Code 1966, § 6-6-1.13; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

 * **Cross reference(s)**--Dogs on premises of food service establishments, § 14-182.

Sec. 3-16. Impoundment of domesticated animal bitten by possible rabid animal.

Any domesticated animal which has been bitten by an animal having or suspected of having rabies shall be immediately impounded for observation in the manner provided for under state law.

(Code 1966, § 6-5-2.2.9; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-17. Disposition of domesticated animals which have bitten persons.

- (a) It shall be unlawful for the owner or person keeping or harboring any domesticated animal, when notified that such animal has bitten any person or has so injured any person as to cause abrasion of the skin, to sell or give away such animal or to permit or allow such animal to be taken beyond the limits of the city, except under the care of a licensed veterinarian.
- (b) It shall be the duty of such owner or keeper, upon receiving notice of the character aforesaid, to immediately place such animal under confinement for a period established by state law or to deliver such animal to the police department or animal control officer or an approved impoundment facility.
- (c) It shall be unlawful for the owner or person keeping or harboring any domesticated animal, when notified that such animal has bitten any person or has so injured any person as to cause abrasion of the skin, to destroy such animal without permission of the health officer, animal control officer or a police officer.

(Code 1966, § 6-5-2.2.9; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000], Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

Sec. 3-18. Duty to give notice upon death of confined domesticated animal.

The health officer shall be notified immediately by the person in charge of the death of any dog confined as required by section 3-16.

(Code 1966, § 6-5-2.2.9; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 4-07/08, 9/5/07 [Fiscal Note: Less than \$1000])

Sec. 3-19. Dogs to be under restraint; dogs to be under immediate voice control; applicability.

- (a) While on any public way, public street, public sidewalk, public parking lots, within Mill Creek Park, or on the Greenbelt Walkway, all dogs shall be on a leash. In all parks, public open spaces, public beaches or other public spaces, the owner or keeper of a dog shall have a leash in hand at all times.
- (b) If a dog approaches or remains within 10 feet of any person other than the owner or keeper, that dog must be under immediate voice control of the owner or keeper. A violation of this section occurs if the person(s) approached does not signal in the affirmative to the owner or keeper either by spoken word (e.g., "It's okay!") or gesture (e.g., hands welcoming) that the former consents to the presence of the dog. In the event that the person approached by a dog is a minor child under the age of 12, an adult must be present with the child to consent either by spoken word or gesture to the presence of the dog.
- (c) If a violation of this section should occur, the owner or keeper of such dog shall be issued a summons by a police officer or animal control officer. If the owner or keeper receives two summonses for violations of subsection (b) above within six months, the owner or keeper must thereafter keep the dog on a leash when in any location in which a prior violation occurred. Upon issuance of a third summons to the owner or keeper for a violation of subsection (b) above, the dog is banned from any location in which a prior violation occurred until such time as the owner or keeper can demonstrate to the satisfaction of the animal control officer that the dog has been trained to, and now does, respect the owner or keeper's immediate voice control. The animal control officer shall keep a written record of such demonstrations.
- (d) Nothing in this section shall be held to require the leashing of any dog or the keeping of any dog under immediate voice control while the dog is on private premises.

(Code 1966, § 6-5-2.2.3; Ord. No. 9-67, §§ 1, 2, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 12/05/06, 11/07/05 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: Less than \$1000])

Cross reference(s)--Dogs at large in house-car trailer camps prohibited, § 11-38

Sec. 3-20. Length of leash.

A dog leash shall:

- a) Be of sufficient strength to restrain the weight and pull of the dog;
 b) If retractable, not longer than sixteen feet when fully extended and not more than eight feet when retracted;
 c) If not retractable, not longer than eight feet.

(Code 1966, § 6-5-2.2.3; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 12-05/06, 11/07/05 [Fiscal Note: Less than \$1000])

Sec. 3-21. Health officer, animal control officer or police officer to investigate bites by domesticated animals.

The health officer, animal control officer or a police officer shall investigate all bites by domesticated animals.

(Code 1966, § 6-5-2.2.9; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 4-07/08, 9/5/07 [Fiscal Note: Less than \$1000])

Sec. 3-22. Authority to kill dangerous, fierce, vicious dogs.

