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SOUTH PORTLAND CODE OF ORDINANCES

Chapter 14

LICENSES, PERMITS AND BUSINESS REGULATIONS GENERALLY*

 * **Charter reference(s)**--Authority to regulate persons and businesses and grant licenses and permits, § 205.
Cross reference(s)--Building permits, § 5-54 et seq.; permits for the installation of oil burning equipment and fuel oil storage tanks, § 5-73 et seq.; electrical permits, § 7-39 et seq.; permits for private collection and disposal of garbage and refuse, § 9-33 et seq.; mobile home parks, § 11-19 et seq.; advertising, § 17-32 et seq.
State law reference(s)--General authority to license and regulate commercial activities, 30 M.R.S.A. § 2151(5).

- Art. I. In General, §§ 14-1--14-44
- Art. II. Special Amusement Permits, §§ 14-45--14-55
- Art. III. Taxicabs and Vehicles for Hire, §§ 14-56--14-74
- Art. IV. Automobile Service Stations, §§ 14-75--14-89
- Art. V. Lodging Establishments, §§ 14-90--14-99
- Art. VI. Food, Food Handlers and Food Establishments, §§ 14-100--14-105
- Art. VII. Catv Franchising Ordinance, §§ 14-200--14-249
- Art. VIII. Bottle Clubs, §§ 14-250--14-300
- Art. IX. Regulation of Condominium Conversions, §§ 14-301--14-400
- Art. X. Coin Operated Game Machine Ordinance, §§ 14-401--14-500
- Art. XI. Used Car Lot Regulatory Ordinance, §§ 14-501--14-600
- Art. XII. Massage Establishments and Massage Therapists, §§ 14-601--14-625
 Div. 1. Generally, §§ 14-601--14-605
 Div. 2. Licenses, §§ 14-606--14-616
 Div. 3. Operating Requirements, §§ 14-617--14-624
 Div. 4. Penalties, §§ 14-625--14-626
- Art. XIII. Adult Use Establishment License, §§ 14-700--14-716
- Art. XIV. Transfer Stations for Municipal Solid Waste §§14-725--,
- Art. XV. AUTOMOBILE GRAVEYARDS, AUTOMOBILE RECYCLING BUSINESSES AND JUNKYARDS §§ 14-751--14-758.

ARTICLE I. IN GENERAL

Sec. 14-1. Title.

This Chapter shall be known as the business and occupations ordinance of the City.

(Code 1966, § 3-1-1 ; Ord. No. 18-09/10, 6/21/10 [Fiscal Note : less than \$1000])

Sec. 14-2. Definitions.

As used in this Chapter, the following words and phrases shall have the meanings ascribed to them in this section.

Automobile junkyard or *graveyard* shall mean any collection of three (3) or more old, discarded, worn-out and junked automobiles or an equivalent lot of parts thereof.

Bona fide nonprofit organization means a bona fide nonprofit, charitable, educational, political, civic, recreational, patriotic or religious organization, which is organized under the provisions of 13 M.R.S.A. § 901, or 13-B M.R.S.A. § 201, or which is recognized as such by the Internal Revenue Services under 26 U.S.C.A. § 501(c) (3).

Business shall include all kinds of vocations, occupations, professions, enterprises, establishments, and all other kinds of activities and matters, together with all devices, machines, vehicles, and appurtenances used in connection therewith, any of which are conducted for profit or benefit, whether directly or indirectly, on any premises in this City or within its jurisdiction.

Doing business shall include the selling of any goods or services, the soliciting of business or offering of goods or services for sale or hire or the acquiring or using of any vehicle or any premises in the City for business purposes.

Fireworks shall be as defined under State law, 8 M.R.S.A. § 221-A(4), as may be amended from time to time.

Flea market shall mean an occasional or periodic market held in an open area or within a structure where groups of individual sellers offer goods for sale to the public and the event is held more than four (4) days in any twelve (12) month period.

Flea market operator shall mean a person, family, corporation, association or other business entity who/which promotes, authorizes and/or suffers the operation or maintenance of a flea market on their property, or on property they rent, lease or otherwise control.

Flea market vendor shall mean a person, family, corporation, association or other business entity who/which rents, leases, pays for or otherwise occupies any amount of space, land and/or tables at a flea market for the purposes of advertising, displaying, promoting or selling new or used goods or merchandise.

Floor space shall mean the floor area of an establishment that is visible to patrons for any reason, excluding restrooms.

License shall mean revocable official permission to operate a business or commit an act not otherwise permitted under State law or local ordinance.

Licensee shall mean any holder of a license issued by this or any other city, or a holder of a license or permit under State law.

Municipality shall include, but not be limited to, the following: City, town and village.

Pawnbroker shall be as defined under State law, 30-A M.R.S.A. § 3960(2), as may be amended, including a person engaged in the business of loaning money secured by pledges of personal property.

Peddler shall mean any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale. This definition includes any person who solicits orders and as a separate transaction makes deliveries to purchasers as part of the scheme to evade the provisions of this ordinance.

Person shall mean any individual natural person, partnership, joint venture, society, association, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

Premises shall include all lands, structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.

Secondhand dealer shall mean a person, firm or corporation engaged in the business of selling, exchanging, dealing in or dealing with secondhand articles. In the event any such articles are taken in trade for another or similar article by a retail or wholesale establishment, such transaction shall not be considered as coming within the requirements of this Chapter.

Solicitor shall mean any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares or other personal property of any nature for future delivery, or for services to be performed in the future. This definition includes any person who, without invitation, goes upon private property to request contribution of funds or anything of value, or to sell goods or services for political, charitable, religious or other non-commercial purpose.

Special event shall mean an outside or outdoor thematic entertainment, amusement, athletic or other event, that is advertised or promoted inside or outside the City, on private property or in the exclusionary use of City-owned property, and it is reasonably foreseeable to involve a large assemblage of vehicles and persons, impose traffic congestion, impact parking availability, and/or involve sanitation and security concerns. A special event has a specific start and stop date.

Taxicab shall mean a motor vehicle for hire in transporting passengers for a consideration called the fare, the destination and route of which are under the direction and control of the passengers. A "limousine" is a specific type of taxicab. It does not include a motor vehicle that operates solely on a fixed schedule and route such as, but not limited to, a bus.

Used car lot shall mean a lot upon which two (2) or more unlicensed motor vehicles are offered for sale.

(Code 1966, § 3-1-3; Ord. No. 9-79/80, 11-5-79; Ord. No. 14-90/91, 4-1-91 Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No.7-08/09, 1/5/09[Fiscal Note: Less than \$1000]; Ord. No. 23-08/09, 6/15/09 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000]; Ord. No. 19-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 5-11/12, 10/3/11 [Fiscal Note: Less than \$1000]; Ord. No. 11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

Sec. 14-3. License regulations; schedule.

- (a) The businesses, occupations and activities referred to in this section shall not be carried on or conducted unless a license has been obtained and the required license fee as specified in the Schedule of License, Permit and Application Fees established by City Council order has been paid, unless waived pursuant to

subsection (e). The granting of such licenses shall be as herein prescribed.

- (b) In addition to payment of the applicable license fee, the license applicant shall be required to pay an application processing fee as specified in the Schedule of License, Permit and Application Fees established by City Council order, the cost of advertising or other public notice required by law, and any other costs incurred by the City to process the license, including any background check fee. A local public hearing and advertisement shall not be required for renewals of licenses issued by the State of Maine Department of Public Safety unless specifically requested on a case by case basis by the City Council. Where any person is applying for more than one license at the same time, the City Clerk may waive the application processing fees above the initial application processing fee for the first application, provided that the fees paid by the applicant cover the reasonably foreseeable costs of processing the applications.
- (c) If an applicant fails to pick up within sixty (60) days a license granted to him/her by the applicable licensing authority, the license shall be revoked without prejudice.
- (d) If a license application shall be denied or withdrawn, the license fee shall be refunded to the applicant but the processing fee shall not be refunded. If a license is suspended or revoked, no fees shall be refunded.
- (e) The City Clerk shall waive the license fee required of any bona fide nonprofit organization for an activity licensed by the City where the City Clerk determines that the activity or the funds to be raised by the activity are of direct and substantial benefit to the citizens of the City. Application for a waiver of this license fee shall be made on a form provided by the City Clerk and a determination shall be made by the City Clerk on each such application. Any organization claiming status as a bona fide nonprofit organization shall furnish sufficient evidence of such status as well as sufficient evidence of the activity's direct and substantial benefit to the citizens of the City. Notwithstanding any other provision of this Article to the contrary, no public hearing shall be required for such license fee waivers.

KEY TO SCHEDULE:

CC	Denotes license granted by City Council
CLK	Denotes license granted by City Clerk
CMR	Code of Maine Rules
MRSA	Denotes Maine Revised Statutes Annotated, as may be amended from time to time
OY	Denotes one year from date of issuance
P	Denotes Permit

- L Denotes License
- Police Denotes review of application by Police Department required prior to issuance or renewal, unless otherwise noted
- Fire Denotes review of application by Fire Department required prior to issuance or renewal, unless otherwise noted
- Health Denotes review of application by Health Officer required prior to issuance or renewal, unless otherwise noted
- CEO Denotes review of application by Code Enforcement Department required prior to issuance or renewal, unless otherwise noted
- Finance Denotes review of application by Finance Director required prior to issuance or renewal, unless otherwise noted
- Corp Denotes review of application by Corporation Counsel required prior to issuance or renewal, unless otherwise noted
- Water Denotes review of application by Water Resource Protection Department required prior to issuance or renewal, unless otherwise noted
- PW Denotes review of application by Public Works Department required prior to issuance or renewal, unless otherwise noted

Business or Occupation	Reference	P/L	Granted by	Exp	Additional Review by
Adult Use Establishment	§§ 14-700 to 14-716	L	CC	OY	Police/Fire/Health/CEO if new license or location
Amplified Sound, per event	§ 14-27	L	CLK		Police
Amusements					
Billiards or pool, per table	§ 14-28, 8 MRSA § 1 et seq.	L	CLK	5/1	Police/Fire
Bowling alley, per establishment	§ 14-29, 8 MRSA § 1 et seq.	L	CLK	5/1	Police/Fire
Amusement Center, device or park not otherwise defined	§ 14-29	L	CLK	6/30	Police/Fire
Carnival (traveling amusement show), per day	8 MRSA §§ 501-502	L	CLK		Police/Fire
Circus, per day	8 MRSA §§ 501-502	L	CLK		Police/Fire
Coin-operated amusement device, each machine	§§ 14-401 to 14-500, 8 MRSA § 441 et seq.	L	CC/CLK	6/30	Police/Fire/CEO if new license or location
Fireworks, public display	§ 14-34, 8 MRSA § 227	L	CLK		Fire/Finance
Roller skating rink or skate park	§ 14-28, 8 MRSA § 601 et seq.				--
Shooting gallery	§ 14-28, 8 MRSA § 1 et seq.	L	CLK	5/1	Police
Theater, motion picture					
Seating capacity of 999 or less, per screen	§ 14-23	L	CLK	12/31	Fire/CEO
Seating capacity of 1000 or more, per screen	§ 14-23	L	CLK	12/31	Fire/CEO
Automobile Graveyard or Junkyard	§§ 14-751 to 14-758, 30-A MRSA § 3751 et seq.	L	CC	10/01	--
Automobile Recycling Business	§§ 14-751 to 14-758, 30-A MRSA § 3751 et seq.	L	CC	10/01 5 YR	--
Automobile service station, flammable liquids	§§ 14-75 - 14-80	L	CC	OY	Fire
Automobile Used Car Lot	§ 14-501	L	CC/CLK	12/31	Police/Fire/CEO if new license or location
Bingo, beano, games of chance	17 MRSA Ch. 13-A	L	CLK		Police/Fire
Single day event or raffle		L	CLK		--

Bottle Clubs	§ 14-252	L	CC/CLK	6/30	Police/Fire/Health
Cable TV Franchise	§ 14-200 et seq.		CC	varies	
Application filing fee					
Proposal Bond					Finance
Performance Bond					Finance
Car Wash, for profit making purposes	§ 14-18	L	CLK	OY	Fire/Water
Car Wash, bona fide non profit organization on temporary, short-term basis	§ 14-18	N/A	N/A	N/A	--
Christmas trees	§ 14-15(b)	L	CLK	12/31	Police/CEO
Farmers' Market License	§ 14-105	L	CLK	5/01 to 4/30	Fire/Police/Health/CEO/Corp
Vendor Associated with a Farmer's Market License	§ 14-105	L	CLK	5/01 to 4/30	Fire/Police/Health/CEO/Corp
Flammable liquids , oil, hazardous materials - manufacturing, refining, mixing or storing	§ 14-32	L	CLK	4/01	Fire
Flea Market					
Operator	§ 14-22	L	CLK	OY	Police/Fire
Vendor	§ 14-22	L	CLK	OY	--
Food Establishment (FE) without alcoholic beverage	§ 14-100 et seq.				
FE, non alcoholic beverages (food preparation on site or no food preparation on site)	§ 14-100 et seq.	L	CLK	OY	Police/Fire/Health/CEO if new license or location
Catering establishment	§ 14-104	L			Police/Fire/Health
Mobile ice cream vending unit	§ 14-104	L	CLK	OY	Police/Fire/Health/CEO if new license or location
Mobile (motorized) vending unit	§ 14-104	L	CLK	OY	Police/Fire/Health/CEO if new license or location
Push cart	§ 14-104	L	CLK		Police/Fire/Health/CEO if new license or location
Stationary vending unit	§ 14-104	L	CLK	OY	Police/Fire/Health/CEO if new license or location
Temporary FE (less than 2 weeks)	§ 14-104	L	CLK		Police/Fire/Health/CEO if new license or location
Food Establishment (FE), with alcoholic beverage	§ 14-100 et seq.; 28-A MRSA § 653				
FE, Club (non-profit) w/liquor	§ 14-100 et seq.	L	CC/CLK	OY	Police/Fire/Health
FE, Hotel w/liquor	§ 14-16	L	CC/CLK	OY	Police/Fire/Health
FE, Restaurant, Class A w/liquor	§ 14-100 et seq.	L	CC/CLK	OY	Police/Fire/Health
FE, Catering Establishment	§ 14-100 et seq.	L	CC/CLK	OY	Police/Fire/Health
FE, Restaurant w/malt and/or vinous	§ 14-100 et seq.	L	CC/CLK	OY	Police/Fire/Health
FE, Retail store w/malt	§ 14-100 et seq.	L	CLK	OY	Police/Fire/Health
FE, Retail store w/vinous	§ 14-100 et seq.	L	CLK	OY	Police/Fire/Health
FE, Class A lounge w/liquor	§ 14-100 et seq.	L	CC/CLK	OY	Police/Fire/Health
FE, Tavern, stand-up bar w/malt	§ 14-100 et seq.	L	CC/CLK	OY	Police/Fire/Health
Special amusement w/dancing	§ 14-45-14-55	L	CC/CLK	OY	Police

Special amusement w/o dancing	§ 14-45-14-55	L	CC/CLK	OY	Police
Garage sale	§ 14-36	L	CLK		--
Going out-of-business sale	30-A MRSA § 3781	L	CLK		--
Lodging Establishment	§ 14-91, 30-A MRSA § 3811; CMP DHS Rules Ch. 206	L	CC	5/31	Police/Fire/Health/CEO if new license or location
Massage establishments and therapists					
Massage establishment	§ 14-601 et seq.	L	CLK	9/30	Police/Fire/Health/CEO
Combined massage establishment/massage therapist	§ 14-601 et seq.	L	CLK	9/30	Police/Fire/Health/CEO
Massage Therapist	§ 14-601 et seq.	L	CLK	9/30	Police/Fire/Health/CEO
Conditional massage therapist	§ 14-601 et seq.	L	CLK	9/30	Police/Fire/Health/CEO
Pawnbroker	§ 14-19 30-A MRSA § 3960 et seq.	L	CLK	12/31	Police
Peddlers or solicitors	§ 14-15				
30 days or less		L	CLK		Police/Health
More than 30 days but less than 90 days		L	CLK		Police/Health
Public Sidewalk, Use of for Outdoor Seating	§ 14-24	L	CC	varies	see § 14-24(d)
Secondhand dealer	§ 14-20 30-A MRSA § 3971	L	CLK	12/31	Police
Taxicabs					
Certificate of Public convenience	§ 14-58	L	CC/CLK		Police
Each taxicab	§ 14-59	L	CLK	6/30	--
Driver (includes badge)	§ 14-60	L	CLK	6/30	Police
Temporary Vendors	§ 14-15				
30 days or less		L	CLK		Police/Health
More than 30 days but less than 90 days		L	CLK		Police/Health
Towing and Wrecker Business	§§ 15-269 to 15-285	L	CLK	OY	Police
Transfer Station for Municipal Solid Waste	§§ 14-725 to 14-728	L	CLK	OY	Police/Fire/Health/Code/PW
Trucking, refuse removal	§ 14-33; § 9-33 et seq.	P	CLK	12/31	Police/PW

Code 1966, §§ 3-3-1, 3-3-2; Ord. No. 2-67, 2-6-67; Ord. No. 1-68, 1-15-68; Ord. No. 22-68, 11-4-68; Ord. No. 23-68, 12-16-68; Ord. No. 24-68, 1-6-69; Ord. No. 9-69, 10-7-69; Ord. No. 14-69, 11-3-69; Ord. No. 8-70, 2-18-70; Ord. No. 28-70, 12-21-70; Ord. No. 32-72, 12-18-72; Ord. No. 18-73, 7-2-73; Ord. No. 6-76, 4-5-76; Ord. No. 9-79/80, 11-5-79; Ord. No. 14-81/82, 10-19-81; Ord. No. 17-81/82, 12-21-81; Ord. No. 13-82/83, 4-20-83; Ord. No. 5-84/85, 9-17-84; Ord. No. 21-84/85, 5-20-85; Ord. No. 27-85/86, 2-19-86; Ord. No. 5-89/90, 9-6-89; Ord. No. 31-89/90, 6-18-90; Ord. No. 8-90/91, 9-5-90; Ord. No. 12-90/91, 1-7-91; Ord. No. 13-90/91, 1-23-91; Ord. No. 14-90/91, 4-1-90; Ord. No. 21-90/91, 5-20-91; Ord. No. 22-90/91, 6-3-91; Ord. No. 13-93/94, 10-18-93; Ord. No. 15-93/94, 11-15-93; Ord. No. 16-93/94, 2-7-94; Ord. No. 21-93/94, 5-2-94; Ord. No. 23-95/96, 5-6-96, Ord. No. 11-97/98, 11/3/97, [Fiscal Note: Less than \$1000]; Ord. No. 4-98/99, 9/9/98 [Fiscal Note: Less than \$1000], Ord. NO. 12-98/99, 12/7/98 [Fiscal Note: Less than \$1000], Ord. No. 5-00/01, 8/7/00, [Fiscal Note: Less than \$1000], Ord. No. 4-02/03, 10/7/02 [Fiscal Note: Less than \$1000]; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 19-03/04, 3/15/04 [Fiscal Note: Less

than \$1000]; Ord. No. 10-05/06, 10/17/05 [Fiscal Note: Less than \$1000] Ord. No. 7-08/09, 1/5/09 [Fiscal Note: Less than \$1000]; Ord. No. 15-08/09, 4/22/09 [Fiscal Note: Less than \$1000]; Ord. No. 23-08/09, 6/15/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 6-11/12, 10/3/11 [Fiscal Note: Less than \$1000]; Ord. No. 11-12/13, 3/4/13 [Fiscal Note: Less than \$1000] Ord. No. 11A-13/14, 4/23/14 [Fiscal Note: Less than \$1000]; Ord. No 11-14/15, 3/16/15 [Fiscal Note: Less than \$1000])

Cross reference(s)--License requirements for dogs to be as prescribed and required by state law, § 3-29; kennel license, § 3-30; bicycle license, § 4-6 et seq.; building permit, § 5-54 et seq.; permit to install oil burning equipment and fuel oil storage tanks, § 5-74; electrical permits, § 7-39 et seq.; permits required by fire prevention code, § 8-44 et seq.; bond required when getting fireworks display, § 8-47; permits for the private collection and disposal of garbage and refuse, § 9-33 et seq.; permit requirements for erecting, placing, constructing pigpens or hog sties, § 10-2; house-car trailer camp license, § 11-3(c); junked motor vehicles, § 15-251 et seq.; permits to construct concrete sidewalks, § 23-1 et seq.; permits to move buildings, § 23-9; permit for the movement of large vehicle upon streets, § 23-10; permit to construct or establish swimming pool and wading pools, § 25-3; permit fees for the construction and maintenance of swimming pools and wading pools, § 25-5; permit to use explosives, blasting agents, § 26-9.

Sec. 14-3.1. Proration of certain fees.

The license fee required by any provision of this Chapter shall be prorated by the City Clerk when the following criteria are met:

- (1) The application must be for a new license or permit;
- (2) The fee must be for an annual license or permit;
- (3) Said license or permit, if granted, would expire by law in less than one year; and
- (4) In no event shall the amount of such prorated fee be less than one-half of the annual fee.

The application processing fee and costs of advertising or notice may not be waived except as provided in Section 14-3(b).

(Ord. No. 33-72, 12-18-72; Ord. No. 9-79/80, 11-5-79; Ord. No. 5-89/90, 9-6-89, Ord. No. 4-98/99, 9/9/98 [Fiscal Note: Less than \$1000]; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Editor's note--Ord. No. 33-72 amended this Code by adding § 14-35, which section was redesignated as § 14-3.1 by the editors for purposes of classification.

Sec. 14-4. Compliance with Chapter, receipt of proper authorization prerequisite to conducting business.