If any dangerous, fierce or vicious dog cannot be safely taken up and impounded, such dog may be slain by any police officer or duly authorized animal-control officer.

(Code 1966, § 6-5-2.2.11; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-23. Duty of police department to deliver carcass of slain dog.

In all cases where any dog which has bitten a person or caused an abrasion of the skin on any person is slain by any police officer, whether by order of the court or otherwise, and a period of less than fifteen (15) days has elapsed since the day on which such dog bit any person or caused an abrasion of the skin on any person, the South Portland Police Department shall deliver the carcass of the dog to the Health & Environmental Testing Laboratory in accordance with state law.

(Code 1966, § 6-5-2.2.11; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-24. Number of dogs limited.

- (a) It shall be unlawful for any person to keep or harbor within the city more than three (3) dogs over six (6) months old on the first day of January in or about the premises, house, barn or other building, or in or about all buildings on any one premises occupied by any one family, and the keeping or harboring of dogs aforesaid is hereby declared to be a nuisance.
- (b) The payment of a license fee shall not be construed to allow the keeping of more than three (3) dogs, as aforesaid, on any one premises.
- (c) This section shall not apply to any person engaged in the commercial business of breeding, buying, selling or boarding of dogs.

(Code 1966, § 6-5-2.2.6; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 13-70, 3-2-70; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-25. License, record, tag requirements generally.

License, record and tag requirements for dogs shall be as prescribed and required by state law.

(Code 1966, § 6-5-2.2.2; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Cross reference(s)--License schedule, § 14-3.
State law reference(s)--Dog licenses, 7 M.R.S.A. § 3451.

Sec. 3-26. Barking, howling dogs.

No person shall own, keep or harbor any dog which by loud, frequent or habitual barking, howling or yelping shall disturb the peace of any person.

(Code 1966, § 6-5-2.2.7; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 12-97/98, 11/17/97 [Fiscal Note: Less than \$1000])

Sec. 3-27. Dangerous dogs a nuisance; owner's responsibility.

- (a) A dangerous dog is hereby declared to be a nuisance. For the purposes of this section, a "dangerous dog" is defined to mean a fierce or vicious dog or a dog with a propensity to bite or otherwise injure people, regardless of whether such a dog is on a leash, is on his owner's premises, or is provoked in any way. In addition to all other applicable requirements of law, any dog determined to be dangerous within the meaning of this section shall be kept muzzled and/or confined within a secure enclosure whenever outside. The muzzle and/or enclosure must be sufficient to protect people, especially children, from said dog.
- (b) Upon written complaint to the city council by any city official or upon receipt by the city council of a written petition signed by at least five (5) owners or

occupants of property located within five hundred (500) feet of the property on which the dog in question is kept, the city council shall by order establish a date, a time and place for a public hearing to determine whether the dog is dangerous within the meaning of this section; provided, however, upon receipt of a notarized complaint that a dog is dangerous within the meaning of this section, the animal control officer or a police officer is authorized to impound such dog pending the outcome of the council hearing provided for under this section.

- (c) The city clerk shall notify the owner(s) and/or person(s) in control of said dog, by registered mail, return receipt requested, of said hearing, and such notice shall be mailed not less than seven (7) days prior to the date of said hearing.
- (d) At the public hearing, every party shall have the right to present his 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. The city council shall also permit all other interested persons to be heard.
- (e) Within seven (7) days after said public hearing the city council shall issue a written decision, including findings of fact and conclusions of law, indicating its determination whether said dog is dangerous within the meaning of this section. If the city council determines the dog is dangerous, the dog must be muzzled and/or confined within a secure enclosure as required under subsection (a) above. A written copy of the city council's decision shall be served on the owner who shall be required to comply with the terms thereof within seven (7) days of receipt of said decision.
- (f) If the owner or person in control of any such dog shall fail to comply with the city council order, the corporation counsel is authorized to seek appropriate legal and equitable relief in a court of competent jurisdiction to enforce the terms of this section. In addition to any equitable relief, a fine of one hundred dollars (\$100.00) a day shall be imposed for each and every day that the violation continues.

(Code 1966, § 6-5-2.2.8; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 9-81/82, 9-21-81; Ord. No. 12-97/98, 11/17/97)

Sec. 3-28. Dog waste in streets, parks, beaches.

It shall be unlawful for any person to place, deposit, or permit to be deposited any dog excrement upon any street, park, beach, or within any storm sewer or storm drain of the city. Violation of this section shall subject a person to a fine of one hundred dollars (\$100.00) for the first offense; two hundred and fifty dollars (\$250.00) for a second offense; and five hundred dollars (\$500.00) for each violation thereafter.

(Ord. No. 8-08/09, 1/21/09 [Fiscal Note: less than \$1000])

Sec. 3-29. Dogs in parks or on beaches at certain times, beyond permitted hours.

No owner or keeper of any dog, licensed or otherwise, shall be permitted in city parks or on beaches beyond the hours of 6 a.m. and 9 p.m.; provided, however, that in the case of Willard Beach, between May 1 through September 30, dogs are not allowed except between the hours of 7:00 a.m. and 9:00 a.m., and 7 p.m. and 9 p.m. Violation of this section shall subject a person to a fine of one hundred dollars (\$100.00) for the first offense; two hundred and fifty dollars (\$250.00) for a second offense; and five hundred dollars (\$500.00) for each violation thereafter.

(Ord. No. 8-08/09, 1/21/09 [Fiscal Note: less than \$1000])

Sec. 3-30. Penalty; action in lieu of penalty.

Except as specifically provided in section 3-28 or 3-29 above, whoever keeps a dog contrary to the provisions of this ordinance shall be punished by a fine of not more than one hundred dollars (\$100.00) to be recovered by complaint before any district court in Cumberland County. In addition or in lieu of such fine, the court may order such owner or keeper within twenty-four (24) hours thereafter to either kill or confine the dog, or remove and keep the dog beyond the city limits.

(Code 1966, § 6-5-2.2.12; Ord. No. 9-67, § 1, 9-18-67; Ord. No. 1-85/86, 7-15-85; Ord. No. 12/97/98, 11/17/97 [Fiscal Note: Less than \$1000]; Ord. No. 8-08/09, 1/21/09 [Fiscal Note: less than \$1000])

Sec. 3-31 - 3-49. Reserved.

ARTICLE II. DOMESTICATED CHICKENS

Sec. 3-51. Purpose.

The purpose of this article is to provide standards for the keeping of domesticated chickens. It is intended to enable residents to keep a small number of female chickens on a non-commercial basis while limiting the potential adverse impacts on the surrounding neighborhood. The City recognizes that adverse neighborhood impacts may result from the keeping of domesticated chickens as a result of noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of predators, rodents, insects, or parasites, and non-confined animals leaving the owner's property. This article is intended to create licensing standards and requirements that ensure that domesticated chickens do not adversely impact the neighborhood surrounding the property on which the chickens are kept.

Sec. 3-52. Permit Required.

An annual permit is required for the keeping of any domesticated chickens in the City of South Portland. Additionally, a building permit is required for the construction of a henhouse and chicken pen.

(a) The annual permit to keep chickens is personal to the permittee and may not be assigned. In the event the permittee is absent from the property for longer than sixty (60) days, the permit shall automatically terminate and become void.

(b) The first permit year shall be September 25, 2007 through December 31, 2008. Thereafter the permit year shall be January 1 through December 31. In the first permit year, no more than twenty (20) permits shall be issued. In each subsequent permit year, twenty (20) more permits may be issued in addition to new permits issued to previous permittees.

Sec. 3-53. Fees

The fee for an annual permit to keep chickens is twenty-five dollars (\$25.00). In addition, a twenty-five dollar (\$25.00) fee shall be required for the building permit for the construction of a henhouse or chicken pen.

Sec. 3-54. Number and Type of Chickens Allowed.

(a) The maximum number of chickens allowed is six (6) per lot regardless of how many dwelling units are on the lot. In the case of residential condominium complexes without individually owned back yards, the maximum number of chickens allowed is six (6) per complex.

(b) Only female chickens are allowed. There is no restriction on chicken species.

Sec. 3-55. Non-Commercial Use Only.

Chickens shall be kept as pets and for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

Sec. 3-56. Enclosures.