No person shall, within the City, conduct or engage in any business or occupation hereinafter listed without having complied with this Chapter, nor shall any person engage in or conduct any such business or occupation prior to his/her receipt of the proper grant of authority or after revocation or during a period of suspension.

(Code 1966, § 3-1-2; Ord. NO. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-5. Duty to issue application for license.

Unless otherwise provided for in this Chapter, the City Clerk shall be the licensing authority.

(Code 1966, § 3-1-4.1; Ord. NO. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Cross reference(s)--Building inspector to tender and receive applications for building permits, § 5-33; application to construct concrete sidewalk to be obtained from director of public works, § 23-2.

Sec. 14-6. When to file application for license.

All applications under this Chapter shall be made on a form prescribed by the City Clerk.

Applicants seeking a license granted by the City Council shall file completed applications with the City Clerk no later than 4:30 p.m. of the Monday that precedes the next regular meeting of the City Council by at least five (5) business days. If said Monday falls on a holiday, the deadline shall be 4:30 p.m. of the preceding Friday. No application shall be deemed complete and ready for hearing before the applicant has paid the application processing fee and all costs of advertising and notice.

Applicants seeking licenses granted by the City Clerk should allow five (5) business days for review and final action by the City Clerk. Applicants seeking licenses for automobile sales or graveyards, the serving of alcoholic beverages, massage therapists or massage establishments, coin operated game machines, mobile food service establishments, second hand dealers, peddlers, solicitors, and taxicabs should allow at least forty five (45) calendar days from the date a completed application is submitted for review and final action by the City Clerk or City Council.

(Code 1966, § 3-1-4.2; Ord. No. 31-71, 11-1-71; Ord. No. 13-86/87, 1-21-87; Ord. No. 5-89/90, 9-6-89; Ord. No. 16-93/94, 2-7-94 Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-7. Clerk to issue licenses provided taxes and accounts have been paid; waiver.

Licenses shall be issued by the City Clerk provided that all of the applicant's real and personal property taxes, plus any and all other accounts of the applicant, payable to the City have been paid in full at the time such license or permit shall be issued; and provided, further, that all of the real and personal property taxes payable to the City on account of the premises for which said license or permit is requested have been paid in full at the time such license shall be issued.

The requirement that all taxes and accounts be paid prior to issuance of a license may be:

- (1) Satisfied by the execution of an agreement (s)he may determine, provided that payment in full is made in or within twelve (12) months from the date of said agreement; or
- (2) Waived in whole or in part by the City Clerk upon good cause shown and upon such terms and conditions as are agreeable to the applicant.

Failure to abide by the terms and conditions under either subsection (1) or (2) above shall be sufficient cause for revocation of the license or modification of said terms and conditions, after notice and hearing, by the City Council.

(Code 1966, § 3-14.1.2; Ord. No. 1-71, 2-1-71; Ord. No. 18-79/80, 2-4-80; Ord. No. 11-90/91, 10-15-90; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Cross reference(s)--Building inspector to issue building permits, §§ 5-33, 5-58; chief of bureau of fire prevention to issue permits for the installation of oil burning equipment and fuel oil storage tanks, §§ 5-74, 5-78; issuance of permits to use explosives, blasting agents, § 26-9.

Sec. 14-8. Standards for denial, suspension or revocation.

(a) Generally applicable standards.

In addition to any other specific provision of this Code authorizing action, a license or permit may be denied, suspended or revoked upon a determination of the existence of one or more of the following grounds:

- (1) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
- (2) Failure to notify the City Clerk of any change of material fact set forth in the license application;
- (3) The applicant's or the licensee's business or professional conduct hereunder has been the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare;
- (4) Noncompliance of the licensed premises or its use with the Code of Ordinances, including any land use ordinances, or the applicant/licensee has violated one of more provisions of this Chapter or other City ordinances, including, without

- limitation, the City's zoning and licensing ordinances;
- (5) Conditions of record such as waste disposal violations, health or safety violations, or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing, visiting or employed by the licensed premises or other such conditions caused by persons patronizing, visiting or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
 - (6) Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing, visiting or employed by the licensed premises;
 - (7) The applicant's or licensee's real or personal property taxes, plus any and all accounts of the applicant or licensee, payable to the City, do not comply with Section 14-7 of this Article;
 - (8) The licensee has violated any provision of this Code in the course of the conduct of the activity or device for which the license or licenses have been applied for, or have been issued; or
 - (9) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof.

(b) Background checks.

In addition to other requirements stated in this Chapter, background checks are required of the following applicants before a license shall be issued: food service establishments with alcohol; massage therapists; pawnbrokers; peddlers and solicitors; second hand dealers; temporary vendors; holders of a taxicab certificate of public necessity; and taxicab drivers. Background checks are also required of the following applicants before a license shall be renewed: massage therapists; holders of a taxicab certificate of public necessity; and taxicab drivers. Failure to submit required releases for a background check is grounds for denial of a license. The cost of the background check shall be borne by the applicant.

(c) Insurance requirements.

The City Clerk or City Council, as appropriate, shall request proof of the insurance listed below before granting a license for the following:

- (1) circus - general liability insurance in the amount of at least \$1 million

- each occurrence and \$2 million general aggregate to cover loss, damage or injuries to persons or property that might result from the circus;
- (2) carnival - general liability insurance in the amount of at least \$1 million each occurrence and \$2 million general aggregate to cover loss, damage or injuries to persons or property that might result from the carnival;
 - (3) Farmers' Market - as required by Section 14-105;
 - (4) fireworks -as required by Section 14-34;
 - (5) taxicab - as required by Section 14-59;
 - (6) towing business/wrecker - as required by Chapter 15 of the Code of Ordinances
 - (7) waste hauler - as required by Chapter 9 of the Code of Ordinances;
 - (8) mobile food vendor - automotive liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage in the amount of at least \$1 million each accident; or
 - (9) mobile ice cream vending unit - automotive liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage in the amount of at least \$1 million each accident;
 - (10) use of public sidewalk for outdoor seating - as required by Section 14-24; or
 - (11) a special event on City property - general liability coverage in an amount not less than \$400,000 combined single limit for personal injury and property damage, or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. § 8001 *et seq.*) as amended from time to time, whichever amount shall be greater, and naming the City as an additional insured.

(Code 1966, § 3-1-4.1.1; Ord. No. 20-67, 12-18-67; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No.7-08/09, 1/5/09 [Fiscal Note: Less than \$1000]; Ord. No. 18/09/10, 6/21/10, [Fiscal Note: Less than \$1000]; Ord. No. 11A-13/14, 4/23/14 [Fiscal Note: Less than \$1000]; Ord. No. 11-14/15, 3/16/15 [Fiscal Note: Less than \$1000]; Ord. No.11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

Sec. 14-9. Emergency contact information required.

All establishments required to be licensed by this Chapter shall provide emergency contact information to the South Portland Police Department on or by January 1 and July 1 of each year on forms provided by that department.

(Code 1966, § 3-2-20.1; Ord. No. 24-67, 1-3-68; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-10. Posting of license, permit, etc.

The holder of a permit, license or other identifying badge or plate shall conspicuously post the same.

(Code 1966, § 3-1-6)

Sec. 14-11. Transferability of license.

Except as may otherwise be provided, no license shall be transferred. Upon the transfer of a business or occupation which is governed by this Chapter, the transferee shall make new application for a license.

(Code 1966, § 3-1-7; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000], Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-12. Renewal of license.

Except as otherwise expressly provided in this ordinance or by law, the City Clerk may renew licenses that are initially granted or approved by the City Council, applying the same review standards for renewal of the license as applied to the initial issuance of the license. As part of the renewal process, the City Clerk will consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate or limit past problems. In the event that the City Clerk determines that a hearing on a renewal application is necessary and appropriate, the City Clerk may elect to defer action on a renewal application and refer the matter to the City Council for hearing and action.

(Code 1966, § 3-1-5; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10, [Fiscal Note: Less than \$1000]; Ord. No. 11-14/15, 3/16/15 [Fiscal Note: Less than \$1000]; Ord. No. 11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

Sec. 14-13. Revocation of license.

A license may be suspended or revoked by the licensing authority for any violation of these municipal ordinances, special terms attached to such license or as set forth in Section 14-8. A revocation of a license by the City Clerk may be appealed to the City Council. A revocation of a license by the City Clerk shall be in writing and shall include notification of the right to and procedure for appeal. The City Clerk may suspend a license issued by the City Council until a hearing for revocation is held by the City Council where suspension of the license is necessary to protect the health, safety or welfare of the public. Department heads are encouraged to report license compliance issues to the City Clerk as they arise, rather than waiting until license renewal. Prior to the City Clerk's

scheduling any suspension or revocation proceedings, the City Clerk may request that an appropriate department head or city official meet with the licensee to discuss license compliance issues; provided, however, that any delay in the conduct of suspension or revocation proceedings due to such a request shall not jeopardize the public health, safety or welfare. Any person aggrieved by a decision of the City Council hereunder may appeal to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure

(Code 1966, § 3-1-8; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No.11-14/15, 3/16/15 [Fiscal Note: Less than \$1000])

Cross reference(s)--Authority to suspend building permit for noncompliance with inspector's orders, § 5-22; revocation of building permit, § 5-59.

Sec. 14-14. Enforcement; violations.

Except as otherwise expressly provided herein, this ordinance shall be enforced by the City Clerk, for whom the Police Chief or his/her designee shall provide investigative and enforcement assistance. In addition to any action that may be taken by the City Clerk or the City Council with respect to the suspension or revocation of a license, violation of this Chapter, or of any licensing provisions of the City governed by this Chapter, shall be a civil violation subject to a fine. Except as otherwise expressly provided herein, the fine for a violation of this Chapter shall be not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense. Each act of violation and every day that any such violation shall occur shall constitute a separate offense. In addition to the fines provided herein, the City may enjoin or abate any violation of this Chapter by appropriate action.

(Code 1966, § 7-9-1; Ord. No. 16-71, 8-16-71; Ord. No. 18-09/10, 6/21/10, [Fiscal Note: Less than \$1000])

State law reference(s)--For similar provisions, see 30 M.R.S.A. § 2151(2).

Sec. 14-15. Peddlers and Solicitors; Temporary Vendors.

The following provisions shall control peddling, solicitations and temporary vending conducted within the City:

- (a) No person, firm or corporation shall conduct any peddling and soliciting, without appointment other than after sunrise and before sunset.
- (b) No person, firm or corporation shall conduct any peddling or soliciting without first obtaining a license from the City Clerk. No person, firm or corporation shall sell, or offer for sale,

goods or other merchandise, excepting foodstuffs, on a temporary basis from a fixed location without first obtaining a license from the City Clerk.

Application for such license shall be made on a form prescribed by the City Clerk and shall be accompanied by payment of the license fee as specified in the Schedule of License, Permit and Application Fees established by City Council order. The City Clerk shall issue such license unless in his/her judgment there are sufficient facts to demonstrate that the proposed location constitutes a hazard to the public health, safety, or welfare because of inadequate parking, traffic hazards, or other good cause. All applications for a license under this subsection shall include written proof of permission from the owner of the property in question.

- (c) No person, firm or corporation shall offer for sale any foodstuffs from either a fixed location on a temporary basis or by door-to-door sales without first obtaining a license from the City Clerk on the same terms as prescribed pursuant to Article VI of this Chapter; provided, further, in the case of such sales from a fixed location on a temporary basis, approval shall also be based on satisfaction of the public safety standards outlined in subsection (b) above and payment of the applicable fees as specified in the Schedule of License, Permit and Application Fees established by City Council order.
- (d) Nothing contained in this section shall affect the rights or obligations of persons, firms, or corporations to register and obtain a permit pursuant to Article II of Chapter 17.
- (e) A copy of the applicant's State vendor's license (if applicable) shall be required for issuance of a local license.

(Code 1966, § 3-2-1; Ord. No. 18-84/85, 4-17-85; Ord. No. 21-84/85, 5-20-85; Ord. No. 16-93/94, 2-7-94; Ord. No. 13-94/95, 3-6-95, Fiscal note: less than \$1,000; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-16. Hotels selling spirituous, vinous or maltous liquors.

- (a) The City Council shall issue any license to a hotel to sell spirituous, vinous or maltous liquor and the Clerk shall renew such license only upon the positive recommendations of the Police Chief, Fire Chief and Health Inspector.

(Code 1966, § 3-2-19.1; Ord. No. 2-68, 1-15-68; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

State law reference(s)--Liquors, generally, 28 M.R.S.A. § 1 et seq.

Sec. 14-17. Retail stores selling malt beverages, vinous liquors.

- (a) The City Clerk only upon positive recommendation of the Health Inspector shall issue an appropriate license allowing a retail store to sell malt beverages.

(Code 1966, §§ 3-2-13.1, 3-2-13.2; Ord. No. 32-71, 11-1-71; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

State law reference(s)--Liquors, generally, 28 M.R.S.A. § 1 et seq.

Sec. 14-18. Car washes.

It shall be unlawful for any person to operate any garage, service station, storage and/or a rental service relating to motor vehicles, or any place of business, where the washing of motor vehicles is done or carried on, unless or until the following provisions are made:

- (1) A license therefor has been issued by the City Clerk, except that a bona fide non profit organization engaging in the washing of cars on a temporary, short-term basis is exempt from this Section; and
- (2) All liquid wastes from such operations shall be intercepted before entering or draining over any street, alley, sidewalk, courtyard or paved approach by means of a sewer or catch basin properly trapped and vented; and
- (3) All motor vehicles so washed shall be dried by either manual or mechanical dryers, so that all liquid wastes caused by the washing of such motor vehicles shall be intercepted before such motor vehicles shall enter upon any street, alley, sidewalk, courtyard or paved approach.

(Code 1966, § 3-2-22; Ord. No. 1-69, 1-20-69; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-19. Pawnbrokers.

- (a) No person, firm or corporation shall engage in the business of a pawnbroker as herein defined unless licensed therefor by the City Clerk.
- (b) Application for such license shall be made upon a form provided and said license shall expire on the 31st day of December each year. The fee for such license shall be as specified in the

Schedule of License, Permit and Application Fees established by City Council order.

- (c) No such application for license shall be granted by the City Clerk until after the Police Chief shall have investigated the applicant in accordance with the requirements of State law. In order to facilitate such investigation by the Police Chief, the applicant shall on the required form state his/her name and address, his/her date of birth and in the case of a firm or corporation as applicant, such information shall be given for each principal of said firm or corporation. The Police Chief shall investigate whether or not the applicant or principals of the applicant have any criminal record and shall base each recommendation for approval or denial upon a search of such records. The recommendation of the Police Chief shall be endorsed in writing on the application form.
- (d) Every pawnbroker, at the time of receiving any article pawned, pledged or received in exchange, or any other article or consideration, shall give the pawnor a statement that the pawnbroker will return the article at a stipulated price that shall be computed in accordance with the requirements of 30-A M.R.S.A. § 3963, as may be amended, and shall complete a sworn statement, blanks for which shall be furnished by or approved by the Police Chief, stating the full name, age, sex and address of the person with whom the transaction is being made, the day and hour when the transaction took place, and a full, accurate and detailed description including all distinguishing marks and numbers of each article so pawned, pledged or exchanged as will make its identification certain and plain; and the fair market value thereof and the price paid by the pawnbroker; the source from which and the time when the pawnor, pledgor or vendor procured the same, and cause such statement to be signed and sworn to by the person with whom such transaction has been made, and within forty-eight (48) hours after the transaction shall electronically report the relevant information contained in the sworn statement to the Police Chief or his/her designee. The pawnbroker shall retain the statement in his or her possession, which, together with any article therein listed, may be inspected by any police officer at any and all times. Articles purchased outright by pawnbrokers shall be retained on the premises not less than ten (10) days, unless sooner released by the Police Chief or his/her designee, and no article pawned, traded or sold shall be altered or changed until opportunity shall have been given for examination of such articles by the Police Chief or his/her designee.
- (e) No pawnbroker shall directly or indirectly either purchase or receive by way of barter or exchange any goods or articles from a minor, knowing or having reason to believe him or her to be

such, unless the minor is accompanied by his or her parent or guardian.

- (f) In addition to the display of licenses required by Section 14-10 of all licensees, every pawnbroker shall post in a conspicuous location in his or her place of business a copy of the Maine statutes applicable to pawnbrokers and a copy of this Article.
- (g) Except to the extent that this Article contains a contrary provision, all provisions of 30-A M.R.S.A. §§ 3960-3964-A, as may be amended, shall be additional to the provisions of this Article.

(Ord. No. 6-76, 4-5-76; Ord. NO. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 23-08/09, 6/15/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Editor's note--Ord. No. 6-76, enacted April 5, 1976, repealed §§ 14-19 and 14-20, relative to pawnbrokers, junk collectors, dealers and peddlers, and enacted in lieu thereof new §§ 14-19 and 14-20 as herein set out. Former §§ 14-19 and 14-20 were derived from Code 1966, §§ 3-2-9, 3-2-11; Ord. No. 21-67, adopted Dec. 18, 1967; Ord. No. 12-68, adopted May 20, 1968; and Ord. No. 13-68, adopted July 1, 1968.

Sec. 14-20. Secondhand dealers.

- (a) No person, firm or corporation shall engage in the business of a secondhand dealer as herein defined unless licensed therefor by the City Clerk.
- (b) Application for such license shall be made upon a form provided and said license shall expire on the 31st day of December each year. The fee for such license shall be as specified in the Schedule of License, Permit and Application Fees established by City Council order.
- (c) No such application for license shall be granted by the City Clerk until after the Police Chief shall have investigated the applicant in accordance with the requirements of State law. In order to facilitate such investigation by the Police Chief, the applicant shall on the required form state his/her name and address, his/her date of birth and in the case of a firm or corporation as applicant, such information shall be given for each principal of said firm or corporation. The Police Chief shall investigate whether or not the applicant or principals of the applicant have any criminal record and shall base each recommendation for approval or denial upon a search of such records. The recommendation of the Police Chief shall be endorsed in writing on the application form.
- (d) Every secondhand dealer, upon acquisition of any article either by purchase or exchange, shall complete transaction records, blanks of which shall be furnished by or approved by the Police Chief, stating the full name and address of the seller, the

month, date and year on which the transaction took place, and a full and detailed description of each article so purchased or exchanged, with the price paid therefore, and cause such record to be signed by the seller in person. Before recording this information, the secondhand dealer shall require reasonable written proof of the seller's identification in the form of a motor vehicle operator's license, military identification, adult liquor identification or similar item. The relevant information in the record shall be electronically or otherwise reported to the Police Chief or his/her designee within forty-eight (48) hours thereafter, unless earlier electronically reported to a duly authorized police officer upon request. The secondhand dealer shall retain the record in his or her possession for a period of not less than two (2) years, during which time the record may be inspected at any and all reasonable times by any police officer. No article so purchased shall be sold or otherwise disposed of, or changed or altered in its appearance or otherwise, within ten (10) days after purchase thereof, except with the written consent of the Police Chief or his/her designee; provided, however, that this ten (10) day hold provision shall not apply to bullion oriented gold, silver, platinum or palladium coins or bars. The Police Chief may impose reasonable conditions for the grant of such consent.

- (e) No secondhand dealer shall directly or indirectly either purchase or receive by way of barter or exchange any goods or articles from a minor, knowing or having reason to believe him or her to be such, unless the minor is accompanied by his or her parent or guardian.
- (f) Except to the extent that this Article contains a contrary provision, all provisions of 30-A M.R.S.A. § 3971, as may be amended, shall be additional to the provisions of this Article.

(Ord. No. 6-76, 4-5-76; Ord. NO. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 23-08/09, 6/15/09 [Fiscal Note: Less than \$1000]; Ord. No. 23-08/09, 6/15/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-21. Repealed

(Code 1966, § 3-2-8; Ord. No. 21-67, 12-18-67; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-22. Flea markets.

- (a) License required. No person, family, corporation, association or other business entity shall operate, suffer, permit or conduct a flea market on their property or on property they rent, lease or otherwise control without first securing a valid flea market operator's

license. No person, family, corporation, association or other business shall sell, market, merchandise, display, promote or package new or used goods at a flea market without first securing a valid flea market vendor's license. Related individuals working at the same table or tables need only obtain one (1) flea market vendor's license provided it lists all the individuals involved in selling. As used in this section, "related individuals" shall mean and include persons who are related by either affinity or consanguinity and reside at the same address.