(a) Chickens must be kept in an enclosure or fenced area at all times. During daylight hours, chickens may be allowed outside of their chicken pens in a securely fenced yard if supervised. Chickens shall be secured within the henhouse during non-daylight hours.

- (b) Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.
- (c) The hen house and chicken pen must provide adequate ventilation and adequate sun and shade and must both be impermeable to rodents, wild birds, and predators, including dogs and cats.
- (d) Henhouses.
 - (1) A henhouse shall be provided and shall be designed to provide safe and healthy living conditions for the chickens while minimizing adverse impacts to other residents in the neighborhood.
 - (a) The structures shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator- and bird-proof wire of less than one (1) inch openings.
 - (b) The materials used in making the structure shall be uniform for each element of the structure such that the walls are made of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The use of scrap, waste board, sheet metal, or similar materials is prohibited. The henhouse shall be well-maintained.
 - (c) The structure shall be painted; the color shall be uniform around the structure and shall be in harmony with the surrounding area.
 - (2) Henhouses shall only be located in rear yards, as defined in Sec. 27-201. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the setbacks generally applicable in the zoning district are met. In no case may a henhouse be placed in the front yard.
 - (3) If a henhouse is proposed to be located less than twenty (20) feet from any side or rear property line, the Code Enforcement Officer shall notify abutting property owners by mail at least twenty (20) days before issuing a permit, except that the permit may be issued in fewer than 20 days if all abutters have responded before the expiration of that time. For henhouses proposed to be located within twenty (20) feet from the side or rear property line, the burden of proof is on the applicant to demonstrate that the proposal will meet the criteria of this article and will not adversely impact the use or enjoyment of abutting properties.
- (e) Chicken Pens.
 - (1) An enclosed chicken pen must be provided consisting of sturdy wire fencing buried at least 12" in the ground. The pen must be covered with wire, aviary netting, or solid roofing. The use of chicken wire is not permitted.

(Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000])

Sec. 3-57. Odor and Noise Impacts.

- (a) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible at the property boundaries.
- (b) Perceptible noise from chickens shall not be loud enough at the property boundaries to disturb persons of reasonable sensitivity.

Sec. 3-58. Lighting.

Only motion-activated lighting may be used to light the exterior of the henhouse.

Sec. 3-59. Predators, Rodents, Insects, and Parasites.

The property owner shall take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. Chickens found to be infested with insects and parasites that may result in unhealthy conditions to human habitation shall be removed by the Animal Control Officer.

Sec. 3-60. Feed and Water.

Chickens must be provided with access to feed and clean water at all times; such feed and water shall be unavailable to rodents, wild birds and predators.

Sec. 3-61. Waste Storage and Removal.

Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully enclosed structure with a roof or lid over the entire structure. No more than three (3) cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.

Sec. 3-62. Application for permit.

Every applicant for a permit to keep domesticated chickens shall:

- (a) Complete and file an application on a form prescribed by the Code Enforcement Officer;
- (b) Deposit the prescribed permit fee with the Code Enforcement office at the time the application is filed.

Any material misstatement or omission shall be grounds for denial, suspension or revocation of the permit.

Sec. 3-63. Approval of permit.

The Code Enforcement Officer shall issue a permit if the applicant has demonstrated compliance with the criteria and standards in this article.

Sec. 3-64. Denial, suspension or revocation of permit.

The Code Enforcement Officer shall deny a permit if the applicant has not demonstrated compliance with all provisions of this article.

A permit to keep domesticated chickens may be suspended or revoked by the Code Enforcement Officer where there is a risk to public health or safety or for any violation of or failure to comply with any of the provisions of this article or with the provisions of any other applicable ordinance or law.

Any denial, revocation or suspension of a permit shall be in writing and shall include notification of the right to and procedure for appeal.

Sec. 3-65. Appeal.

A person appealing the issuance, denial, suspension or revocation of a permit by the Code Enforcement Officer may appeal to the Board of Appeals within thirty (30) days of the decision being appealed.

Sec. 3-66. Penalty.

In addition to any other enforcement action which the city may take, violation of any provision of this article shall be a civil violation and a fine not exceeding one-hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense.

Sec. 3-67. Removal of Chickens

In addition to the penalty stated in Sec. 3-68, any violation of the provisions of this article or of the permit shall be grounds for an order from the Code Enforcement Officer to remove the chickens and the chicken-related structures.