- (b) Applicability. Nothing in this section shall exempt any property, use or activity from complying with any applicable provisions of other City ordinances, including, without limitation, the zoning ordinance. Further, this section shall apply to any and all flea markets, regardless of whether they are in operation at the time of adoption of this section.
- (c) Terms for flea market operator license. To be issued a flea market operator's license, a person, family, corporation, association or other business entity must agree to the following terms and conditions, which terms and conditions are made a part of any license issued:
- (1) The flea market operator will not permit any person, family, corporation, association or other business entity to sell, display, market or otherwise avail themselves of the benefits and privileges of the flea market unless the person or entity holds a valid flea market vendor's license;
 - (2) The flea market operator must comply with all City ordinances, including, without limitation, the City's zoning and licensing ordinances;
 - (3) The flea market will not open earlier than 7:00 a.m. for vendors and 8:00 a.m. for patrons and will not close later than 5:00 p.m., and there shall be no flea market set-up or clean-up other than between said hours;
 - (4) The flea market operator will advise and instruct all flea market vendors on the property to prominently display at all times the vendor's City license;
 - (5) The flea market operator shall exclude from participation in any flea market any person the operator knows is required to obtain a flea market vendor's license who does not present proof of such licensure;
 - (6) No food shall be sold at a flea market unless appropriate licenses have been obtained;
 - (7) The flea market operator shall provide adequate parking arrangements with regard to the licensed activity and those parking arrangements shall not unreasonably impair public safety or unreasonably cause traffic congestion on public ways;
 - (8) The flea market operator shall take reasonable steps to ensure that the licensed activity does not unreasonably impair public safety or unreasonably cause traffic congestion on public ways,

including, without limitation, the hiring of traffic safety personnel (either public or private) to direct traffic if deemed necessary by the Police Chief or his designee;

- (9) The flea market operator will not jeopardize or endanger the public health or safety in any way, or the health or safety of any customers at the market; nor suffer or permit any flea market vendor from doing any of the same;
 - (10) The flea market operator will prohibit, bar and/or expel from the flea market any flea market vendor who breaches the peace or who violates any City ordinance; and
 - (11) No outdoor flea market sales are allowed.
- (d) Terms for flea market vendor license. To be issued a flea market vendor's license, a person, family, corporation, association or other business entity must agree to the following terms and conditions, which terms and conditions are made a part of any license issued:
- (1) The flea market vendor must comply with all City ordinances, including, without limitation, the City's zoning and licensing ordinances;
 - (2) The flea market vendor will not commence set-up earlier than 7:00 a.m. and will not be open to patrons earlier than 8:00 a.m. and will not close later than 5:00 p.m., and there shall be no flea market set-up or clean-up other than between said hours;
 - (3) The flea market vendor will prominently display at all times the vendor's City license;
 - (4) The flea market vendor will not jeopardize or endanger the public health or safety in any way, or the health or safety of any customers at the market;
 - (5) There shall be no purchasing of goods by a flea market vendor from any person, except another flea market vendor at the flea market, prior to the opening of the flea market to the general public;
 - (6) No person under the age of eighteen (18) shall be permitted to sell goods or work as a flea market vendor unless his/her parents or guardian have given written permission;
 - (7) There shall be no overnight parking of motor vehicles on site and no flea market vendor shall remain on site prior to opening or after closing as set forth herein;
 - (8) The flea market vendor will not sell hazardous materials, flammable liquids, petroleum products, drug paraphernalia or illegal, counterfeit or contraband items. To the extent permitted by law, the flea market vendor will not sell firearms;
 - (9) No food shall be sold at a flea market unless appropriate licenses have been obtained;
 - (10) Persons holding a valid City secondhand dealer license need not also obtain a flea market vendor's license if they wish to participate in a flea market, but they shall otherwise comply with all provisions of this section; and
 - (11) No outdoor flea market sales are allowed.

- (e) Standards for denial, suspension or revocation. The City Clerk, in addition to other provisions of this Code authorizing such action, may deny, suspend or revoke a flea market operator license upon one or more of the following grounds:
- (1) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
 - (2) Failure to notify the City Clerk of any change of material fact set forth in the license application;
 - (3) The applicant's flea market business or professional conduct hereunder has been the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare;
 - (4) The flea market has violated one of more provisions of this Chapter or other City ordinances, including, without limitation, the City's zoning and licensing ordinances; or
 - (5) The flea market operator has permitted unlicensed flea market vendors to sell, display or market goods on the property and had failed to remove or expel such vendors.
- (f) Standards for renewal. As part of the renewal process, the City Clerk will consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate or limit past problems.
- (g) Enforcement. This section shall be enforced by the City Clerk, for whom the Police Chief or his/her designee shall provide investigative and enforcement assistance.

(Code 1966, § 3-2-10; Ord. No. 21-67, 12-18-67; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 7-08/09, 1/5/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-23. Theaters.

The City Clerk, only upon positive recommendation by the Building Inspector and Fire Chief, shall issue an appropriate license for the operation of a place where plays, operas, motion pictures, etc., are presented. Such recommendation shall be in writing.

(Code 1966, § 3-2-16; Ord. No. 21-67, 12-18-67; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

State law reference(s)--Theaters and shows, generally, 8 M.R.S.A. § 651 et seq.

Sec. 14-24. Use of public sidewalk for outdoor seating.

- (a) No person, corporation, association or other business entity shall use a public sidewalk for outdoor seating unless licensed therefor by the City Council. A license granted pursuant to this section obviates the need for the user to obtain a permit under Section 23-11 of the Code of Ordinances as relates to use of a public sidewalk for outdoor seating. The City Clerk may act to renew a license granted in the prior year, applying the same review standards for renewal of the license as applied to the initial issuance of the license; provided, however, that subsection (e) hereunder shall not apply to a renewal application.
- (b) Application for a use of public sidewalk for outdoor seating license (hereinafter "public sidewalk license") shall be made upon a form provided by the City Clerk and said license shall be for such term as determined appropriate by the City Council, but in no event shall the license be valid prior to March 15th of each year or expire later than November 1st of each year. The application shall contain a sketch showing the portion of the public sidewalk sought to be used as the licensed premises. The fee for such license shall be as specified in the Schedule of License, Permit and Application Fees established by City Council order.
- (c) No public sidewalk license shall be issued by the City Council until the applicant has filed with the City Clerk a certificate, in a form satisfactory to the Corporation Counsel, evidencing general liability coverage in an amount not less than \$400,000 combined single limit for personal injury and property damage, or such other amount as may be required to meet the maximum coverage provisions of the Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.) as it may be amended, whichever amount shall be greater, and naming the City as an additional insured. The Licensee shall maintain such insurance at all times while engaged in use of the public sidewalk, and the Licensee shall provide the City Clerk with not less than ten (10) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.
- (d) No public sidewalk license shall be granted by the City Council until the Fire Chief, the Police Chief, the Director of Public Works, the Director of Parks and Recreation and the Code Enforcement Officer have all made a positive recommendation upon the applicant's ability to comply with the terms and conditions in subsection (f) below.
- (e) The City Clerk or her designee shall, at the applicant's expense, give written notice to the applicant, by first class mail, of the

date, time, and place of the meeting at which the application will be considered, and to all abutting property owners. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the City Council.

(f) Terms for public sidewalk license. To be issued a public sidewalk license, a person, corporation, association or other business entity must agree to the following terms and conditions, which terms and conditions are a part of any license issued:

(i) Licensee's use of the public sidewalk shall be limited to the specific sidewalk area approved by the City Council ("the Licensed Property"). Licensee's use of the public sidewalk will comply with all applicable laws, ordinances, and regulations, including, without limitation, any and all requirements regarding licensing and land use approvals.

(ii) Hours of operation at the Licensed Property are limited to 7:00 a.m. through 9:00 p.m., seven (7) days/week.

(iii) The Licensee, his/her/its employees, guests, patrons and invitees shall not engage in or allow any illegal activity to occur at the Licensed Property. Illegal drugs and/or tobacco products shall not be brought onto or consumed within the Licensed Property. The sale or consumption of alcohol on the Licensed Property is prohibited. Notices stating that smoking is prohibited on the Licensed Property shall be prominently displayed thereon.

(iv) Thirty-six inches (36") in width of the public sidewalk must be left clear of any obstructions to safe pedestrian and wheelchair passage on the portion of the sidewalk that is not a part of the Licensed Property; provided, however, that umbrella canopies may encroach into this clearance width if they comply with subsection (vii) below.

(v) Nothing shall be permanently attached to the Licensed Property or any other City property. Heat lamps and tents are prohibited on the Licensed Property.

(vi) No sign, billboard, panel, placard, poster, notice or other advertising device in, upon or above the Licensed Property or so situated with respect to the Licensed Property shall interfere with or distract motorists on adjacent streets or otherwise be so situated as to prevent the safe use or maintenance of adjacent streets.

- (vii) No umbrella canopy shall be no larger than seventy-two inches (72") at its widest dimension when open. An umbrella shall have a minimum height of seven feet (7'), as measured from the lowest point of the sidewalk to the lowest point of the umbrella canopy when open. No umbrella shall obstruct safe pedestrian and wheelchair passage on the portion of the sidewalk that is not a part of the Licensed Property.
- (viii) No tables, chairs, umbrellas, trash receptacles or other items of personal property shall block any means of ingress or egress to Licensee's own premises. All tables, chairs, umbrellas, trash receptacles and other items of personal property shall be properly secured in the event of a storm. The Fire Chief or his designee must approve the number, method of securing and arrangement of tables, chairs, umbrellas, trash receptacles and other items of personal property located within the Licensed Property, and once so approved, the Licensee shall not increase the number of, or substantially change, the arrangement of tables, chairs, umbrellas, trash receptacles and other items of personal property located within the Licensed Property without first obtaining an amended approval from the Fire Chief or his designee.
- (ix) The Licensee shall provide at least one trash receptacle located within the Licensed Property.
- (x) The Licensed Property shall be cleaned as reasonably necessary, but no less than daily, using a broom, hose and/or other equipment as appropriate.
- (xi) The Licensee is responsible for any damage to the Licensed Property or any part thereof caused directly or indirectly by the Licensee or his/her/its agents, employees, guests, or invitees. The City shall not be liable for any damage or loss to any property of the Licensee from any cause whatsoever while said Licensee's personal property is located at the Licensed Property for storage purposes or otherwise.
- (xii) The Licensee is responsible for leaving the Licensed Property in the same condition in which it was received, reasonable wear and tear excepted, and shall be responsible for any loss or damage to the Licensed Property. The Licensee shall be charged for any required repair or cleanup costs incurred as a result of the Licensee's use of the Licensed Property.
- (xiii) The Licensee releases and agrees to defend, indemnify and hold harmless the City, its agents, officers and employees,

from any and all liability, actions, damages and claims of any kind and nature whatsoever for any injury, harm or damage to persons or damage to property that may arise or occur during or in connection with the Licensee's use of the Licensed Property.

- (xiv) In the event of suspension, revocation or expiration of the license, Licensee shall have forty-eight (48) hours to clean the Licensed Property and to complete the removal of all furniture, equipment and other personal property from the Licensed Property; Licensee shall repair all damages resulting from such removal. Any personal property not removed at the end of the term hereof shall be deemed abandoned by the Licensee and shall become the property of the City, and Licensee hereby waives any claim to such personal property and agrees to indemnify the City against all costs and expenses incurred by the City in storing, removing and disposing of any such personal property.

(Code 1966, § 3-2-4; Ord. No. 21-67, 12-18-67; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11A-13/14, 4/23/14 [Fiscal Note: Less than \$1000]; Ord. No. 11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

State law reference(s)--Boxing, generally, 8 M.R.S.A. § 101 et seq.

Sec. 14-25. Repealed.

(Code 1966, § 3-2-5.1; Ord. No. 21-67, 12-18-67; Ord. No. 12-68, 5-20-68; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

State law reference(s)--Dances, generally, 8 M.R.S.A. § 161 et seq.

Sec. 14-26. Repealed.

(Code 1966, § 3-2-5.2; Ord. No. 12-68, 5-20-68; Ord. No. 16-93/94, 2-7-94; ; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-27. Amplified sound.

An amplified sound license issued by the City Clerk is required for events that will be using sound-amplifying equipment.

(Code 1966, § 6-2-1; Ord. No.23-95/96, 5-6-96; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

State law reference(s)--Authority to regulate dance halls, 30 M.R.S.A. § 2151(5).

Sec. 14-28. Licensing of poolrooms, billiard halls.

The City Clerk, only upon positive recommendation by the Police Chief and Fire Chief, shall issue an appropriate license for the operation of the various places of amusement described as poolrooms and billiard halls. Such recommendation shall be in writing.

(Code 1966, § 3-2-12; Ord. No. 21-67, 12-18-67; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-29. Hours of operation of poolrooms, billiard halls, bowling alleys, shooting galleries.

No poolroom, billiard hall, bowling alley, shooting gallery or other place of amusement conducted for profit which is located within five hundred (500) feet of a residential zoning district shall be kept open or have any games played therein after 11:00 p.m.

(Code 1966, §§ 3-2-3, 6-2-2; Ord. No. 1-94/95, 8-15-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

State law reference(s)--Poolrooms, billiard rooms, generally, 8 M.R.S.A. § 1 et seq.

Sec. 14-30. Roller-skating rinks.

- (a) Every person who keeps, operates or conducts a roller-skating rink or room or skate park in the City shall obtain a license to do so from the City Clerk and shall pay the fee as specified in the Schedule of License, Permit and Application Fees established by City Council order.
- (b) No such license shall be issued by the City Clerk until he/she first receives a positive recommendation from the Police Chief and Fire Chief for an indoor rink or skate park and from the Police Chief for an outdoor rink or skate park. Such recommendations shall be in writing.
- (c) All licenses issued pursuant to this section shall terminate on the last day of December in the year in which issued.

(Code 1966, § 3-2-14; Ord. No. 21-67, 12-18-67; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

State law reference(s)--Roller-skating rinks, generally, 8 M.R.S.A. § 601 et seq.

Sec. 14-31. Repealed.

(Code 1966, § 3-2-2; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-32. Issuance of license to handle or use flammable liquids or hazardous materials.

No license shall be granted or issued for the storage, handling or use of flammable liquids or hazardous materials by any firm or corporation until the plans, specifications and location of the facilities for storing handling or using the flammable liquids or hazardous materials have been approved by the Fire Chief and he/she has made a positive recommendation therefor to the City Clerk. Such recommendation shall be in writing. The Fire Chief or designee is authorized to immediately suspend any license granted under this section where the public health or safety so requires. Any license suspended for reasons of public health or safety shall remain suspended until the Fire Chief or designee deems that the risk to public health or safety has been reduced or eliminated and approves, in writing, the reissuance of the license.

(Code 1966, § 3-2-7; Ord. No. 21-67, 12-18-67; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-33. Waste Hauling.

The City Clerk shall issue an appropriate permit allowing the hauling of waste by truck, provided that the applicant has shown compliance with the provisions of Code Ordinances Chapter 9, Article II and all other applicable federal, state and local requirements for waste haulers and provided that the Police Chief has provided a positive recommendation on the permit application. In reviewing the application, the Police Chief shall consider past motor vehicle violations of the applicant as well as any criminal conviction or violation of federal, state or local law relevant to waste hauling. The recommendation of the Police Chief shall be in writing.

(Code 1966, § 3-2-17; Ord. No. 21-67, 12-18-67; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 9-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-34. Fireworks displays.

No person shall have a public display of fireworks of any kind without first having applied to the City Clerk for a permit therefor. No such permit will be granted by the City Clerk until s/he first receives a positive recommendation in writing from the Fire Chief and the applicant has submitted proof of insurance in such amount as required by State law, 8 M.R.S.A. § 227-A, as may be amended. The recommendation of the Fire Chief and the Director of Finance shall be in writing.

(Code 1966, § 3-2-6; Ord. No. 21-67, 12-18-67; Ord. No. 16-93/94, 2-7-94; ; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Cross reference(s)--Permits for supervised public displays of fireworks, § 8-44.
State law reference(s)--Fireworks, generally, 8 M.R.S.A. § 211 et seq.

Sec. 14-35. Repealed.

(Ord. No. 18-74, 8-19-74; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-36. License required for garage sales.

No person shall conduct a garage sale or similar sale of in excess of three (3) items of personal property without first having obtained from the City Clerk a license to conduct such sale. The City Clerk may issue such license, at a cost as specified in the Schedule of License, Permit and Application Fees established by City Council order, to any person proposing to conduct such sale provided that such license and any sale conducted thereunder shall not be lawful and valid for more than three (3) consecutive days. Signs may be utilized to advertise such sale; provided, however, no such signs shall obstruct or intrude onto any public right-of-way, block the sight vision of any public right-of-way for vehicular or pedestrian traffic, be placed upon any public utility pole, or be placed upon the property of others without their prior consent. Such signs may not be erected or allowed to remain either more than twenty-four (24) hours prior to or more than twenty-four (24) hours after such sale.

The City Clerk may issue only two (2) garage sale licenses for such sale, whether conducted indoors or out-of-doors, to any person or for a sale on any given lot within a consecutive six-month period. Any sale of this type conducted more frequently than three (3) consecutive days for each six (6) consecutive month period, or any sale conducted without license, shall be considered a use of land which must comply with the South Portland Zoning Ordinance and all licensing ordinances of the City, including the licensing requirement for secondhand dealers within this Chapter.

(Ord. No. 19-76, 8-16-76; Ord. No. 11-83/84, 11-21-83; Ord. No. 19-88/89, 5-1-89; Ord. No. 16-03/04, 2/2/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-37--14-44. Reserved.

ARTICLE II. SPECIAL AMUSEMENT PERMITS

Sec. 14-45. Title, purpose and definitions.

- (a) This article shall be known and may be cited as the "Special Amusement Ordinance of the City of South Portland, Maine."
- (b) The purpose of this Article is to control the issuance of special permits for music, dancing, or entertainment in facilities licensed by the State of Maine to sell liquor as required in 28 M.R.S.A. § 702.
- (c) The following definitions shall apply for the purposes of this Article:
 - (1) "Entertainment" shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.
 - (2) "Licensee" shall include the holder of a license issued under the Alcoholic Beverages Statutes of the State of Maine, or any person, individual, partnership, firm, association, corporation, or other legal entity, or any agent, or employee of any such licensee.

(Ord. No. 9-78, 6-5-78; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-46. Permit required; application procedure and term of permit.

- (a) No licensee for the sale of liquor to be consumed on his/her licensed premises shall permit, on the licensed premises, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the municipality in which the licensed premises are situated a special amusement permit approved by at least a majority of the City Council. Any such special amusement permit may be renewed by the City Clerk in accordance with Section 14-12.
- (b) Applications for all special amusement permits shall be made in writing, filed with the City Clerk, and shall state the name of the applicant; the applicant's residence address; the name of the

business to be conducted; the business address; the nature of the business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically; whether the applicant, including all partners or corporate officers, has ever been convicted of a felony and, if so, the applicant shall describe specifically those circumstances; and any additional information as may be needed by the municipal officers or the City Clerk in the issuing or renewal of the permit, including but not limited to a copy of the applicant's current liquor license on the form provided.

No permit shall be issued for any thing, or act, or premises, if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, bylaws, or rules and regulations of the municipality.

The fee for a special amusement permit without dancing shall be as specified in the Schedule of License, Permit and Application Fees established by City Council order, and with dancing shall also be as specified in the Schedule of License, Permit and Application Fees established by City Council order.

For an initial permit, the City Council shall, prior to granting the permit and after reasonable notice to the municipality and the applicant, hold a public hearing within fifteen (15) days of the date the request was received, at which the testimony of the applicant and that of any interested members of the public shall be taken. The licensee shall be notified in writing of the City Council decision approving or denying the request no later than fifteen (15) days from the date the application was received.

The City Council shall grant an initial permit and the City Clerk shall renew a permit unless the City Council or the City Clerk finds that issuance of the permit will be detrimental to the public health, safety or welfare, or would violate municipal ordinances, or rules and regulations, articles, or bylaws.

- (c) A permit shall be valid only for the license year of the applicant's existing liquor license.

(Ord. No. 9-78, 6-5-78; Ord. No. 21-84/85, 5-20-85; Ord. No. 31-89/90, 6-18-90; Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 {Fiscal Note: Less than \$1000})

Sec. 14-47. Rules and regulations; inspections; revocation; admission charges.

- (a) The City Council is further authorized, after public notice and hearing, to establish further written rules and regulations governing the issuance, suspension, and revocation of special

amusement permits, the classes of permits, the music, dancing, or entertainment permitted under each class, and other limitations on these activities required to protect the public health, safety and welfare whenever the need arises. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises, and the hours during which the permitted activities are permitted.

Such rules and regulations shall be additional to and consistent with all sections of this Article.

- (b) Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a special amusement permit are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any ordinance provision or state law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the municipality authorized to make the inspection at any reasonable time that admission is requested.

In addition to any other penalty which may be provided, the City Clerk may suspend for a period of up to thirty (30) days and the City Council, after notice and public hearing, may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official, or employee to make an inspection, or who interferes with such officer, official, or employee while in the performance of his duty. Provided, that no license or special amusement permit shall be suspended or revoked unless written demand for the inspection is made upon the licensee or person in charge of the premises, at the time it is sought to make the inspection.

- (c) The City Clerk may suspend any special amusement permit for a period up to twenty one (21) days where there is an immediate risk to the public health, safety or welfare. The City Council may, after a public hearing preceded by notice to interested parties, suspend or revoke any special amusement permits which have been issued under this Article on the grounds that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety, or welfare, or violates any municipal ordinances, articles, bylaws, or rules and regulations.
- (d) A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee who has been issued a special amusement permit may charge admission in designated areas approved by the municipal special amusement permit.

(Ord. No. 9-78, 6-5-78; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-48. Reapplication; appeal; penalty; separability.

- (a) In the event that a licensee is denied a permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a permit within thirty (30) days after an application for a permit has been denied.
- (b) Any licensee who has requested a permit and has been denied by the City Clerk, or whose permit has been revoked or suspended by the City Clerk, may, within thirty (30) days of the denial, suspension or revocation, appeal the decision to the City Council. Any licensee who has requested a permit and been denied by the City Council, or whose permit has been revoked or suspended by the City Council, or who has appealed a decision of the City Clerk to the City Council, may, within thirty (30) days of the denial, suspension or revocation, appeal the decision to the Superior Court in accordance with Maine Rules of Civil Procedure, Rule 80B. The hearing before the Superior Court shall be without a jury. Any denial, revocation or suspension shall be in writing and shall include notification of the right to and procedure for appeal.
- (c) Whoever violates any of the provisions of this Article shall be punished by a fine of not more than five hundred dollars (\$500) for the first offense, and up to one thousand dollars (\$1,000) for each subsequent offense, to be recovered, on complaint, to the use of the City of South Portland. Each day in violation or occurrence in violation of this Article shall constitute a separate and distinct offense for the purpose of this section.
- (d) The invalidity of any provision of this Article shall not invalidate any other part.

(Ord. No. 9-78, 6-5-78; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-49--14-55. Reserved.

ARTICLE III. TAXICABS AND VEHICLES FOR HIRE*

 * **Editor's note**--Ord. No. 1-86/87, enacted July 21, 1986, amended Art. III, to read as set out in §§ 14-56-14-70. Formerly Art. III, pertaining to taxicabs, was derived from Code 1966, §§ 3-2-15.1--3-2-15.7; Ord. No. 12-67, adopted Oct. 2, 1967; Ord. No. 14-67, adopted Nov. 6, 1967; Ord. No. 20-68, adopted Oct. 21, 1968; Ord. No. 2-71, adopted March 1, 1971; Ord. No. 2-74, adopted April 1, 1974; Ord. No. 15-77, adopted Sept. 7, 1977; Ord. No. 7-79/80, adopted Oct. 1, 1979; and Ord. No. 26-79/80, enacted 4-7-80.

Cross reference(s)--Fees for taxicab licenses, § 14-3; motor vehicles and traffic, Ch. 15; traffic engineer to establish and designate taxi stands, § 15-97; stopping, standing and parking of taxicabs, § 15-206.

State law reference(s)--Authority to regulate vehicles for hire, 30 M.R.S.A. § 2151(3).

Sec. 14-56. Definitions.

For the purposes of this Article, the following terms are to be deemed and construed to have the meaning indicated in this section:

- (a) *Certificate year*: The term "certificate year" shall mean the one-year period for which a certificate of public convenience is valid (unless earlier suspended or revoked in accordance with this Article).
- (b) *City*: The term "city" shall mean the City of South Portland.
- (c) *City Council*: The term "City Council" shall mean the City Council of the City of South Portland as established by Article II of the Charter of the City of South Portland.
- (d) *Driver*: The term "driver" shall mean any person who is engaged in the driving of a taxicab for hire.
- (e) *Holder*: The term "holder" shall mean the person, firm, association, partnership or corporation to whom a certificate of public convenience has been granted.
- (f) *Limousine*: The term "limousine" shall mean a taxicab that is used customarily for hire solely on a prior reserved hourly basis or flat rate basis. Limousine vehicles shall not be available for hire on a "hail" or walk-up basis by passengers on the street.
- (g) *Medical transportation vehicle*: The term "medical transportation vehicle" shall mean any motor vehicle for hire that is designed and operated to provide non-emergency transportation to passengers who are wheelchair-bound or otherwise restricted in mobility due to physical incapacity,

injury, sickness or other medical, vision, or age-related reason. For purposes of this Article, medical transportation vehicles are taxicabs, except that any motor vehicle utilized by a local, regional or nationally affiliated transportation agency that is registered and in good standing as a Maine non-profit corporation and that performs a background check on its drivers that is substantially comparable to or more stringent than this Article shall be excluded from this definition and the provisions of this Article. Any person or business who is unlicensed and claims to qualify for this exception bears the burden of proof to demonstrate that the exception is applicable.

- (h) *Owner*: The term "owner" shall mean the person, firm, association, partnership or corporation to whom a taxicab license has been issued.
- (i) *Sealer*: The term "sealer" shall mean the sealer of weights and measures for the City of South Portland as appointed by the City Council.
- (j) *Taxicab*: The term "taxicab" shall mean a motor vehicle for hire in transporting passengers for a consideration called the fare, the destination and route of which are under the direction and control of the passengers. A "limousine" is a specific type of taxicab. The term "taxicab" does not include a motor vehicle that operates solely on a fixed schedule and route such as, but not limited to, a bus.
- (k) *Taximeter*: The term "taximeter" shall mean a mechanical instrument or device by which the fare for hire of the taxicab and the distance traveled by the taxicab are mechanically measured, calculated, and displayed.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 11-06/07, 11/20/06 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-57. Unauthorized and unlicensed taxicabs prohibited.

It shall be unlawful for any person, firm, association, partnership or corporation, situated within or without the City of South Portland, to operate or cause or permit to be operated in the City any taxicab not authorized in accordance with the provisions of Section 14-58 of this Article, and without first having obtained a taxicab license in accordance with the provisions of Section 14-59 of this Article unless such person, firm, association, partnership or corporation holds a valid license issued under a municipal ordinance whose provisions and requirements are substantially similar to the provisions of Section 14-58 and Section 14-59 of this Article.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 15-86/87, 1-21-87; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-58. Certificate of public convenience.

No taxicab license shall be issued unless and until the City Council grants, in accordance with the provisions of this section, an initial certificate of public convenience or the City Clerk grants a renewal of a certificate of convenience. Such certificate shall authorize the holder to operate within the City the number of taxicabs denoted on the certificate, subject to increase as provided in subsection (d) below. Such certificate shall be valid only for a period of one year (unless earlier suspended or revoked under Section 14-65(a) of this Article) and must be renewed annually subject to the same terms and conditions as in the case of an initial application with the exception that the City Clerk may grant a renewal. Such certificate shall describe the graphic design, logo, insignia, wording, color scheme, or other identifying markings approved for placement on the holder's taxicabs. Such certificate shall be nontransferable.

- (a) *Application for certificate.* Application for a certificate of public convenience shall be made on a form furnished by and filed with the City Clerk. It shall be signed and verified by the individual who is applying for the certificate; or, if the applicant is a corporation, by each of its principal officers; and in all other cases, by each person other than a corporation having an ownership interest in the applicant and by each principal officer of any corporation having an ownership interest in the applicant. A completed application form shall contain:
- (1) The address of the applicant for purposes of any and all notices or other mailings required to be given under this Article;
 - (2) If the applicant is a corporation or if a corporation has an ownership interest in the applicant, the state of incorporation and whether the corporation is licensed to do business in the State of Maine;
 - (3) The name, residence and business addresses, residence and business telephone numbers, and date and place of birth of each person required to sign and verify the application form, and of each person having management authority in the business of the applicant;
 - (4) A record of conviction in any state or political subdivision for Operating Under the Influence (OUI), Driving to Endanger (DTE), speeding or any other moving violation within the

- previous ten years for each person identified in subsection (a)(3) above and (ii) a record of conviction of any criminal offense punishable by incarceration for any period of time, regardless of whether a sentence of incarceration was in fact imposed or served, or a statement that no such conviction exists, for each person identified in subsection (a)(3) above:
- (5) The identity of each municipality in which the applicant or any person identified in subsection (a)(3) above has operated or is operating a taxicab service, whether the right to operate in any such municipality at any time has been suspended or revoked, and a detailed explanation of the reasons for and the circumstances surrounding any such suspension or revocation;
 - (6) The number of taxicabs actually owned or leased by the applicant and by each person identified in subsection (a)(3) above, if any;
 - (7) The number of taxicabs actually operated by the applicant and by each person identified in subsection (a)(3) above, if any;
 - (8) The number of taxicabs for which authorization to operate under a certificate of public convenience is sought;
 - (9) The make, type, year of manufacture, vehicle identification number, license plate number and seating capacity (including the driver) of each taxicab for which authorization to operate under a certificate of public convenience is sought;
 - (10) A detailed description of the graphic design, logo, insignia, wording, color scheme, and other markings intended to identify the applicant's taxicabs and which will appear thereon;
 - (11) Authorization by each person identified in subsection (a)(3) above to all persons and governmental agencies having information relevant to subsections (a)(1) through (a)(10) above to release upon request of the City Clerk such information for use by the City Council in aid of its determination of whether to issue, suspend or revoke a certificate of public convenience; and
 - (12) Such other information as the applicant deems appropriate or as the City Council may reasonably require to protect the public health, safety and welfare, and to ensure the safe care, custody and transportation of passengers.

- (b) *Public hearing.* For initial applications, the City Council shall hold a public hearing at the next regular City Council meeting for which it is in order after completion of the required background check. The City Clerk shall cause written notice of the date, time and place of such public hearing to be given or mailed to the applicant at the address provided by the applicant pursuant to subsection (a)(1) above or subsection (d) below, and to be published at the applicant's expense in a newspaper of general circulation within the City of South Portland at least seven (7) days prior to such public hearing;
- (c) *Standards for approval of a certificate of public convenience.* A certificate of public convenience shall be granted, and the applicant shall be authorized to operate within the City the requested number of taxicabs, plus those taxicabs which may be added in accordance with subsection (d) below, unless the City Council, for an initial application, or the City Clerk, for a renewal, finds:
- (1) That the applicant is or is comprised in part by a corporation which is not authorized to do business in the State of Maine;
 - (2) That the proposed graphic design, logo, insignia, wording, color scheme, or other markings intended to identify the applicant's taxicabs are identical or confusingly similar to any graphic design, logo, insignia, wording, color scheme, or other such markings which appear on taxicabs already operating in the City or in a municipality adjacent to the City;
 - (3) That the applicant or any person identified in subsection (a)(3) above:
 - a. Knowingly made a material misstatement or omission on the application form;
 - b. Has had a certificate of public convenience revoked, or has otherwise displayed a consistent pattern of disregard for the requirements of this Article or similar requirements of any other municipality, within the three-year period preceding the date of application;
 - c. Has been convicted of a moving violation or a criminal offense, unless the City Council, for an initial application, or the City Clerk, for a renewal, finds that, despite such conviction, the applicant can be entrusted with the safe care, custody and transportation

of passengers, and the public health, safety and welfare are not thereby threatened;

- (4) That there exists any other substantial basis for a reasonable belief that the applicant cannot be entrusted with the safe care, custody and transportation of passengers, or that the public health, safety and welfare will be threatened by the granting of a certificate of public convenience to the applicant.

- (d) *Changes and additions to the application.* The holder of a certificate of public convenience shall promptly notify the City Clerk of any change in or addition to the information required by subsection (a) above to be supplied on the application form. Failure of the holder to promptly notify the City Clerk of any such change or addition may be cause for revocation or suspension of the certificate of public convenience in accordance with Section 14-65(a) of this Article.

Any such change or addition which is a material misstatement or omission knowingly made by the holder, or which demonstrates that the application contains a material misstatement or omission that was knowingly made by the applicant or by a person identified in subsection (a)(3) above, may be cause for revocation or suspension of the certificate of public convenience in accordance with Section 14-65(a) of this Article. Subject to the foregoing, any such change or addition which is de minimus in nature or scope, such as a change in the holder's address, shall not affect the validity of the certificate of public convenience. Provided further that any such change or addition which seeks authorization for a taxicab not identified in the application form shall not affect the validity of the certificate of public convenience, and any such taxicab shall be considered to be fully authorized for purposes of this section if all information required to be provided by subsections (a)(6) through (a)(9) above has been furnished and the holder is in compliance with all other provisions of this Article.

- (e) *Appeal of denial of certificate or of denial of additional taxicab authorization.* An applicant may appeal to the City Council within thirty (30) days the denial by the City Clerk of an application for a renewal of a certificate of public convenience or the denial by the City Clerk of authorization for additional taxicabs as provided in subsection (d) above, as provided by applicable law. An applicant may appeal to Superior Court the denial by the City Council of an application for a certificate of public convenience, or the denial of authorization for additional taxicabs as provided in subsection (d) above, as provided by applicable law, or the denial of an appeal from the City Clerk's denial of a renewal application. Any denial shall be in writing and shall include notification of the right to and procedure for appeal.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-59. Taxicab licenses required; taximeters; inspection of taxicabs; insurance; termination, expiration of licenses; appeal upon denial of application.

A taxicab license may be issued by the City Clerk for a taxicab which is authorized to operate in the City in accordance with the provisions of Section 14-58. No taxicab license may be issued unless each taxicab authorized to operate in the City by a holder is licensed in accordance with the provisions of this section. Such license shall be valid only for the certificate year (or portion thereof, as provided in subsection (e) below), unless earlier suspended or revoked under Section 14-65(b) of this Article, and must be renewed annually in the same manner and subject to the same terms and conditions as in the case of an initial application. Such taxicab license shall be nontransferable. The taxicab license must be placed in the licensed taxicab in a location easily visible and readable to the passenger(s).

- (a) *Application for taxicab license.* Application for a taxicab license shall be made on a form furnished by and filed with the City Clerk. A nonrefundable license as specified in the Schedule of License, Permit and Application Fees established by City Council order shall accompany each application. A completed application form shall contain:
- (1) The address of the applicant for purposes of any and all notices or other mailings required to be given under this Article;
 - (2) A written statement from the sealer that any taximeter required to be installed in the taxicab complies with subsection (b) below;
 - (3) A binder or other satisfactory evidence that the taxicab is insured in accordance with subsection (d) below.
- (b) *Taximeters.* Each taxicab other than a limousine shall be equipped with a taximeter tested, approved and sealed by the sealer as an accurate measure of the distance travelled by the taxicab and of the fare being charged. The taximeter shall:
- (1) Be adjusted to calculate no more than the maximum rates of fare set forth in Section 14-62;
 - (2) Display in clear and distinct figures by digital or dial counter the distance being travelled in length units identical to the length units used for computing the fare, the time being consumed in travel if the fare is based in whole or in part on time consumed in travel, the cumulative

fare being charged, and the type of fare being charged-- mileage and/or time;

- (3) Be permanently affixed to the interior portion of the taxicab such that the information required to be displayed is in plain view of the passenger while riding in the taxicab and is illuminated during the period between sunset and sunrise to enable the passenger to read the information displayed thereon.

The taximeter shall be sealed by the sealer whenever required by this Article. The sealer shall have the right to require reinspection of any taximeter which he has good cause to believe is not functioning properly or is not otherwise functioning in the manner herein prescribed.

- (c) *Inspection of taxicabs.* Before the issuance of a taxicab license, the Police Chief or his designee shall inspect to determine whether the taxicab:

- (1) Has a valid State of Maine motor vehicle registration;
- (2) Complies with the requirements of all laws, ordinances, rules and regulations relating to the examination, inspection and safe operation of motor vehicles registered in the State of Maine;
- (3) Has an official taxicab inspection sticker as a certificate of inspection affixed by the Police Chief or his designee in the lower left-hand corner of the windshield or in the center of the windshield in back of the rear view mirror;
- (4) Is in a clean and sanitary condition;
- (5) Meets the identifying lights and identifying design requirements of Section 14-61 of this Article;
- (6) Is, if applicable, equipped with a taximeter sealed by the sealer; and
- (7) Is in all other respects safe and suitable for taxicab service.

The Police Chief or his/her designee shall indicate in writing on the application form whether the vehicle has been found to be safe and suitable for taxicab service. The Police Chief or his/her designee shall have the right to require reinspection of any taxicab which he has good cause to believe no longer meets the standards set forth herein. If a taxicab fails any reinspection,

the Police Chief or his designee shall give the owner written notice of the deficiencies which must be corrected and a clear warning that failure to correct these deficiencies within ten (10) days of the date of mailing of the notice shall constitute good cause for suspending or revoking the taxicab license pursuant to Section 14-65. Nothing herein shall be construed to limit the authority of any law enforcement officer, including the Police Chief or his designee, to prevent by impoundment, or otherwise, continued operation of a motor vehicle determined by the officer to be unsafe to operate.

(d) *Insurance.* Each taxicab shall be insured for the period over which the taxicab license is to remain in force, insuring persons and property from liability for injuries and damages resulting from the use and operation of the taxicab. Such insurance policy or coverage shall be issued for a principal sum sufficient to provide indemnity for personal injury in the amount of not less than three hundred thousand dollars (\$300,000.00) for personal injuries arising out of a single accident, and for property damage in the amount of fifty thousand dollars (\$50,000.00). Written evidence of such coverage shall be filed with the City Clerk. The licensee shall maintain such insurance at all times during the term of the license, and the licensee shall provide the City Clerk with not less than thirty (30) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.

(e) *Termination and expiration of taxicab license.* The expiration, termination, suspension or revocation of a certificate of public convenience shall cause the immediate termination of any and all taxicab licenses authorized thereunder.

(f) *Appeal.* If an application for a taxicab license is denied because of failure to comply with the terms of this section, or if a taxicab fails a reinspection, the owner may appeal such action to the City Council within ten (10) days after notification thereof is mailed to the owner. An appeal from the decision of the City Council may be taken to the Superior Court as provided by applicable law.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 12-11/12, 5/7/12 [Fiscal Note: Less than \$1000])

Sec. 14-60. Taxicab driver's license required; license applications; issuance of license; appeal upon denial of application; badge and identification cards; term of license; filing of list of drivers.

It shall be unlawful for any person to operate a taxicab for hire in the City of South Portland without first having obtained a taxicab driver's license in accordance with the provisions of this section unless such person holds a valid license issued under a municipal ordinance whose provisions and requirements are substantially similar to the provision of this section. Such license shall be issued by the City Clerk upon satisfaction by the applicant of the requirements set forth in subsections (a) and (b) below. Such license shall be valid for a period of one year from the date of issuance (unless earlier suspended or revoked under Section 14-65(c) of this Article) and must be renewed annually in the same manner and subject to the same terms and conditions as an initial application. A taxicab driver's license shall be nontransferable.

- (a) *Application for license.* Application for a taxicab driver's license shall be made on a form furnished by and filed with the City Clerk. A nonrefundable license fee as specified in the Schedule of License, Permit and Application Fees established by City Council order shall accompany the application. A completed application form shall be signed and verified by the applicant and shall contain:
- (1) The address of the applicant for purposes of any and all notices and other mailings required to be given under this Article;
 - (2) A record of conviction of any criminal offense punishable by incarceration for any period of time, regardless of whether a sentence of incarceration was in fact imposed or served, or a statement that no such conviction exists;
 - (3) The identity of each municipality in which the applicant has operated a taxicab for hire, whether the right to operate in any such municipality has ever been suspended or revoked, and a detailed explanation of the reasons for and circumstances surrounding any such suspension or revocation;
 - (4) A record of conviction of any OUI, DTE, speeding or other moving violation within the previous ten years, the date of such conviction, the punishment imposed, and the location of the court in which such conviction was entered, or a statement that no such conviction exists;
 - (5) Authorization by the applicant to all persons and governmental agencies having information relevant to subsections (a)(1) through (a)(4) above to release upon request of the City Clerk such information which may aid his determination of whether to issue, suspend or revoke a taxicab driver's license; and

(6) Such other information as the applicant deems appropriate or as the City Clerk may reasonably require to protect the public health, safety and welfare, and to ensure the safe care, custody and transportation of passengers.

(b) *Evidence in support of application.* In addition to filing a completed application form, an applicant for a taxicab driver's license must satisfy each of the following requirements:

- (1) Present sufficient evidence that the applicant is at least eighteen (18) years of age;
- (2) Demonstrate that the applicant can fluently read, write and speak the English language;
- (3) Present a valid State of Maine driver's license;
- (4) Present at the time of the initial license application a valid letter from a physician licensed to practice medicine in the State of Maine indicating the applicant's fitness to safely operate a motor vehicle, and a supplemental letter every year thereafter stating the licensee's continuing fitness to safely operate a motor vehicle;
- (5) Submit two (2) recent photographs of himself measuring not more than one and one-half (1 1/2) inches by one and three-quarters (1 3/4) inches;
- (6) Demonstrate to the satisfaction of the Police Chief or his designee that the applicant is competent to operate a motor vehicle safely and in accordance with all applicable traffic laws and ordinances; provided, that conviction of a predicate offense to habitual offender status under the laws of Maine during the year immediately preceding the date of the application shall create a rebuttable presumption that the applicant does not satisfy the requirements of this paragraph;

(c) *Badge and identification card.* A taxicab driver's license shall be signed by the City Clerk. Upon the issuance of such a license, the City Clerk shall deliver to the licensee a badge bearing the words "City of South Portland Taxicab Driver's License", which badge shall be worn conspicuously by the licensee at all times while performing his/her job functions as a taxicab driver. The City Clerk shall also deliver to the licensee an identification card bearing a recent photograph of the licensee and the licensee's

name. The taxicab driver's license must be placed in the taxicab in a location easily visible and readable to the passenger(s).

- (d) *Current list of taxicab drivers.* Each owner shall on the first day of each certificate year file with the City Clerk a current list of all taxicab drivers in the owner's employ and of the license number assigned to each such driver. Each owner shall promptly notify the City Clerk of any additions or subtractions to such list during the certificate year.
- (e) *Appeal of denial of license.* If an application for a taxicab driver's license is denied because of failure to comply with the terms of this section, the unsuccessful applicant may appeal such denial to the City Council within ten (10) days after notification thereof is mailed to the applicant. An appeal from the decision of the City Council may be taken to the Superior Court as provided by applicable law.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 15-86/87, 1-21-87; Ord. No. 18-95/96, 1-17-96; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-61. Identification of taxicabs.

- (a) *Identification as taxicab.* Each taxicab other than a limousine shall be identified as such by the permanent placement on the exterior of one door on each side of the taxicab one of the following:
- (1) The name of the owner and word "taxicab" or "taxi" or "cab" as well as the existing mileage fares in letters at least two and one-half (2 1/2) inches high; or
 - (2) A graphic design, logo, or insignia at least eight (8) inches in diameter, and which contains the owner's name or trade name and the word "taxicab" or "taxi" or "cab."
- (b) *Lights.* In addition to the exterior lights required by law, each taxicab other than a limousine shall be equipped with an identity light attached to its roof. Such identity light shall be constructed in one unit not exceeding eight (8) inches in height and twenty-three (23) inches in length and shall consist of an illuminated plate or cylinder upon which is printed the word "taxicab" or the name of the owner. Such identity light shall be illuminated during the period between sunset and sunrise when the taxicab is available for hire.

- (c) *Identifying design.* Each taxicab shall bear such graphic design, logo, insignia, wording, color scheme, or other identifying markings as described in the certificate of public convenience under which the taxicab is authorized.
- (d) *Identification as limousine.* Each limousine shall be identified as such by the use of a State of Maine Department of Motor Vehicles license plate that identifies the vehicle as one for hire.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000])

Sec. 14-62. Fare schedule.