The Health Inspector, Health Officer, or Animal Control Officer may also order the removal of the chickens upon a determination that the chickens pose a health risk.

If a chicken dies, it must be disposed of promptly in a sanitary manner.

Sec. 3-68. Annual Report to City Council

On or before December 31 annually, the Code Enforcement Officer shall submit to the City Council a report stating the number of permits issued in the permit year, the number of complaints reported in the permit year, the nature of any enforcement activities, and any other information relevant to the oversight of provisions in this article.

Sec. 3-69. Separability.

In the event that any section, subsection or portion of this article shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article.

(Ord. No. 4-07/08, 9/5/07 [Fiscal Note: Less than \$1000])

Sec. 3-69 through 3-70 Reserved.

(Ord. No. 13-07/08, 5/5/08 [Fiscal Note: Less than \$1000])

ARTICLE III. BEEKEEPING

Sec. 3-71. Purpose.

The purpose of this Article is to provide standards for the keeping of bees. It is intended to enable persons to keep an appropriate number of bees while limiting the potential adverse impacts on the surrounding neighborhood. The City recognizes that adverse neighborhood impacts, including but not limited to swarming, stinging and the spread of disease, may result from the keeping of bees if appropriate and responsible beekeeping practices are not followed. This Article is intended to create licensing standards and requirements that ensure that bees kept by persons do not adversely impact the use and enjoyment of neighborhood properties surrounding the property on which the bees are kept.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-72. Definitions.

For purposes of the application of this article, the following words and terms shall have the following meaning:

Apiary shall mean a place where bee colonies are kept.

Bee shall mean any stage of the common domestic honey bee, *apis mellifera* species.

Beekeeper shall mean a person who owns or has charge of one or more colonies of bees.

Beekeeping equipment shall mean anything used in the operation of an apiary, including but not limited to hive bodies, supers, frames, top and bottom boards and extractors.

Best management practices shall mean the Best Management Practices published on the Maine State Beekeepers Association's website, as may be amended from time to time.

Colony shall mean a hive and its equipment and appurtenances, including bees, comb, honey, pollen and brood.

Hive shall mean the structure intended for the housing of a bee colony.

Person shall mean any individual, partnership, limited liability company, corporation, governmental entity, association, or public or private organization of any character.

Robbing shall mean bees attempting to access honey stored in or spilled from another hive.

Tract shall mean a contiguous parcel of land under common ownership.

Undeveloped property shall mean any tract that is not improved or in the process of being improved with any structures or improvements intended for human use or occupancy.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-73. Certain conduct prohibited; nuisance.

- (a) Notwithstanding compliance with the provisions of this Article, it shall be a violation of this Article for any beekeeper to keep a colony or colonies in such a manner or in such disposition as to cause any unhealthy condition or interfere with the normal use or enjoyment of any property in the vicinity by humans or animals.
- (b) The keeping by any person of bee colonies in the city not in compliance with this article may be declared to be a nuisance under the procedures set forth in Chapter 16, Nuisances.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-74. Permit required.

An annual permit is required for the keeping of bees in the City of South Portland.

Every applicant for a permit to keep an apiary shall:

(a) Complete and file an application on a form prescribed by the Code Enforcement Officer. The application shall be accompanied by a plot plan that includes the size of the lot, the location and # of hives, the distance of the hives from the property boundary lines and, if required, the location of any flyway barriers.

(b) Deposit the prescribed permit fee with the Code Enforcement office at the time the application is filed.

The Code Enforcement Officer shall issue a permit if the applicant has shown right, title or interest in the property where the apiary is proposed to be sited and has demonstrated compliance with the criteria and standards in this Article. Written permission of the property owner to allow the applicant's maintenance of bee colonies on the property may serve as evidence of the applicant's right, title or interest in the property. Any permit issued by the Code Enforcement Officer only authorizes the keeping of bee colonies at the property and in the location on the property approved by the Code Enforcement Officer. The relocation of any bee colonies to another property within the City or the change of colony locations within a property requires the prior approval of the Code Enforcement Officer.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-75. Fees.