- (a) *Taxicabs other than limousines.* It shall be unlawful for any person, firm, association, partnership or corporation to charge fares for use of a taxicab other than a limousine in excess of the following:
- (1) *Fares based on distance:*
- One-ninth (1/9) mile or part thereof: \$1.90.
- Each additional one-ninth (1/9) mile or part thereof: \$0.25
- After five (5) minutes each seventy-two (72) second waiting period at passenger's request to stand and wait: \$0.30
- (2) *Hourly fares:*
- First hour or part thereof: \$10.00.
- Each additional one-quarter (1/4) hour or part thereof: \$2.50.
- (3) *All fares:*
- Hand luggage: No charge.
- More than one passenger, trip between the same two points: No extra charge.
- More than one passenger, different destinations: Each to pay proportionate share of charges shown on meter.
- (b) *Limousines.* There is no maximum fare schedule for hire of a limousine; provided, however, that the driver of a limousine shall, upon request, establish in advance a fixed fare for a fixed

itinerary, and in such event, the actual fare charged shall not exceed the fixed fare, unless the passengers so agree.

- (c) *Fare card.* A fare card shall be displayed in each taxicab other than a limousine as required by Section 14-64 of this Article. Such card must be placed in the taxicab in a location easily visible and readable to the passenger(s) and must show in readable form and format the maximum fare schedule prescribed in this section, and the notice provided by Section 14-66 of this Article.

(Ord. No. 1-86/87, 7-21-86, Ord. No. 5-92/93, 9-21-92; Ord. No. 6-01/02, 11/5/01 [Fiscal Note: Less than \$1000]; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-06/07, 11/20/06 [Fiscal Note: Less than \$1000]; Ord. No. 14-07/08, 4/23/08 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-63. Taxi stands and soliciting.

The City Council may by order assign to each and every licensed taxicab other than a limousine owner suitable taxi stand space on public streets and ways.

- (a) *Standing in other than designated areas prohibited.* No owner shall permit his licensed taxicab to stand in any public place, street, lane or square other than an assigned taxi stand.
- (b) *Passenger soliciting.* No driver of a taxicab shall solicit any passenger or passengers within fifty (50) feet of such assigned taxi stand except while parked or standing therein.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000])

Sec. 14-64. Display requirements.

Any applicable fare card, the taxicab license issued for that taxicab and that taxicab driver's license shall also be conspicuously displayed so that they can be read by passengers while riding therein. Each such taxicab license, taxicab driver's license and any applicable fare card shall be illuminated between the hours of sunset and sunrise so as to enable the passengers to read the information contained therein.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000])

Sec. 14-65. Suspension and revocation of certificates and licenses.

- (a) (a) *Suspension or revocation of certificate of public convenience.* The City Clerk may suspend any certificate of public convenience where there is an immediate risk to the public health, safety or welfare. Upon suspension of the certificate of public convenience by the City Clerk, a public hearing before the City Council shall be placed on the agenda for the next City Council meeting that is at least seven (7) calendar days from the date of the suspension. The City Council may, after notice to the holder and a public hearing, suspend or revoke a certificate of public convenience if it finds:
- (1) That the holder knowingly failed to disclose relevant and material information required to be submitted in support of its application, or knowingly failed to promptly advise of any material change or addition thereto after issuance of the certificate for public convenience; or
 - (2) That the holder knowingly made an incorrect statement of a material nature in support of its application or after issuance of the certificate for public convenience; or
 - (3) That the taximeter, or any part of a taxicab affecting the operation of the taximeter, has been adjusted to intentionally misrepresent the distance actually travelled by the taxicab or other information required to be measured by the taximeter, by or with the full knowledge of the owner; or
 - (4) That the holder has consistently failed to maintain standards in the operation of his taxicab service as required under Section 14-59 and other provisions of this Article; or
 - (5) That the taxicabs of the holder have consistently been operating in violation of Section 14-63 of this Article relating to taxistands and solicitation; or
 - (6) That the holder has consistently demonstrated a disregard in the operation of his/her taxicab service for the public health, safety and welfare, or for the safe care, custody and transportation of passengers.
- (b) *Suspension or revocation of taxicab license.* The City Clerk may suspend any taxicab license where there is an immediate risk to the public health, safety or welfare. Upon suspension of the taxicab license by the City Clerk, a public hearing before the City Council shall be placed on the agenda for the next City Council meeting that is at least seven (7) calendar days from the date of the suspension. The City Council may, after notice to the

owner and a public hearing, suspend or revoke a taxicab license if it finds:

- (1) That any applicable fare card, a taxicab license, or a taxicab driver's license has consistently not been on display as required by Section 14-64 or this Article; or
- (2) That the licensed taxicab fails to meet the standards required under Section 14-59 of this Article; and or
- (3) That the owner has displayed a disregard for the public health, safety and welfare, or for the safe care, custody and transportation of passengers.

(c) *Suspension or revocation of taxicab driver's license.* The City Clerk may suspend any taxicab driver's license where there is an immediate risk to the public health, safety or welfare. Upon suspension of the taxicab driver's license by the City Clerk, a public hearing before the City Council shall be placed on the agenda for the next City Council meeting that is at least seven (7) calendar days from the date of the suspension. The City Council may, after notice to the licensee and public hearing, suspend or revoke the license of a taxicab driver if the City Council finds:

- (1) That the licensee has been convicted of a moving violation while on or off duty; or
- (2) That the licensee has consistently failed to wear the badge issued to him, as required under Section 14-60 of this Article; or
- (3) That the licensee has consistently failed to display any applicable fare card, the taxicab license, or his taxicab driver's license, as required by Section 14-64 of this Article; or
- (4) That the licensee no longer complies with the standards contained in Section 14-60(a) of this Article; or
- (5) That the licensee in one or more instances knowingly took a longer route to the requested destination than was necessary, unless so requested by the passenger; or
- (6) Knowingly conveyed any passenger to a place other than that which the passenger specified; or

- (7) Transported any person other than the passenger first engaging the taxicab without the express consent of such first passenger.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-66. Privileges of passengers.

- (a) *Additional passengers.* No driver of a taxicab shall carry any person other than the passenger first engaging his/her taxicab, without the latter's consent.
- (b) *Refusal to provide taxicab service.* No orderly person, upon request, shall be refused or neglected transportation by a driver unless the taxicab is previously engaged or unable or forbidden by provisions of this Article to accept such passenger.
- (c) *Receipt upon demand.* The driver of any taxicab shall, upon demand by a passenger, render to such passenger a receipt for the amount paid. Such receipt shall bear the name of the owner, the name of the driver, the date of transaction and the amount paid.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-67. Applicability.

(a) Except as otherwise provided in this section, the provisions of this Article shall apply to taxicabs when their headquarters are located in the City and they provide any rides for hire within South Portland.

(b) The provisions of this Article shall not apply to a motor vehicle licensed by another municipality to operate as a taxicab or other motor vehicle for hire that is operated within South Portland in response to: (i) a call to convey a passenger from the City to such other municipality; or (ii) a request to convey a passenger from the City to such other municipality when such request is made at the point of delivery in the City of a passenger from such other municipality; or (iii) a request to convey a passenger from such other municipality to the City.

(c) Limousine operators that hold a current interstate operating authority from the Federal Motor Carrier Safety Administration and the limousines covered by such interstate operating authority are exempt

from this Article. Failure to have a written prior reservation record at the time of pick-up, drop-off or conveyance of a passenger creates a rebuttable presumption that the vehicle and operator are required to be licensed under this Article.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-09/10, 12/7/09 [Fiscal Note: Less than \$1000])

Sec. 14-68. Penalties.

Any person violating any provision of this Article shall be fined in an amount not to exceed five hundred dollars (\$500.00) per violation. Each separate section and each day of a violation shall constitute separate violations. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of Section 14-65.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-69. Severability.

The provisions of this Article are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-70. Effective date.

This article shall become effective January 21, 1987, at which time former Article III, Sections 14-56 through 14-70, in effect at the time of adoption of this Article, shall be repealed in their entirety.

Amendments to Section 14-56, Definitions, adopted as Ordinance #11-06/07 shall become effective 12:01 a.m. November 21, 2006.

(Ord. No. 1-86/87, 7-21-86; Ord. No. 15-86/87, 1-21-87; Ord. No. 11/06/07, 11/20/06 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-71--14-74. Reserved.

ARTICLE IV. AUTOMOBILE SERVICE STATIONS*

* State law reference(s)--Motor vehicle service stations generally, 22 M.R.S.A. § 2481 et seq.

Sec. 14-75. When surrender of license to mix or store flammable liquids required; licensee to certify when operation ceased.

Whenever any owner and/or operator of an automobile service station, having a license allowing the mixing or storage of flammable liquids, ceases to do business, such license shall promptly be surrendered to the City Clerk, and at the time of surrendering the license, the licensee shall certify when the automobile service station stopped operation.

(Code 1966, § 3-2-24.1; Ord. No. 8-69, 10-6-69)

Sec. 14-76. When license allowing mixing or storage of flammable liquids not to be issued unless approved by City Clerk; City Clerk to request certification.

- (a) Notwithstanding any other provision of this Code, including Chapter 27, whenever an automobile service station ceases to do business continuously for six (6) months, a license allowing the mixing or storage of flammable liquids on the premises of such station will not be issued without the prior approval of the City. An automobile service station shall be deemed to have ceased doing business continuously for a six-month period if in that continuous six-month period the station has not been opened for business to the general public for at least ninety (90) consecutive eight-hour business days, exclusive of weekends and legal holidays, during which time gasoline has been dispersed to the general public.
- (b) The City Clerk shall request certification from the Police Department, Fire Department and Building Inspector that the granting of such license will not adversely affect the health, safety or welfare of the citizens of South Portland.

(Code 1966, § 3-2-24.2; Ord. No. 8-69, 10-6-69; Ord. No. 16-74, 7-15-74; Ord. No. 9-75, 4-7-75; Ord. No. 8-79, 6-18-79; Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-77. Reserved.

Editor's note--Section 14-77, relative to the proximity of automobile service stations to schools, churches, theaters or other places of public assembly, was repealed by Ord. No. 1-80/81, adopted July 21, 1980. Said section was derived from Code 1966, § 3-2-24.7, and Ord. No. 16-69, enacted Nov. 17, 1969.

Sec. 14-78. Reserved.

Editor's note--Ord. No. 14-84/85, adopted Jan. 7, 1985, deleted § 14-78 pertaining to the proximity of service stations to each other, which derived from Code 1966, § 3-2-24.6, and Ord. No. 16-69, enacted Nov. 17, 1969.

Sec. 14-79. Duty to notify owner to remove tanks; notice procedure; contents of notice; City Manager's authority to remove tanks and assess costs.

- (a) Whenever an automobile service station has ceased to do business for six (6) months, the Building Inspector shall notify the owner of such service station to remove or fill with sand any tanks used or intended to be used for the storage of flammable liquids remaining on the premises; provided, however, that the owner shall not be required to remove any tanks which are less than ten (10) years old or are constructed of fiberglass and in either case can be made gas-free as determined by a field inspection by the Fire Department; provided, further, before any such tank may be reused, they must be reinspected by the Fire Department and pass a petrotight test or its equivalent.
- (b) Such notice shall be sent to the owner's last known address by certified mail, return receipt requested, and shall give such owner thirty (30) days from the date of the notice to remove any tanks used or intended to be used for the storage of flammable liquids remaining on the premises. The notice shall also warn the owner that if such tanks are not removed within the thirty-day period, the City Manager may order such tanks removed and assess the cost of removing such tanks against the owner of the real estate where the tanks are located.
- (c) In the event the tanks described above are not removed within the thirty-day period, then the City Manager may order such tanks to be removed, and shall assess costs for such removal against the owner of the real estate where the tanks are located.

(Code 1966, §§ 3-2-24.3--3-2-24.5; Ord. No. 8-69, 10-6-69; Ord. No. 14-84/85, 1-7-85; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-80. Regulation of petroleum product distribution.

Gasoline, oil and other petroleum products sold and delivered to any residence, business or other commercial or industrial establishment located within the City may be unloaded at such point of delivery only as follows:

- (1) From a delivery vehicle utilizing a metering device currently certified by the sealer of weights and measures for the State of Maine or his designate; or
- (2) From a delivery vehicle utilizing a float gauge or other such similar device sealed and currently certified by the sealer of weights and measures for the State of Maine or his designate; provided, the driver or operator of such delivery vehicle shall have in his possession the current calibration certificate for said float gauge issued by the sealer of weights and measures for the State of Maine or his designate; or
- (3) From a delivery vehicle utilizing a sealed discharge port or compartment and such seal is broken in the presence of the recipient; provided, this method may be used only if the recipient is to receive the full amount contained in such discharge port or compartment.

The provisions of this section shall not apply to any sale and delivery of less than one hundred (100) gallons.

(Ord. No. 18-80/81, 10-20-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-81--14-89. Reserved.

ARTICLE V. LODGING ESTABLISHMENT LICENSE

Sec. 14-90. State Rules adopted

The State of Maine Department of Human Services, Bureau of Health, Division of Health Engineering's Rules Relating to Lodging Establishments, CMR 206, January 1, 2003 (hereinafter "the Lodging Rules") are hereby adopted by reference as if fully set forth herein, except for the changes set forth in this Article.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-91. License required.

No person may operate a lodging establishment or place without first obtaining a license to do so from the City Council. A lodging establishment license shall only be granted upon a showing by the applicant of compliance with all requirements of this Article and all other relevant provisions of this Chapter. Licenses must be posted in a conspicuous place on the licensed premises.

(Code 1966, § 3-2-21.1; Ord. No. 21-68, 11-4-68; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-92. License fee.

The fee for a lodging establishment license shall be as specified in the Schedule of License, Permit and Application Fees established by City Council order.

(Code 1966, § 3-2-21.3; Ord. No. 21-68, 11-4-68; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-93. City Council as licensing board

The City Council shall act as the City's licensing board and shall have the authority to grant, deny, suspend or revoke any license in accordance with state law.

(Code 1966, § 3-2-21.4; Ord. No. 21-68, 11-4-68; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-94. City as delegated municipality for health inspections.

The State of Maine Department of Health and Human Services' "Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program," as may be amended from time to time, are adopted by reference as if fully set forth herein. The City desires to be a delegated community or municipality, authorized to perform health inspections consistent with the Rules.

(Code 1966, § 3-2-21.2; Ord. No. 21-68, 11-4-68; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 3-12/13, 10/1/12 [Fiscal Note: Less than \$1000])

Sec. 14-95. Repealed.

(Code 1966, § 3-2-21.2; Ord. No. 21-68, 11-4-68; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Secs. 14-96--14-99. Reserved.

ARTICLE VI. FOOD, FOOD HANDLERS AND FOOD SERVICE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 14-100. State Code adopted and administrative rules adopted.

The City hereby adopts the most recent version of the State of Maine Food Code as adopted by the Maine Department of Health and Human Services and the Maine Department of Agriculture, Food and Rural Resources and its associated Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program as if fully set forth herein, except for the changes set forth in this Article.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 3-12/13, 10/1/12 [Fiscal Note: Less than \$1000])

Sec. 14-101. Definitions.

Catering establishment: An establishment providing catered meals to eat on site for planned functions, but which does not provide meals to the general public on a walk-in basis.

Craft producer: A vendor associated with a farmers' market who manufactures or crafts non-farm and food products by the force of their own labor, who has control over the means and methods of production and who assumes the financial and liability risk for the production enterprise.

Farm and food products: Any agricultural, horticultural, forest or other product of the soil or water, including, but not limited to, fruits and fruit products, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, maple products, apple cider, fruit juice, malt liquor, wine, ornamental or vegetable plants, nursery products, fiber or fiber products, firewood and Christmas trees.

Farmers' market: A building, structure or place used by 2 or more farmers for the direct sale of farm and food products to consumers. A person may not sell farm and food products at a market labeled "farmers' market" unless at least 75% of the product offered

by that person was grown or processed by that person or under that person's direction. A product not grown or processed by that person must have been purchased directly from another farmer and the name and location of the farm must be identified on the product or on a sign in close proximity to the displayed product.

Food establishment. The definition of "food establishment" in the Food Code at Section 1-201.10(B) (32) (c) is hereby amended to read:

(c) "Food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous, provided that the sale revenues of the prepackaged foods do not exceed 3% of the annual gross income of the individual establishment;

Services vendor: A vendor associated with a farmers' market who provides a service intended for immediate consumption.

Vendor associated with a farmers' market: A craft producer and/or services vendor selling good or services at the same designated location and days and times as a farmers' market.

(Code 1966, § 2-7-2; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 2-05/06, 7/18/05 [Fiscal Note: Less than \$1000]; Ord. No. 11-12/13, 3/4/13 [Fiscal Note: Less than \$1000])

Charter reference(s)--Council authorized to create offices, § 203; authority for manager to make appointments, § 302.1.

Sec. 14-102. License required.

No person may operate a food establishment or place without first obtaining a license to do so from the City Clerk. A food service establishment license shall only be granted upon a showing by the applicant of compliance with all requirements of this Article and all other relevant provisions of this Chapter. Licenses must be posted in a conspicuous place on the licensed premises.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-103. License fees

Fees for licenses required by this Article shall be as specified in the Schedule of License, Permit and Application Fees established by City Council order.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-104. Mobile, temporary and non-permanent stationary vending units

Mobile, temporary and non-permanent stationary vending units, including push carts and mobile ice cream vendors, shall be licensed in accordance with the provisions of this Article except as set forth herein. Each such unit shall be licensed to sell and dispense only such items as are listed in the application and which the unit is properly equipped to dispense. In no event shall any license granted to any unit be valid to permit operation or sales within a five hundred foot (500') distance from any licensed food establishment within the City; provided, however, that this limitation shall not apply to mobile ice cream vending units.

Sales of farm or food products as part of a farmers' market in a location specified in Section 14-105(a) shall not be considered mobile, temporary or non-permanent stationary vending units and shall not be regulated by this section.

A license for a mobile, temporary and non-permanent stationary vending unit may only be granted if the vending unit complies with zoning regulations and has received site plan approval from the Planning Board as provided in Chapter 27, "Zoning," Article VXIII, Site Plan Review; provided, however, that site plan approval is not required for special events. Impacts to be considered include, but are not limited to: increase in traffic generation and circulation, parking area, utilization of City services, stormwater run-off, noise, odors or other annoying or dangerous emissions detectable at lot boundaries, or health concerns such as likelihood of attracting insects, vermin or other pests.

Notwithstanding other provisions of this section to the contrary, applicants for mobile, temporary or non-permanent stationary vending unit licenses may apply to the City Council for a waiver of the provisions of this section prohibiting operation within five hundred feet (500') of any other licensed food service establishment. The City Council shall hold a public hearing on any such request. Not less than ten (10) days before the public hearing, notice shall be sent to all licensed food service establishments within five hundred feet (500'). The City Council may grant, deny, or grant with conditions any such license based upon a showing of hardship by the applicant and based upon a showing that the granting of a variance would not be detrimental to the public health, safety or welfare, provided, however, that at least five (5) affirmative votes shall be required for a waiver.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 11-10/11, 5/16/11 [Fiscal Note: Less than \$1000]; Ord. No.11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

Sec. 14-105. Farmers' Markets and Associated Vendors.**(a) Farmers' Markets Generally.**

(i) No person may sell items at a farmers' market without either a farmers' market license or a vendor associated with a farmers' market license issued by the City Clerk's office. There must be at least two farmers holding valid farmers' market licenses present at a designated location and day/time of a farmers' market in order for any licensee to sell good or services at the farmers' market for that day/time.

(ii) A farmer, craft producer or services vendor seeking to participate in or be associated with a farmers' market shall pay an annual application processing fee as specified in the Schedule of License, Permit and Application Fees established by City Council order. In addition, for each farmers' market location that an applicant seeks to sell goods or services at, the applicant shall pay the applicable per market location fee as specified in the Schedule of License, Permit and Application Fees established by City Council order. All other licensing fees shall be waived.

(iii) Any vendor who seeks to apply for a vendor associated with a farmers' market license must first demonstrate to the City Clerk that the applicant has been approved by whomever is responsible for the general oversight of the designated location and day/time of the farmers' market, be it the property owner, market manager or otherwise.

(iv) To ensure that a farmers' market retains its essential character as such, the total number of licenses issued for vendors associated with a farmers' market shall not exceed 25% of the total number of farmers' market licenses issued, as calculated on a per farmers' market location basis each license year and in whole numbers. For purposes of calculating compliance with this subsection, the number of licenses issued for vendors associated with a farmers' market shall be rounded up to the nearest whole number.

(v) All farmers' markets must comply with all applicable requirements of Chapter 27 of the Code of Ordinances.

(vi) Mobile, temporary and non-permanent stationary food vending units, including push carts and mobile ice cream vendors, are prohibited from participating in duly approved farmers' market locations.

(vii) Any items sold at the farmers' market that are not the products of the farmer selling them must be so labeled.

(viii) In addition to the general provisions regarding suspension or revocation of a license, the City Clerk shall revoke the license of any person who fraudulently uses weights or measures, combines with any other licensee in the fixing or maintaining of a price, or who intentionally and knowingly deprives another licensee of the use of the latter's designated stall in the market. In addition, the City Clerk may suspend or revoke the license of any person who violates any other section of this Chapter.

(b) Farmers' Markets located on City Property.

(i) Farmers' markets may be permitted on City property at such times and locations as established by City Council order.

(ii) The City Clerk may assign to a particular farmer or to a farmers' market association duly organized and existing under the laws of Maine the administrative duty to assign stalls to participating farmers.

(iii) No license for the sale at a farmers' market of any items shall be issued by the City Clerk until the applicant has filed with the City Clerk a certificate, in a form satisfactory to the Corporation Counsel, evidencing general liability coverage in an amount not less than \$400,000 combined single limit for personal injury and property damage, or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.) as amended from time to time, whichever amount shall be greater, and naming the City as an additional insured. The licensee shall maintain such insurance at all times while engaged in sales at a farmers' market, and the licensee shall provide the City Clerk with not less than ten (10) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.

(Ord. No. 2-04/05, 7/18/05 [Fiscal Note: Less than \$1000]; Ord. No. 17-05/06, 4/19/06 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000] Ord. No. 11-10/11, 5/16/11 [Fiscal Note: Less than \$1000]; Ord. No. 6-11/12, 10/17/11 [Fiscal Note: Less than \$1000]; Ord. No. 12-11/12, 5/7/12 [Fiscal Note: Less than \$1000]; Ord. No. 11-12/13, 3/4/13 [Fiscal Note: Less than \$1000])

Sec. 14-106. Enforcement and penalties.

(a) Enforcement. The City's Health Officer or Health Inspector is authorized to enforce and shall enforce the provisions of this Article. The City Clerk is also authorized to enforce the provisions of this Article.

(b) Fines. Any person violating any provisions of this Article shall be fined in an amount not to exceed five hundred dollars (\$500) per violation. Each separate section and each day of a violation shall constitute separate violations. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions below.

(c) License suspension or revocation.

(1) The Health Officer or Health Inspector may immediately suspend any license granted under this Article for reasons of public health or safety.

(2) The Health Officer or Health Inspector may immediately suspend any license granted under this Article upon denial of access to inspect the establishment.

(3) The City Clerk may suspend any license granted under this Article for violation of any provision of this Chapter.

Upon suspension, the licensee shall immediately surrender the license to the Health Officer or Health Inspector. If suspended by the Health Officer or Health Inspector, the license shall remain suspended until reinspection shows compliance with this Article. If suspended by the City Clerk, the license shall remain suspended until the licensee shows compliance with this Chapter.

Where a licensee fails to comply with the requirements of this Article or this Chapter within ten (10) days from the date of suspension, a hearing shall be scheduled before the City Council for revocation of the license. Upon scheduling of a revocation hearing before the City Council, the license shall remain suspended until the completion of the hearing and decision by the City Council. The City Council may revoke the license on the following grounds:

1. The licensee has failed to bring the establishment into compliance with this Article or this Chapter within ten (10) days of the date the license was suspended;
2. The license has been suspended three (3) times or more within the previous 12-month period; or
3. The Council finds that the establishment poses a significant threat to public health or safety.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 2-05/06, 7/18/05 [Fiscal Note: Less than \$1000]; Ord. No. 11-12/13, 3/4/13 [Fiscal Note: Less than \$1000])

Sec. 14-107. City as delegated municipality for health inspections.

The State of Maine Department of Health and Human Services' "Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program," as may be amended from time to time, are adopted by reference as if fully set forth herein. The City desires to be a delegated community or municipality, authorized to perform health inspections consistent with the Rules.

(Ord. No. 3-12/13, 10/1/12 [Fiscal Note: Less than \$1000])

Secs. 14-108--14-149. Reserved.**Sec. 14-150. Repealed.**

(Code 1966, § 11-5-1; Ord. No. 18-72, 9-18-72; Ord. No. 15-93/94, 11-15-93; Ord. No. 21-93/94, 5-2-94; Ord. No. 1-95/96, 7-17-95 [Fiscal note: less than \$1000; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-151. Repealed.

(Code 1966, § 11-5-24, Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-152. Repealed.

(Code 1966, § 11-5-23; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04)

Sec. 14-153. Repealed.

(Code 1966, § 11-5-2.1; Ord. No. 18-72, 9-18-72; Ord. No. 15-93/94, 11-15-93; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-154. Repealed.

(Code 1966, § 11-5-2.3; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-155. Repealed

(Code 1966, §§ 11-5-2.4--11-5-2.6; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-156. Repealed.

(Code 1966, § 11-5-3; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-157. Repealed.

(Code 1966, § 11-5-2.2; Ord. No. 18-72, 9-8-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-158. Repealed.

(Code 1966, § 11-5-22; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-159. Repealed

(Code 1966, § 11-5-4; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-160. Repealed.

(Code 1966, § 11-5-5; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-161. Repealed.

(Code 1966, § 11-5-6; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-162. Repealed

(Code 1966, § 11-5-7; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-163. Repealed.

(Code 1966, § 11-5-8; Ord. No. 18-72, 9-18-7; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-164. Repealed.

(Code 1966, § 11-5-9; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-165. Repealed.

(Code 1966, § 11-5-10; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-166. Repealed.

(Code 1966, § 11-5-11; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-167. Repealed.

(Code 1966, § 11-5-12; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-168. Repealed.

(Code 1966, § 11-5-13; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-169. Repealed.

(Code 1966, § 11-5-14; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-170. Repealed.

(Code 1966, § 11-5-15; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-171. Repealed.

(Code 1966, §§ 11-5-16.1--11-5-16.2c; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-172. Repealed.

(Code 1966, § 11-5-16.3; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-173. Repealed.

(Code 1966, § 11-5-16.4; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-174. Repealed.

(Code 1966, §§ 11-5-17.1--11-5-17.9; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-175. Repealed.

(Code 1966, § 11-5-17.10; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-176. Repealed.

(Code 1966, § 11-5-17.11; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-177. Repealed.

(Code 1966, § 11-5-17.12; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-178. Repealed.

(Code 1966, § 11-5-17.13(a)--(h); Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-179. Repealed.

(Code 1966, § 11-5-17.13(i); Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-180. Repealed.

(Code 1966, § 11-5-18, Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-181. Repealed.

(Code 1966, § 11-5-19.1; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-182. Repealed.

(Code 1966, § 11-5-19.2; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-183. Repealed.

(Code 1966, § 11-5-19.3; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-184. Repealed.

(Code 1966, § 11-5-20.1; Ord. No. 18-72, 9-18-72; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-185. Repealed.

(Code 1966, § 11-5-21; Ord. No. 18-72, 9-18-72; Ord. No. 1-82/83, 7-19-82, Ord. No. 13-93/94, 10-18-93; Ord. No. 21-93/94, 5-2-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-186. Repealed.

(Ord. No. 14-77, 8-15-77; Ord. No. 4-78, 4-3-78; Ord. No. 1-82/83, 7-19-82; Ord. No. 3-83/84, 8-15-83; Ord. No. 21-93/94, 5-2-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-187. Repealed.

(Ord. No. 1477, 8-15-77; Ord. No. 21-93/94, 5-2-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-188. Repealed.

(Ord. No. 14-77, 8-15-77; Ord. No. 21-93/94, 5-2-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-189. Repealed.

(Ord. No. 21-93/94, 5-2-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-190. Repealed.

(Ord. No. 21-93/94, 5-2-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

ARTICLE VII. CATV FRANCHISING ORDINANCE

Sec. 14-200. Short title.

This article shall be known and may be cited as the "South Portland CATV Franchising Ordinance."

(Ord. No. 8-74, 5-20-74; Ord. No. 20-84/85, 5-20-85)

Sec. 14-201. Definitions.

For the purpose of this Article and any franchise granted hereunder, the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

Annual gross subscriber revenues shall mean all revenues received by the grantee, its affiliates, subsidiaries or lessees from and in connection with the provision of basic service to subscribers over the broadband telecommunications network in the City of South Portland, Maine. It shall include revenues from all sources including, without limitation, revenues from advertising, channel leasing, data transmission and per program charges, in addition to the subscribers' regular monthly payments for basic service.

CATV system shall mean any network of cables, optical, electrical or electronic equipment, including cable television, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the City.

City shall mean the City of South Portland, its municipal officers, officials, boards, commissions, agents and employees, unless otherwise specifically designated, the area within the territorial city limits of the City of South Portland and such territory presently outside of the city limits over which the City may assume jurisdiction or control by virtue of annexation.

Council shall mean the present governing body of the City of South Portland or any legally appointed or elected successor or agency constituting the governing body of the City.

Franchise payment shall include all charges imposed for a franchise whether the object be regulation, revenue or one-time reimbursement of costs incurred by the City in the award of a franchise.

Full network service shall mean all basic services and additional services to be offered by the grantee.

Grantee means all persons including, but not limited to, subsidiaries, parent or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this Article, and under the broadband telecommunications network franchise, collectively called the "franchise", and also includes all persons having or claiming any title to or interest in the network, whether by reason of the franchise itself directly or by interest in a subsidiary, parent or affiliate company, association or organization or by any subcontract, transfer, assignment, mortgage security agreement, management agreement or operating agreement, or whether otherwise arising or created.

May is permissive.

Physical mile of plant shall mean messenger strand as measured from pole to pole without taking into consideration sag or downguys, and for underground and buried plant, actual trench feet.

Service area shall mean that geographical area within the incorporated limits of the City.

Shall and *must*. Each is mandatory and not merely directory.

State shall mean the State of Maine.

Subscriber shall mean any person, firm, company, municipality, corporation or association receiving either basic service or additional service from the grantee under the schedule of charges filed with and/or approved by the City.

Substantially completed. Operation will be considered substantially completed when sufficient distribution facilities have been installed and activated so as to permit the offering of full network service to a least ninety (90) per cent of the dwelling units in the service area.

(Ord. No. 8-74, 5-20-74; Ord. No. 70-84/85, 5-20-85; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-202. The CATV system franchise.

- (a) *Franchise required.* No person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the City, or within any other public property of the City, or within any privately owned area within the corporate limits of the City, any equipment or facilities for the distribution of television signals, or radio signals or other intelligences either analog or digital over a broadband telecommunications network to any subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this Article, and unless such franchise is in full force and effect.
- (b) *Review of qualifications.* Specific permission to operate a CATV system under the provisions of this Article may be granted by the City Council to any grantee after a review of the grantee's legal, character, financial and technical qualifications and the adequacy and feasibility of the grantee's construction arrangements and has approved the grantee's qualifications as a part of a public proceeding affording due process.
- (c) *Duration of franchise.* Upon filing by the grantee of the proper acceptance, the bond and the required insurance, a franchise shall take effect as provided therein and shall continue in full force and effect for a maximum term of ten (10) years.

(Ord. No. 8-74, 5-20-74; Ord. No. 20-84/85, 5-20-85; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-203. Applications for a franchise.

Applications for a franchise shall be filed with the City in accordance with the filing instructions promulgated by the City and shall contain the following written information and provisions:

- (1) *Proposal bond and filing fee.* Provision of the proposal bond as required in Section 14-206(a) and payment of a nonrefundable filing fee to the City as specified in the Schedule of License, Permit and Application Fees established by City Council order, which sum shall be due and payable concurrently with the request for application information.
- (2) *Name and address of applicant.* The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).

- (3) *Description of proposed operation.* A general description of the applicant's proposed operation including but not limited to business hours; operating staff; maintenance procedures beyond those required in this Article; management and marketing staff complement and procedures; and, its proposed rules of operation for public access.
- (4) *Signal carriage.* A statement of all the television and radio services to be provided, including both off-the-air and locally originated signals.
- (5) *Special services.* A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the grantee for the public, municipal and educational channels required to be made available by the provisions of this Article and the Federal Communications Commission.
- (6) *Programming assistance.* A statement establishing any additional revenues beyond those required in Section 14-205 herein to be designated for the programming or programming assistance for the public, educational and government access channels.
- (7) *Schedule of charges.* A statement of the applicant's proposed schedule of charges as set forth by the provisions of Section 14-207 herein.
- (8) *Corporate organization.* A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- (9) *Stockholders.* A statement identifying the number of authorized and outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding ten (10) per cent or more of applicant's outstanding stock.
- (10) *Intracompany relationships.* A statement describing all intracompany relationships of the applicant, including parent, subsidiary or affiliated companies.
- (11) *Agreements and understandings.* A statement setting forth all agreement and understandings whether written or oral existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded and the conduct of the operation thereof existing at the time of proposal submittal.

- (12) *Financial statement.* If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "US Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years. If applicant is a sole proprietorship, copies of personal financial statements for the two (2) previous fiscal years.
- (13) *Financial projection.* An estimated ten (10) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. The proforma shall also state the average return on investment anticipated by the applicant for the ten (10) year operations period and shall state the method of computation thereof. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the proforma as required in this Article, but shall be separately identified in the proforma.
- (14) *Financial support.* A corporate board resolution or statement from a qualified officer of the applicant shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct and operate the CATV system proposed herein. The applicant shall identify any external financing sources anticipated and shall explain the nature and extent of participation by such external financing sources. If external financing shall be accomplished through lines of credit with a lending institution, the applicant shall identify the available, uncommitted balance of such line of credit.
- (15) *Technical description.* A technical description of the type of network proposed by the applicant including but not limited to network configuration (i.e. hub, dual cable), network capacity, two-way capability and the proposed dates of commencement of construction and operation of said network.
- (16) *Engineering statement.* A statement from a registered professional engineer advising that he has reviewed the technical description provided above and that the planned network and operation thereof meets all the technical standards set forth in Section 76.605 of the FCC's Third Report and Order, and any amendments thereto.
- (17) *Existing franchises.* A disclosure of existing franchises held by the applicant indicating when the franchises were issued and when the networks were constructed in each respected government unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.

- (18) *Convictions.* A statement as to whether the applicant or any of its officers or directors or holders of ten (10) per cent or more of its voting stock has in the past ten (10) years been convicted of any crime other than a routine traffic offense and the disposition of each such case.
- (19) *Operating experience.* A statement detailing the prior operational experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
- (20) *Franchise renewal information.* If an application is for renewal of a franchise, the proposal must include, in addition to the information required in subsections (1) through (19) above:
- (a) A summary of the technical, financial and programming history of the network since the granting of the original franchise.
 - (b) A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, programming or technical specifications during the renewal period.
- (21) *Additional requirements.* The application for franchise shall respond specifically, and in sequence, to subsections (1) through (19) of this section and shall be bound separately from any additional information proffered by the applicant. Fifteen (15) copies of the application shall be supplied to the City. Supplementary, additional or other information that the applicant deems reasonable for considerations may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The City may, at its discretion, consider such additional information as part of the application.
- (22) *Supplementation to applications.* The City reserves the right to require such supplementary, additional or other information that the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to applications shall be considered only if specifically requested by the City.
- (23) *Grandfather clause.* Applications submitted on March 17, 1972 and all amendments thereto, shall be deemed to be in conformity to this section.

(Ord. No. 8-74, 5-2074; Ord. No. 20-84/85, 5-20-85; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: less than \$1000]))

Sec. 14-204. Reports and records of the grantee.

- (a) *Annual financial reports required.* The grantee shall file annually with the City not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, two (2) copies of:
- (1) The report to its stockholders.
 - (2) An income statement identifying expenses and income applicable to its operations under said franchise during the fiscal year or fraction thereof.
 - (3) A listing of its properties devoted to network operations under the franchise together with an itemization of its investment in each of such properties. These reports along with other such reasonable information as the City may request, shall be certified by a certified public accountant.
- (b) *Annual facilities report required.* The grantee shall file annually with the City not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year. Such report shall also contain any revisions to the network "as built" maps filed with the City under the provisions of subsection (d) herein.
- (c) *Annual service record report required.* The grantee shall, if requested by the City, file annually with the City not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, a list of all trouble complaints and network "downtime" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purpose of this provision, a certified copy of a "complaint" logbook reflecting all such incidents will suffice. Also, if requested by the City, uncertified additions to the annual complaint log shall be supplied to the City at intervals to be established by the City.
- (d) *Network maps required.* The grantee shall file with the City not later than three (3) months after the network is substantially completed, a set of network "as built" maps, drawn to scale, showing all of the CATV system facilities installed in the City. Subscriber service drop facilities need not be shown.

- (e) *Certificate of performance.* The grantee shall file with the City not later than three (3) months after the network is substantially completed and within three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year two (2) copies of the following supplemental information:
- (1) If a nonprofit corporation, a list of all current bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold ten (10) per cent or more of the voting stock of the corporation.
 - (2) A current list of all grantee's officers and directors including addresses and telephone numbers.
 - (3) Copies of all pertinent agreements or contracts, including pole-use agreements, entered into by the grantee during the fiscal year in the conduct of its business under a franchise granted.
 - (4) The names and both business and residential addresses and phone numbers of the broadband telecommunications network resident manager and engineer.
 - (5) If the grantee is a subsidiary, a copy of the annual report of the parent firm.
- (f) *Public availability of reports.* Such reports as required under this Article must be available to the public in the office of the City Clerk, during normal business hours. Subscribers shall be notified of the availability of such reports by the inclusion of such notice in the subscriber agreement if used. Other methods of notification if required shall be approved by the broadband telecommunications regulatory board.
- (g) *Correspondence.* The grantee shall simultaneously file with the City a copy of each petition, application, report and communication transmitted by the grantee to, or received by the grantee from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate and pertaining to the operations of any broadband telecommunications network authorized hereafter.
- (h) *City's access to records.* The City shall have access during all normal business hours and upon the giving of reasonable notice, to the grantee's contracts, engineering plans, accounting, financial data and service records relating to the property and the operations of the grantee and to all other records required to be maintained according to said franchise. Records of subscriber lists and

statistical data shall be made available only upon showing to the grantee by the City that such records are material to the City's regulatory program.

- (i) *Subscriber agreement.* The form of grantee's agreements with its subscribers shall be subject to the approval of the City Council.

(Ord. No. 8-74, 5-20-74; Ord. No. 20-84/85, 5-20-85; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-205. Franchise payment.

- (a) *Filing fee.* Applicants for a franchise shall pay a nonrefundable filing fee to the City as specified in the Schedule of License, Permit and Application Fees established by City Council order, which shall be due and payable concurrently with the request for the proposal information.

- (b) *Reserved.*

- (c) *Annual franchise payment.* A grantee of a franchise shall pay to the City an annual fee in the amount established in the franchise. This payment shall be based upon the grantee's annual gross subscriber revenues, as defined herein, and shall be in addition to any other payment owed to the City by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

- (d) *Method of computation; interest:*

- (1) Sales taxes or other taxes levied directly on a per subscription basis and collected by the grantee shall be deducted from the local annual gross subscriber revenues before computation of sums due the City is made. Payments due the City under the provisions of subsection (c) above shall be computed annually for the preceding fiscal year and shall be paid simultaneously with the filing of annual reports required in Section 14-204 at the office of the City Clerk during its regular business hours. The first payment period shall commence as of the effective date of the franchise. The City shall be furnished a statement with each payment, by a certified public accountant, reflecting the total amounts of annual gross subscriber revenues, and the above charges, deductions and computations for the annual payment period covered by the payment.

- (2) In the event that any statement or payment is not furnished as required, interest on the amount due, as determined from the

annual gross subscriber revenues as computed by a certified public accountant, selected by the City, shall accrue from the date of the required submittal at an annual rate of interest equal to that charged by the City that year for delinquent municipal real estate taxes.

- (e) *Percentage amendments.* The percentages designated in this section may be amended no more than once each year by the City Council.
- (f) *Rights of recomputation.* No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Article or for the performance of any other obligation of the grantee.

(Ord. No. 8-74, 5-20-74; Ord. No. 20-84/85, 5-20-85; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-206. Bonds.

- (a) *Proposal bond.* Each applicant for a franchise shall submit a proposal bond in a form acceptable to the City or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the City in an amount as specified in the Schedule of License, Permit and Application Fees established by City Council order. The grantee's proposal bond shall be returned upon provision of the performance bond as required in subsection (b) below.
- (b) *Performance bond.* The grantee shall maintain, and by its acceptance of any franchise agrees that it will maintain, through the term of the franchise, any renewal or extension thereof, or during the restoration of property following franchise termination or revocation, a faithful performance bond running to the City, with a corporate surety licensed to do business in the State of Maine and approved by the City in the penal sum total as specified in the Schedule of License, Permit and Application Fees established by City Council order conditioned upon the faithful performance of the grantee and upon further condition that in the event the grantee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the City of South Portland, Maine by registered mail of one (1) copy of a written notice of such intent to cancel or not renew.

- (c) *Return of proposal bond.* Proposal bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the City shall be returned to the applicant as soon as the proposal is rejected.
- (d) *Bond evidence to be filed with City.* The performance bond and written evidence of payment of required premium, shall be filed and maintained with the City during the term of any franchise granted hereafter, or any renewal thereof.

(Ord. No. 8-74, 5-20-74; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-207. Reserved.

Editor's note--Ord. No. 20-84/85, adopted May 20, 1985, deleted § 14-207, pertaining to service rates and charges, derived from Ord. No. 8-74, enacted May 20, 1974.

Sec. 14-208. Complaint procedure.

- ((a) *Complaints.* Complaints, dispute and disagreements which are not resolved by the grantee to the subscriber's satisfaction, may be filed with the City Manager, provided such filing complies with the time limits prescribed below.
- (b) Any complaint, dispute or disagreement may be filed with the City Manager provided it falls within the time limits set forth below:
- (1) Within thirty (30) days after final action on the complaint, dispute or disagreement by the grantees; or
 - (2) Within thirty (30) days after notice of the complaint, dispute or disagreement has been given to the grantee and the grantee has not resolved on the complaint, dispute or disagreement.
- (c) *Investigation and report.* Within ten (10) days after receiving notice of such complaint, dispute or disagreement, the City Manager shall cause an investigation of the same to be made. After completion of the investigation, the City Manager shall issue a report either dismissing the complaint or directing the grantee to

take appropriate action to remedy the complaint, dispute or disagreement, and shall cause a copy of such report to be forwarded to each party.

The report of the City Manager shall be final unless either party appeals from it within ten (10) days as provided below.