The fee for an annual permit to keep bees is twenty-five dollars (\$25.00) per beekeeper.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-76. State registration required

Prior to the issuance of a permit under this Article, beekeepers must register with the Maine Department of Agriculture pursuant to 7 M.R.S.A. § 2701, as may be amended from time to time.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-77. Colony densities.

It shall be unlawful to keep more than following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:

¼ acre or less	2 colonies
more than ¼ acre to ½ acre	4 colonies
more than ½ acre to 1 acre	6 colonies
more than 1 acre	8 colonies

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-78. Standards and Practices.

Except as otherwise provided in this Article, all bee colonies shall be kept in accordance with best management practices as defined herein.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-79. Flyways.

If any colony is situated within 25 feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least six feet in height consisting of a solid wall, fence, dense vegetation or combination thereof that is parallel to the property line and extends ten feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least six feet above ground level over the property lines in the vicinity of the apiary. This barrier shall be in place prior to placing a colony within twenty-five (25) feet of a public or private property line and prior to the approval of the annual permit to keep an apiary. It shall be a defense to enforcement under this Article that the property abutting the apiary tract is undeveloped property.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-80. Water

Water shall be provided in accordance with best management practices as defined herein.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-81. Reserved.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-82. Reserved.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-83. Marking hives, presumption of beekeeping

(a) In apiaries, the name and telephone number of the beekeeper shall be clearly marked upon the structure of at least two hives and placed at opposite ends of the apiary. Alternatively, the beekeeper may post a conspicuous and clearly legible sign stating the beekeeper's name and telephone number; this requirement does not apply to apiaries located on the tract of land where the beekeeper resides.

(b) Unless marked in accordance with subsection (a), it shall be presumed for purposes of this Article that the beekeeper is the person or persons who have the present right of possession or control of the tract on which any hive or colony is located. This presumption may be rebutted by a written agreement authorizing another person to maintain the hive or colony upon the tract setting forth the name, address and telephone number of the person who is acting as the beekeeper.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-84. Disease control.

Beekeepers shall comply with best management practices as defined herein in order to control disease.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-85. Transportation of hives.

Beekeepers shall take appropriate care according to best management practices as defined herein when transporting hives of bees. All loads of hives and supers of honey shall be secured in accordance with Maine Department of Transportation regulations. Bees being transported shall have entrance screens or be secured under netting.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-86. Right to inspect.

The City Health Officer, the Animal Control Officer, the *Code Enforcement Officer* and/or the *State Bee Inspector* shall have the right to inspect any

apiary site. Where practicable, prior notice shall be given to the beekeeper. The City Health Officer and Code Enforcement Officer may seek the advice and assistance of any available master beekeeper in the administration and enforcement of this Article.

Permit holders will be responsible for all fees associated with any or all enforcement actions associated with non-compliance with this Article.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-87. Reserved.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-88. Approval of permit.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-89. Denial, suspension or revocation of permit.

The Code Enforcement Officer shall deny a permit if the applicant has not demonstrated compliance with all provisions of this Article.

A permit to keep bees may be suspended or revoked by the Code Enforcement Officer where there is a risk to public health or safety or for any violation of or failure to comply with any of the provisions of this Article or with the provisions of any other applicable ordinance or law.

Any material misstatement or omission shall be grounds for denial , suspension or revocation of the permit.

Any denial, revocation or suspension of a permit shall be in writing and shall include notification of the right to and procedure for appeal.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-90. Appeal.

A person appealing the issuance, denial, suspension or revocation of a permit by the Code Enforcement Officer may appeal to the Board of Appeals within thirty (30) days of the decision being appealed.

Sec. 3-91. Penalty.

In addition to any other enforcement action which the city may take, violation of any provision of this Article shall be a civil violation and a fine up one hundred dollars (\$100.00) for a first offense, two hundred dollars (\$200.00) for a second offense, and three hundred dollars (\$300.00) for any subsequent offense. Each day that a violation continues will be treated as a separate offense.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-92. Effective date

The effective date of this Article is March 24, 2008.

(Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 3-93 . Separability.

In the event that any section, subsection or portion of this Article shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this Article.

(Ord. No. 13-07/08, 5/5/08 [Fiscal Note: Less than \$1000]; Ord. No. 8-11/12, 1/4/12 [Fiscal Note: Less than

\$1000])