- (d) *Appeal to regulatory board.* If either party is aggrieved by the decision of the City Manager, he may appeal to the regulatory board described in Section 14-209. The regulatory board will hold a hearing on the appeal from the decision of the City Manager within seven (7) days after receiving the appeal and its decision will be rendered within seven (7) days after the hearing.
- (e) *Notice to parties.* The board shall provide reasonable advance notice of the time and place of the hearing to the parties.

(Ord. No. 8-74, 5-20-74; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-209. CATV system regulatory board.

- (a) *CATV system board established.* There is hereby established a CATV system board hereinafter referred to as the "board."
- (b) *Regulatory board composition:*
- (1) The board shall be composed of three (3) members of the City Council, one of whom shall be elected chairman.
- (c) *Duties of the board.* The duties of the board shall be:
- (1) Reviewing appeals taken pursuant to Section 14-208 of this Article. Its decisions or findings shall be binding on all parties.
 - (2) Reviewing and auditing reports submitted to the City as required in Section 14-204 herein, and such other correspondence as may be submitted to the City concerning the operation of the broadband telecommunications network so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of the article.
 - (3) Work with the public and the media to assure that all records, rules and charges pertinent to the broadband telecommunications network in the City of South Portland are made available for inspection at reasonable hours upon reasonable notice.

- (4) Confer with the grantee and advise on the interconnection of the City's network with networks serving other governmental entities.
- (5) Solicit, review and provide recommendations to the City Council for selection of applicants for franchise.
- (6) Reserved.
- (7) Undertake such other duties as the City Council may assign from time to time.
- (8) Make recommendations to the grantee concerning educational and local interest programming.
- (9) Coordinate and advise the educational, governmental and public users of the CATV system access channels in their programming efforts.
- (10) Monitor the procedural aspects and operation of the public access channel.
- (11) Perform such duties and functions relative to coordination with boards of similar networks to assume the mutually satisfactory interchange of programs between networks.
- (12) If requested by the City Council, prepare and present an annual budget to the City Council for the administration and operation of the committee.
- (13) The board shall have the authority to conduct public hearings in the performance of its duties.

(Ord. No. 874, 5-20-74; Ord. No. 20-84/85, 5-20-85; Ord. No.18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-210. Reserved.

Editor's note--Ord. No. 5-80/81, enacted July 21, 1980, repealed § 14-210, relative to the broadband telecommunications network public and educational channels program advisory committee. Said section was derived from Ord. No. 11-75, adopted June 2, 1975.

Sec. 14-211. Compliance.

The grantee shall at all times comply with all applicable federal, State and City laws, ordinances and regulations.

(Ord. No. 8-74, 5-20-74; Ord. No. 11-75, 6-2-7; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-212. Separability.

If any section, subdivision, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction or by any federal regulatory agency, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 8-74, 5-20-74; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-213--14-249. Reserved.

ARTICLE VIII. BOTTLE CLUBS

Sec. 14-250. License required.

No person shall keep, maintain, operate, lease or otherwise furnish, either to its members and guests or to the general public, any premises, building, apartment or place for use as a bottle club, without first having obtained a license from the City of South Portland and paying the fee therefor as specified in the Schedule of License, Permit and Application Fees established by City Council order.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-251. Licensing authority.

Initial licenses shall be issued by the City Council, after notice and hearing on the licensee's application. Notice shall be given as provided in Section 14-258. The City Council shall grant a license only if it finds that the applicant is in strict compliance with the requirements of this Article and all other applicable ordinances of the City of South Portland. Renewals of licenses shall be issued by the City Clerk, who shall grant a license only after finding that the applicant is in strict compliance with the requirements of this Article and all other applicable ordinances of the City of South Portland, except where a material change has occurred since the previous license, in which instance the City Council shall renew the license.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-252. Definitions.

Unless otherwise defined herein or in the text, all words used will have their common meaning except for the following definitions:

- (a) *Bottle club*: "Bottle club" means any person operating on a regular basis a premises for social activities in which members or guests provide their own alcoholic beverages, and where no alcoholic beverages are sold on the premises. A bottle club maintains suitable quarters for the use of members on a regular basis or charges an admission fee to members or to the general public. A bottle club is not a public place, as defined in Title 17 M.R.S.A. § 2003.
- (b) *Person*. "Person" shall mean any individual, firm, corporation, association, partnership or organization.

(c) *Officer*. "Officer" shall mean any officer, director, stockholder, owner, manager or person who either has a financial interest of any nature in a bottle club or directs any policy of a bottle club.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-253. Fees.

Fees for a license for a bottle club as specified in the Schedule of License, Permit and Application Fees established by City Council order shall be paid annually.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 31-89/90, 6-18-90; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-254. Application and information.

Every applicant for a bottle club license shall:

- (a) Complete and file an application on a form prescribed by the City Clerk;
- (b) Deposit the prescribed license fee in advance with the City Clerk;
- (c) Submit the completed application to the City Clerk, together with proof of corporate or other business entity status and evidence of authority to conduct business in the State of Maine, as well as a list of all officers of the bottle club.

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

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-255. Qualifications of officers.

No officer of a bottle club shall have been convicted of a class A, B or C crime nor of violating any of the gambling, prostitution, drug or prohibitive liquor laws of either the United States or the State of Maine or any other state within the five (5) years immediately preceding the date of application. Failure to provide any release necessary to perform a background investigation to determine compliance with this section shall be grounds for denial of the application.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-256. Repealed.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-257. Investigation of applicant.

Upon receipt of each application for a bottle club license or notice of a change of officers:

- (a) The Building Inspector shall verify that the premises of the proposed bottle club complies with all applicable ordinances of the City of South Portland, including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Building Inspector does not approve the application, s/he shall state the reason(s) in writing on the application.
- (b) The City Clerk shall review the application and other documents and determine whether such documents indicate that the requirements of the article have been met.
- (c) The health inspector or his/her agent shall inspect the proposed location to (c) The Health Inspector or his/her designee shall inspect the proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied, and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Health Inspector does not approve the application, s/he shall state the reason(s) in writing on the application.
- (d) The Fire Chief or his/her designee shall inspect the proposed location to determine if all City ordinances concerning fire and safety have been satisfied and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Fire Chief does not approve the application, s/he shall state the reason(s) in writing on the application.
- (e) The Police Chief or his/her designee shall investigate the officers of the bottle club and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Police Chief does not approve the application, s/he shall state the reason(s) in writing on the application.

For initial applicants, all reports required under this section shall be filed with the City Clerk, who shall forward them to the City Council.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-258. Notice of hearing.

For an initial application, after receipt of the written reports required by Section 14-257, the City Clerk shall give notice of the public hearings on applications for bottle clubs in the form and manner and to the persons herein specified.

The notice shall include the time and place of such hearing, the nature of the matter to be heard, the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven (7) days in advance of the hearing date by regular United States mail.

Notices shall be given to each of the following, as specified:

- (a) To all residents of the City by publication in a newspaper of general circulation in the City at least once, not more than thirty (30) nor less than ten (10) days, before the date of the hearing.
- (b) To the owners of the property within five hundred (500) feet of such parcel or tract by mail.
- (c) For the purpose of this section, the owners of property, shall be considered to be the parties listed by the assessor's department of the City of South Portland as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the City Council.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-93/94, 2-7-94)

Sec. 14-258-A. Repealed.

(Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-259. License not to be transferable.

A separate license must be obtained for each branch or separate establishment of a bottle club. Each license shall authorize the operation of such an establishment only at the location described in such license and in conformity with all applicable ordinances and laws. No license shall be transferred to another person or to any other location, except that a licensed bottle club may change its name upon giving ten (10) days written notice in advance to the City Clerk.

(Ord. No. 27-79/80, 4-23-80)

Sec. 14-260. Display of license.

Every bottle club shall exhibit its license at all times in a conspicuous place on its premises.

(Ord. No. 27-79/80, 4-23-80)

Sec. 14-261. Expiration of license.

All licenses issued pursuant to this Article shall expire one year from the date of issuance.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-262. Proximity to schools and churches.

No new bottle club license shall be granted under this Article to premises situated within three hundred (300) feet of a public or private school, school dormitory, church, chapel or parish house, in existence as such at the time such new license is applied for, except such premises as were in use as bottle clubs on the effective date of this Article. The three hundred-foot distance shall be measured from the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-263. Minors not permitted on bottle club premises.

No person under the age of twenty-one (21) years shall be permitted in or on that part of the premises operating as a bottle club.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-264. Entertainment license.

No licensee shall permit on his licensed premises any music, except radio or other mechanical device, or any dancing or entertainment of any sort, unless the licensee shall have first obtained a special amusement permit, pursuant to the requirements of the applicable ordinance and state statute.

(Ord. No. 27-79/80, 4-23-80)

Sec. 14-265. Hours of bottle club.

The premises used as a bottle club shall be closed and vacated by members and guests each day from 1:00 a.m. to 6:00 a.m., except the former time shall be 2:00 a.m. on January 1st. During the hours that a bottle club must remain closed, no members, guests or other persons, other than regular employees, may be on or remain therein, and the use by anyone of the premises or facilities of the bottle club for the drinking of alcoholic beverages during such hours when a bottle club must remain closed is prohibited.

(Ord. No. 27-79/80, 4-23-80)

Sec. 14-266. Entrance to be marked.

The entrance to every club shall be plainly marked "Bottle Club, Members and Guests only."

(Ord. No. 27-79/80, 4-23-80)

Sec. 14-267. Repealed.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-268. Denial, suspension or revocation of license.

A license to operate a bottle club, as provided for by this Article, may be denied by the City Council or City Clerk for either 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. A license to operate a bottle club may be suspended by the City Clerk 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. Upon suspension of the license to operate a bottle club by the City Clerk, a public hearing before the City Council shall be placed on the agenda for the next City Council meeting that is at least seven (7) calendar days from the date of the suspension. The license shall remain suspended until the City Council hearing and decision. After a public hearing, the City Council may continue the suspension of the license or may revoke the license 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 shall be in writing and shall include notification of the right to and procedure for appeal.

If any license application is denied or license revoked, the applicant/licensee may not reapply for a period of three (3) months. This prohibition on reapplication shall also apply to the spouse, parent, child, or other close relation by blood or marriage or a corporation, association or business entity directly related to the prior applicant/licensee.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 24-85/86, 2-19-86; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-269. Appeals.

An appeal from license denial by the City Clerk may be taken to the City Council within thirty (30) days. An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 808 of the Maine Rules of Civil Procedure.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-270. 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 five hundred dollars (\$500.00) may be imposed. Each day that a violation continues will be treated as a separate offense.

(Ord. No. 27-79/80, 4-23-80; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-271--14-300. Reserved.

ARTICLE IX. REGULATION OF CONDOMINIUM CONVERSIONS*

* **Editor's note**--Ord. No. 25-80/81, enacted Dec. 15, 1980, amended this Code by adding Art. IX, §§ 14-301--14-307.

Sec. 14-301. Title.

This article shall be known as the "City of South Portland Regulation of Condominium Conversions Ordinance" and may be referred to by short title as the "Condominium Conversion Ordinance."

(Ord. No. 25-80/81, 12-15-80)

Sec. 14-302. Council findings and purpose.

The City Council finds that the rise in costs in the maintenance and upkeep of multiple occupancy dwellings has forced owners to seek alternatives to the rental form of ownership; at present there is a great interest in and a significant amount of conversions of multiple occupancy dwellings occupied by tenants to condominium units occupied by individual owners thereof; escalating property values whereby high profits can be reaped by the sale of the property also make more attractive the trend towards conversion of these buildings to condominiums.

Further, the City Council finds that the cost of purchasing the unit, in many cases, is far greater than paying the monthly rental fee for the unit and so it is often extremely difficult for the present tenant to get his or her finances in order quickly enough to determine whether purchasing the unit is economically feasible; the situation can lead to the displacement or eviction of present tenants, many of them elderly, who have lived in the rental units for years with the intention of making their units their permanent residences; when they settled into the rental units, in many cases, no representation was made to them that the form of building ownership might change, thus requiring a radically different financial outlay than originally anticipated; even the task of finding comparable rental housing elsewhere on short notice, and moving into it, has placed or will place a great burden on these tenants.

Therefore, a need exists for an ordinance to afford these tenants some relief from the situation, which is detrimental to their welfare, without unnecessarily infringing on the property rights of the owner of multiple occupancy dwellings.

(Ord. No. 25-80/81, 12-15-80)

Sec. 14-303. Definitions.

Unless otherwise defined herein or in the text, all words used will have their common meaning except for the following definitions:

- (1) *Condominium*: "Condominium" shall mean the type of real property ownership defined by 33 M.R.S.A. §§ 560 through 587, as it may be amended.
- (2) *Multiple occupancy dwelling*: "Multiple occupancy dwelling" shall mean any dwelling or part thereof containing three (3) or more dwelling units.
- (3) *Unfair conversion practice*: "Unfair conversion practice" shall mean any act in violation of Section 14-304 of this Article.
- (4) *Common areas and facilities*: "Common areas and facilities" shall be the same as defined in 33 M.R.S.A. § 561(3), as it may be amended.

(Ord. No. 25-80/81, 12-15-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-304. Unfair conversion practice.

- (1) It shall be unlawful for any owner, landlord, agent or other person operating or managing a multiple occupancy dwelling to convert said premises to a condominium, or to terminate a lease with a tenant or to make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with a tenant for the purpose of converting the said premises to a condominium, unless:
 - (a) The tenant has been notified in writing either hand delivered or sent by certified mail, return receipt requested, of the owner's intention to convert to a condominium by a date specified therein, which notice shall be delivered one year prior to the date of the scheduled conversion;
 - (b) The notice of intention to convert contains a statement informing the tenant then in possession of his or her exclusive right to purchase the unit at a specified price during the first four (4) months of the notice period. During the right-to-purchase period, the owner or his agent cannot show the unit to other prospective purchasers unless the tenant has in writing waived the right to purchase;
 - (c) The above statement contains a specific statement of the total amount of money due on or before settlement of the purchase contract, including any initial or special condominium fees

due, and including a full explanation of any special purchase price reductions to be offered to the present tenants;

- (d) The above statement indicates what recreational facilities, parking facilities, garage accommodations, and other common areas and facilities are to be included in the purchase price;
- (e) The above statement contains information on the actual expenditures made on all repairs, maintenance, operation and upkeep of the subject property, including all taxes and utility payments, within the last three (3) years, set forth tabularly with the proposed budget of the condominium cumulatively broken down on a per unit basis;
- (f) The above statement contains a description of any provisions made in the budget for reserves for capital expenditures, or, if no provision is made for reserves, a statement in capital letters to this effect which statement shall be conspicuously captioned to gain the reader's attention; and
- (g) The above statement contains a declaration by a professional engineer or architect, licensed in the State of Maine, as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and major repairs, and the expected useful life of each item, together with the estimated cost (in current dollars) of replacing each of the same. The above statements shall also contain an indication of all present violations of the Code of Ordinances of the City of South Portland and the date of the last code inspection by the City of South Portland.

Upon compliance with the provisions of this section the owner or developer shall record an affidavit in the Cumberland County Registry of Deeds identifying the property in question, the date of the scheduled conversion and indicating full compliance with the terms hereof.

- (2) A tenant in possession at the time of delivery of the notice referred to above may not be required to vacate the premises prior to the expiration of the one year's notice period except for:
 - (a) Nonpayment of rent; or
 - (b) Breach of a covenant in the existing lease; or
 - (c) The tenant's having committed a nuisance or waste upon the property or having caused the premises to be in violation of

the ordinances of the City of South Portland or the laws of the State of Maine.

- (3) Any tenant in possession at the time of delivery of the aforesaid notice, whose lease would ordinarily terminate during the one-year period, is entitled to have the tenancy extended on the same terms and conditions until the expiration of the one-year period from the date of said notice.
- (4) Any tenant in possession at the time of delivery of the notice may terminate his lease with ninety (90) days' notice without penalty for termination.
- (5) Tenants who take possession of a unit after the one year's notice provision is delivered pursuant to this section but before the date of actual conversion shall be notified in writing prior to the signing of the lease of the owner's intentions to convert to a condominium as of the specified date and given whatever information is requested by that tenant relative to the cost of purchasing that unit.
- (6) No provision of this section can be waived or made subject to a contract between the parties depriving a tenant of the benefits of this section.
- (7) It is the policy of the City of South Portland that provisions in any contracts, leases or other undertakings which allow owners or their agents at their option to cancel or terminate the terms of such contracts, leases or other undertakings upon any future possibility of conversion to a condominium, upon less than one year's notice as required by this section, shall be null and void as against public policy, except if the term of the lease shall be less than one year between the date of original occupancy in the multiple occupancy dwelling and the date of conversion.

(Ord. No. 25-80/81, 12-15-80)

Sec. 14-305. Effective date and application.

This article shall become effective pursuant to the Charter of the City of South Portland. Upon the effective date of this Article, all evictions for condominium conversions, whether pending or future, shall be governed by the provisions of this Article, and all notices required hereunder shall be given to tenants after the effective date hereof.

(Ord. No. 25-80/81, 12-15-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-306. Penalty.

Whoever willfully violates any provision of this Article or whoever knowingly makes any false statements or affidavits as required under this Article, as the same may be amended, shall be guilty of an unfair conversion practice and shall be punished by a fine of not more than one thousand dollars (\$1,000.00). In addition to said monetary penalty, either the City of South Portland or the tenants affected by such violation may seek equitable relief in a court of competent jurisdiction.

(Ord. No. 25-80/81, 12-15-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-307. Separability.

If any section, subdivision, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 25-80/81, 12-15-80; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-308--14-400. Reserved.

ARTICLE X. COIN OPERATED GAME MACHINES ORDINANCE*

* **Editor's note**--Ord. No. 16-81/82, enacted Jan. 4, 1982, repealed former Art. X, §§ 14-401--14-410, relative to arcades, derived from Ord. No. 39-80/81, adopted May 18, 1981, and enacted in lieu thereof a new Art. X, §§ 14-401--14-413, as herein set out.

Sec. 14-401. Title.

This article shall be known as the "City of South Portland Coin Operated Games Machine Regulatory Ordinance" and may be referred to by short title as the "Coin Operated Game Machine Ordinance."

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-402. Council findings and purposes.

The City Council finds that the location of coin operated games machines, as defined herein, can create problems for pedestrian and vehicular traffic; may create public safety problems with the congregation of minors; may result in late hours and noisy conditions to the detriment of surrounding residentially zoned properties, churches and schools; and subject minors and the neighborhood to secondary effects associated with gambling. Consequently, the City Council determines that the regulation of coin operated game machines as defined herein, by the issuance of annual licenses is necessary to promote the health, safety and general welfare of the citizens of South Portland.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-03/04, 2/18/04, [Fiscal Note: Less than \$1000])

Sec. 14-403. Definitions.

Coin operated game machines: Those machines normally denominated as such including, but not limited to, so-called pinball, video, coin operated or electronic games which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game or amusement, whether or not registering a score. This definition shall include those machines which would otherwise come within the meaning of this term except that they have been manufactured or modified to be operated by remote control. This definition does not include jukeboxes.

Person: Any individual, firm, corporation, association, partnership or organization.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-404. License required.

No person shall keep, maintain, operate, lease or otherwise establish a coin-operated machine or machines, as defined herein, in any premises, building, apartment, or place without having first obtained a nontransferable license from the City for each such machine and paying the applicable fee therefor as specified in the Schedule of License, Permit and Application Fees established by City Council order. The City Council shall grant the initial license(s) and the City Clerk shall grant the renewal license(s) only if it or he/she finds the applicant is in strict compliance with the requirements of this Article, the provisions contained in Sections 14-7 and 14-8, and all other requirements of law. A copy of the license shall be posted in a conspicuous manner near the pinball machines.

No initial license shall be issued until the matter has first been noticed for public hearing, and a public hearing thereon has been held by the City Council. No license shall be issued for any premises within two hundred fifty (250) feet of any school, church or any area zoned residential under the terms of the City's zoning ordinance; provided, however, that based upon a showing by the applicant that relaxation of the distance restriction contained in this section would not be detrimental to the public health, safety and general welfare and would not be inconsistent with the general purpose of this Article as stated in Section 14-402, the City Council may waive said restriction; provided, further, at least five (5) affirmative votes shall be required for such a waiver. The two hundred fifty (250) foot distance shall be measured from the main entrance of the licensed premises and from the main entrance of any church or school by the ordinary course of travel and from the edge of the residential zoning boundary line.

Notwithstanding any other provisions of this Article to the contrary, no public hearing shall be required nor shall notices be sent to neighboring property owners for license renewals by the City Clerk of establishments with the same or decreased number unless required by the City Council or requested by the applicant.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 1-83/84, 8-15-83; Ord. No. 17-90/91, 5-16-91; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

Sec. 14-405. Notice of hearing.

The City Clerk shall give public notice of the public hearing on initial coin-operated machine applications by publishing a notice in a newspaper of general circulation in the City indicating the time and place of the public hearing, the nature of the matter to be heard, and the address or location of the property on which the coin-operated machine(s) is to be located. Notices shall also be sent to the owners of all property located within five hundred (500) feet of said property. For the purpose of this section, the owners of property shall be considered to be the parties listed by the assessor's department of the City of South Portland as those against whom municipal real estate taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing nor invalidate any action of the City Council on such application.

Notwithstanding any other provisions of this Article to the contrary, no public hearing shall be required nor shall notices be sent to neighboring property owners for license renewals by the City Clerk of establishments with the same or decreased number unless required by the City Council or requested by the applicant.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 11-15/16, 6/20/16 [Fiscal Note: Less than \$1000])

Sec. 14-406. Application and information.

Every applicant for a pinball machine license shall:

- (a) Complete and file an application on a form prescribed by the City Clerk;
- (b) Deposit the prescribed license fee in advance with the City Clerk;
- (c) Submit the completed application to the City Clerk, together with proof of corporate or other business entity status and evidence of authority to conduct business in the State of Maine, as well as a list of all officers and directors; and
- (d) Pay the required processing fee and the costs of publishing and mailing notices as specified in the Schedule of License, Permit and Application Fees established by City Council order.

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

(Ord. No. 16-81/82, 1-4-82; Ord. No. 17-90/91, 5-16-91; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-407. Qualifications of officers.

No applicant nor any owner, officer, manager or partner of an applicant shall have been convicted of a crime now classified as a class A, B or C crime, a crime involving moral turpitude, nor of violating any of the gambling, drug or prohibitive liquor laws of either the United States or the State of Maine or any other state within the five (5) years immediately preceding the date of application. Failure to provide any release necessary to perform a background investigation to determine compliance with this section shall be grounds for denial of the application.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-408. Investigation of applicant.

- (a) Upon receipt of each application for a coin operated game machine license or notice of any change to the building in which the machine is located, the Building Inspector shall verify that the premises at which the coin operated game machine is to be located complies with all applicable ordinances of the City of South Portland including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Building Inspector does not approve the application, s/he shall state the reason(s) in writing on the application.

Cross reference(s)--Buildings, Ch. 5; electricity, Ch. 7; plumbing, Ch. 20; zoning, Ch.27.

- (b) Upon receipt of each application for a coin operated game machine license or notice of any change to the building, officers or business organization of the licensee, the City Clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this Article;
- (c) Upon receipt of each application for a coin operated game machine license or notice of any change to the building in which the machine is located, the Fire Chief or his/her designee shall inspect the proposed location to determine if all City ordinances concerning fire and safety have been satisfied and sign the application if the applicant complies with all applicable ordinance requirements. If

the Fire Chief does not approve the application, s/he shall state the reason(s) in writing on the application.

- (d) Upon receipt of each initial application for a coin operated game machine license or notice of any change to the building in which the machine is located, the Police Chief or his/her designee shall conduct a background investigation and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Police Chief does not approve the application, s/he shall state the reason(s) in writing on the application. After the initial background investigation, the Police Chief shall notify the City Clerk of any relevant changes or new information regarding the applicant.

For initial applications all reports required under this section shall be filed with the City Clerk who shall forward them to the City Council.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-409. Repealed.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000])

Sec. 14-410. Maximum number of machines.

There shall be no more than five (5) machines at a single business premises; provided, however, that based upon a showing by the applicant that an increase in the maximum number of pinball machines at a single business premises would not be detrimental to the public health, safety and general welfare and would not be inconsistent with the purposes of this Article as stated in Section 14-402, the City Council may increase the maximum number of pinball machines on a case by case basis; provided, further, at least five (5) affirmative votes shall be required for any such waiver.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-411. Denial, suspension or revocation of license.

A license to operate coin operated game machines may be denied by the City Council or City Clerk for either violation of, or failure to comply with, any of the provisions of this article or with the provisions of any other applicable ordinance of the City of South Portland or other law.

A license to operate coin operated game machines may be suspended by the City Clerk 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. Upon suspension of the license to operate a coin operated game machine by the City Clerk, a public hearing before the City Council shall be placed on the agenda for the next City Council meeting that is at least seven (7) calendar days from the date of the suspension. The license shall remain suspended until the City Council hearing and decision. After a public hearing, the City Council may continue the suspension of the license or may revoke the license 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, suspension or revocation shall be in writing and shall include notification of the right to and procedure for appeal.

If any license application is denied or license revoked, the applicant/licensee may not reapply for a period of three (3) months. This prohibition or reapplication shall also apply to the spouse, parent, child, or other close relation by blood or marriage or a corporation, association or business entity directly related to the prior applicant/licensee.

(Ord. No. 16-81/82, 14-82; Ord. No. 25-85/86, 2-19-86; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-412. Appeals.

An appeal from license denial by the City Clerk may be taken to the City Council within thirty (30) days. An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-413. Penalty.

In addition to any other enforcement action which the City Council may take, violation of any provision of this Article shall be a civil offense and a fine not exceeding five hundred dollars (\$500.00) may be

imposed. Each day that a violation continues shall be treated as a separate offense.

(Ord. No. 16-81/82, 1-4-82; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-414--14-500. Reserved.

ARTICLE XI. USED CAR LOT REGULATORY ORDINANCE**Sec. 14-501. Purpose.**

The City Council finds that used car lots within the City sometimes are littered with refuse or debris or used unlawfully as repositories of partially dismantled, inoperable, wrecked, junked, or discarded vehicles, thereby creating conditions which attract children and endanger their lives and health; increase vermin and noxious weeds; invite vandals; create fire hazards and other safety and health hazards; create, extend, and aggravate urban blight; interfere with the enjoyment of and reduce the value of surrounding private property; and interfere with the comfort and well-being of the public. The City Council also finds that frequently such used car lots are overburdened with many more motor vehicles, both being offered for sale and otherwise, so as to create or aggravate the aforementioned conditions.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 18-089/10,6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-502. License required.

No person shall own, operate, or otherwise maintain any land, premises, or building for use as a used car lot as defined herein without having first obtained a nontransferable license from the City of South Portland and paying the fee therefor as specified in the Schedule of License, Permit and Application Fees established by City Council order.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-503. Licensing authority.

Initial licenses shall be issued by the City Council, after notice and public hearing on the licensee's application. The City Council shall grant and the City Clerk shall renew a license only if it or he/she finds that the proposed use and premises conform with all requirements of the building code, health and fire prevention laws, zoning ordinance, and all other applicable state or municipal laws and ordinances, as well as the provisions of this Article. Further, in reviewing a used car lot license application the City Council in the case of an initial application or the City Clerk in the case of a renewal, shall determine the total number of motor vehicles to be located on the lot at any one time, including those offered for sale

and otherwise, which can be safely accommodated on the lot without creating a fire hazard or other public safety or health hazard and will not create or extend urban blight or interfere with the enjoyment of surrounding properties as identified in Section 14-501. Any initial license granted by the City Council or renewal granted by the City Clerk shall specifically state the maximum number of used motor vehicles for sale which may be located on the lot at any one time and the maximum number of motor vehicles that may be located on the lot at any one time whether offered for sale or otherwise. In determining the maximum number of used motor vehicles for sale that may be located on the lot at any one time and the maximum number of motor vehicles which may be located on the lot at any one time, whether offered for sale or otherwise, the City Council may consider the impact of non-motor vehicles, including but not limited to trailers or other accessories customarily associated with motor vehicles, which are located on the lot.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 18-90/91, 5-20-91; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-504. Definitions.

Unless otherwise defined herein, all words will have their common meaning except for the following definitions:

- (a) *Motor vehicle or car* shall mean an automobile, truck, motorcycle, or other trackless, self-propelled vehicle designed primarily to transport persons or property over public streets and highways.
- (b) *Officer* shall mean any officer, director, stockholder, owner, manager or person who either has a financial interest of any nature in a used car lot sales facility or is otherwise in control thereof.
- (c) *Person* shall mean any individual, firm, corporation, association, partnership or organization.
- (d) *Used car lot* shall mean any premises upon which two (2) or more unlicensed and previously owned and operated motor vehicles are offered for sale.

(Ord. No. 24-83/84, 5-21-84)

Sec. 14-505. Fees.

Fees for an annual license for a used car lot as specified in the Schedule of License, Permit and Application Fees established by City Council order shall be paid annually.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 31-89/90, 6-18-90; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-506. Application and information.

Every applicant for a used car lot license shall:

- (a) Complete and file an application on the form prescribed by the City Clerk;
- (b) Deposit the prescribed license fee in advance with the City Clerk;
- (c) Submit the completed application to the City Clerk, together with proof of corporate or other business entity status and evidence of authority to conduct business in the State of Maine, as well as a list of all officers of the applicant; and
- (d) Pay the required processing fee and the costs of published and mailed notices.

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

(Ord. No. 24-83/84, 5-21-84; Ord. No. 18-90/91, 5-20-91; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000])

Sec. 14-507. Description of premises.

Every applicant for a used car lot license shall include in the application a drawing or plan of the premises in question showing the location and length of the boundaries of the premises, any buildings or structures located or to be located thereon, and a complete layout plan. The drawing or plan must be sufficient to demonstrate that the lot as improved is large enough to accommodate the maximum number of used motor vehicles the applicant seeks permission to sell as well as the maximum number of cars for employees, repairs, customers and otherwise which the applicant will need to accommodate on the lot. The drawing or plan of the premises must also include other information such as fencing and exterior lighting sufficient to enable the City Council to determine compliance with the licensing standards contained in Section 14-503. The applicant is responsible for submission of a

drawing or plan sufficient to show compliance with this Article. Submission of a drawing or plan that is not sufficient to determine compliance with this Article is grounds for denial of the license. Material misrepresentations or omissions on the drawing or plan is grounds for denial, suspension or revocation of the license.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than\$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-508. Investigation of applicant.

Upon receipt of each application for a used car lot license:

- (a) The Police Chief or his/her designee shall sign the application. If the Police Chief does not approve the application, s/he shall state the reason(s) in writing on the application. After the initial background investigation, the Police Chief shall notify the City Clerk of any relevant changes or new information regarding the applicant.
- (b) The City Clerk shall review the application and other documents and determine whether such documents comply with all the requirements of this Article;
- (c) The Fire Chief or his/her designee shall inspect the proposed location to determine if all City ordinances concerning fire and safety have been satisfied, and shall sign the application if the applicant complies with all applicable ordinance requirements. If the Fire Chief does not approve the application, s/he shall state the reason(s) in writing on the application.

For initial applications, all reports required under this section shall be filed with the City Clerk who shall in turn forward them to the City Council.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: less than \$1000]; Ord. No. 18-09/10,6/21/10 [Fiscal Note: Less than \$1000])

Cross reference(s)--Adoption of building code, electrical code, fire prevention code, plumbing code, §§ 5-2, 7-55, 8-31, 20-1; zoning, Ch. 27.

Sec. 14-509. Denial, suspension or revocation of license.

A license to operate a used car lot may be denied by the City Council or the City Clerk for either violation of, or failure to comply with, any of the provisions of this Article or with the provisions of any other applicable ordinance of the City of South Portland or law.

A license to operate a used car lot may be suspended by the City Clerk 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. Upon suspension of the license to operate a used car lot by the City Clerk, a public hearing before the City Council shall be placed on the agenda for the next City Council meeting that is at least seven (7) calendar days from the date of the suspension. The license shall remain suspended until the City Council hearing and decision. After a public hearing, the City Council may continue the suspension of the license or may revoke the license 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, suspension or revocation shall be in writing and shall include notification of the right to and procedure for appeal.

If any license application is denied or license revoked, the applicant/licensee may not reapply for a period of three (3) months. This prohibition on reapplication shall also apply to the spouse, parent, child, or other close relation by blood or marriage or a corporation, association or business entity directly related to the prior applicant/licensee.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 26-85/86, 2-19-86; Ord. No. 18-90/91, 5-20-91; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-510. Appeals.

An appeal from license denial by the City Clerk may be taken to the City Council within thirty (30) days. An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-511. Penalty.

In addition to any other enforcement action which the City may take, violation of any provision of this Article shall be a civil offense and a fine not exceeding five hundred dollars (\$500.00) may be imposed.

Each day that a violation continues shall be treated as a separate offense.

(Ord. No. 24-83/84, 5-21-84; Ord. No. 16-93/94, 2-7-94; Ord. No. 16-03/04, 2/18/04 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Secs. 14-512--14-600. Reserved.

ARTICLE XII. MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

DIVISION 1. GENERALLY

Sec. 14-601. Title.

This article shall be known as the "City of South Portland Massage Establishment and Massage Therapist Regulatory Ordinance" and may be referred to by short title as the "massage ordinance."

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-602. Purpose.

The City of South Portland recognizes that the practice of legitimate massage therapy by trained and experienced therapists is a valuable component of our health care system. The City of South Portland also recognizes that persons without legitimate massage training or experience may masquerade as massage therapists as a facade for the exchange of sexual intercourse, sexual contacts or sexual acts for money. It is the purpose of this ordinance to clearly distinguish between these persons and to promote the public health, safety and general welfare by simultaneously acknowledging and permitting legitimate massage therapy and prohibiting the commission of sexual intercourse, sexual contacts or sexual acts for money.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-603. Definitions.

For purposes of this Article, the following definitions shall apply unless the context clearly implies otherwise:

Client means any person who receives a therapeutic massage.

Massage or *therapeutic massage* are used interchangeably to mean any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body with the hands or other parts of the body or with the aid of any instrument or device.

Massage establishment or *therapeutic massage establishment* are used interchangeably to mean any business including but not limited to a

sole proprietorship in which the business operations consist of providing or making available massage in the city for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within city limits.

Massage therapist means any person who performs therapeutic massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

Minor shall mean any person under the age of eighteen (18) years of age.

Person means an individual, partnership, corporation or other entity.

Recognized school means any school or institution of learning approved or accredited by the American Massage Therapy Association/Commission on Massage Training Accreditation/Approved (AMTA/COMTAA), Associated Bodywork & Massage Professionals/International Massage & Somatic Therapies Accreditation Council (ABMP/IMSTAC), or a school or institution requiring training equivalent to or surpassing an AMTA/COMTAA-approved or ABMP/IMSTAC-approved school, which offers a course of training in the theory, method, profession and work of massage therapy consisting of five hundred (500) hours or more, the completion of which renders a student eligible for membership in the AMTA or ABMP. Schools which cannot be verified shall not be deemed a recognized school. The burden of proving that a school meets or surpasses the educational and training requirements of an AMTA/COMTAA-approved or ABMP/IMSTAC-approved school shall be on the applicant.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92; Ord. No.9-96/97, 10-7-96; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-604. Exemptions.

The following persons shall be exempt from this Article while practicing in accordance with the laws of this state: Physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, members of the AMTA, members of ABMP, barbers, cosmetologists, beauticians and other health and hygiene professionals. Students enrolled in a recognized school who are required to give massages as part of their training shall be exempt from this Article.

v
(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92; Ord. No.9-96/97, 10-7-96; Ord. No. 18-09/10,6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-605. General provisions to apply.

Except to the extent that this Article contains a contrary provision, all provisions of Chapter 14 shall apply to this Article.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

DIVISION 2. LICENSES**Sec. 14-606. Required.**

- (a) *Therapeutic massage establishment license.* No person shall operate a therapeutic massage establishment without a valid therapeutic massage establishment license issued by the City. A separate license shall be required for each such establishment.
- (b) *Massage therapist license.* No person shall work as a massage therapist without a valid massage therapist license or a combined massage establishment/therapist license issued by the City.
- (c) *Combined massage establishment/massage therapist license.* A sole practitioner who employs no massage therapist other than himself may apply for a combined massage establishment/massage therapist license in lieu of both a therapeutic massage establishment license and a massage therapist license.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-607. Compliance of existing therapists and massage establishments.

- (a) Any person presently operating as a massage therapist and/or operating a massage establishment in the City as defined herein on the effective date of this Article shall comply with the terms of this Article by obtaining a license hereunder within three (3) months of the effective date of this Article.
- (b) Any license issued pursuant to this Chapter between the effective date hereof and September 3, 1991 shall be valid until September 30, 1992. For any license issued pursuant to this Chapter after September 30, 1991, the expiration date in Section 14-3 shall apply.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-608. Reserved.

Editor's note: Ord. No. 12-91/92, passed 4-6-92, eliminated the requirements of public notice of applications and public hearing on applications before the City Council prior to license issuance.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-609. Application and information.

Each applicant for a license shall:

- (1) Complete and file an application on a form prescribed by the City Clerk;
- (2) Deposit the license fee as specified in the Schedule of License, Permit and Application Fees established by City Council order in advance with the City Clerk;
- (3) Submit the completed application to the City Clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;
- (4) File an affidavit which will identify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for the immediately preceding three (3) years;
- (5) For a combined massage establishment/massage therapist license or a massage therapist license, submit two (2) front face photographs of the applicant taken within thirty (30) days of application, of such size as the City Clerk may specify;
- (6) File the release authorized by 16 M.R.S.A. § 620(6) (Criminal History Record Information Act) with the application for each applicant and for each officer, owner, manager or partner of an applicant seeking a therapeutic massage establishment or combined massage establishment/massage therapist license; and
- (7) Pay the required processing fee as specified in the Schedule of License, Permit and Application Fees established by City Council order.

If an application is denied or withdrawn, the license fee shall be refunded to the applicant. The processing fee shall not be refunded.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-610. Qualifications of applicant, officers.

No applicant nor, for a massage establishment or combined massage establishment/massage therapist license, any owner, officer, manager or partner of an applicant shall have been convicted of a crime now classified as a Class A, B or C crime, a crime involving moral turpitude, nor of violating any of the gambling, drug or prohibitive liquor laws of either the United States or the State of Maine or any other state within the five (5) years immediately preceding the date of application.

(Ord. No. 21-90/91, 5-20-91)

Sec. 14-611. Investigation of applicant, officers.

Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:

- (1) The Building Inspector shall verify that the premises at which the establishment will be located comply with all applicable ordinances of the City including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall report findings in writing to the City Clerk;
- (2) The City Clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this Article;
- (3) The health officer shall inspect the location or proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report findings in writing to the City Clerk;
- (4) The Fire Chief or his/her designee shall inspect the location or proposed location to determine if all City ordinances concerning fire and safety have been satisfied and shall report findings in writing to the City Clerk; and
- (5) The Police Chief or his/her designee shall investigate the application, including the criminal history record information

required under Section 14-610, and shall report findings in writing to the City Clerk.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-612. Basic proficiency.

Each applicant for a massage therapist license or combined massage establishment/therapist license shall show proof of basic proficiency in the field of massage therapy which may be satisfied by:

- (1) Evidence of the satisfactory completion of all formal course work and training in massage therapy required for graduation from a recognized school, which shall be in the form of a diploma or certificate of graduation or equivalent documentation; or
- (2) A written statement from a physician, nurse, osteopath, chiropractor, physical therapist, or member of the AMTA or ABMP stating that that person refers clients to the applicant for therapeutic massage.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92; Ord.No.9-96/97, 10-7-96)

Sec. 14-613. Obtaining license by fraud.

No person shall make any false, untruthful or fraudulent statement, either written or oral, or in any way conceal any material fact, or give or use any fictitious name in order to secure or aid in securing a license required by this Chapter. All names, including but not limited to maiden name, ever used by the applicant must be noted on the application.

Any license so secured shall be void.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-614. Use of license.

No person shall make use of, in any manner, to his own or another's benefit, any license which has not been duly issued to him in accordance with this Chapter.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-615. Standards for denial.

A license under this division shall be denied to the following persons:

(1) *Therapeutic massage establishment license:*

- a. To a corporation not registered to do business in this state; or
- b. To a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction within the immediately preceding five (5) years; or
- c. To an applicant, other than a corporation, if such applicant or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction, within the immediately preceding five (5) years.

(2) *Massage therapist license, or combined massage establishment/massage therapist license:*

- a. To an applicant who has been given a disqualifying criminal conviction at any time during the five (5) years immediately preceding application; or
- b. To an applicant who is not at least eighteen (18) years of age.

(3) *All licenses:*

- a. To an applicant who has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the City Council or reasonably necessary to determine whether the license is issuable; or
- b. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has been denied a license for knowingly making an incorrect statement of a material nature within the immediately preceding five (5) years; or
- c. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has had a license granted pursuant to this ordinance revoked for any reason within the immediately preceding five (5) years.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-616. Grounds for suspension or revocation.

- (a) *All licenses.* In addition to the grounds for denial set forth in Section 14-613, any license may be suspended or revoked upon a determination that the licensee:
- (1) Failed to notify the City Clerk of any change in material fact set forth in the application for such license; or
 - (2) Violated any provision of this Article.
- (b) *Therapeutic massage establishment or combined establishment/therapist license.* In addition to the provisions of subsection (a) hereof, either a massage establishment license or combined establishment/therapist license may be suspended or revoked upon a determination that the licensee:
- (1) Permitted any person to perform therapeutic massage without a valid license to do so;
 - (2) Permitted or allowed an employee, massage therapist or conditional massage therapist, to violate any provision of this Chapter on the premises of the establishment or in the course of conduct of the business of the establishment; or
 - (3) Knowingly permitted any violation of Title 17-A M.R.S.A. §§ 851 through 855. Such knowledge shall be presumed if there has been a conviction for any such offense within the immediately preceding five (5) years. The applicant or licensee may rebut said presumption by showing that: (i) Due diligence was exercised to prevent the recurrence of any such offense; and (ii) despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92; Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

DIVISION 3. OPERATING REQUIREMENTS**Sec. 14-617. Licenses displayed.**

A valid therapeutic massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued. A valid massage therapist

license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-618. Age restrictions.

No massage or therapeutic massage shall be practiced on a minor without the written consent of a parent guardian.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-619. Massage tables.

All therapeutic massage shall be administered on a massage table, treatment table or treatment mat, or treatment chair.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-620. Maintenance and cleaning.

Every person who conducts or operates a therapeutic massage establishment shall keep the same at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind, or parts thereof, that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

(Ord. No. 21-90/91, 5-20-91)

Sec. 14-621. Prohibited activities.

- (a) No massage therapist shall administer, offer to administer or agree to administer a massage to a client whose genitals are exposed.
- (b) No massage therapist shall administer, offer to administer or agree to administer a massage to the genitals or anus of a client.
- (c) No massage therapist shall administer, offer to administer or agree to administer a massage unless he or she is fully clothed with nontransparent clothing of the type customarily worn by massage therapists while administering a massage.
- (d) No client shall expose or touch his or her genitals while receiving a massage.
- (e) No client shall permit a massage to be administered to his or her genitals or anus.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92, Ord No. 5-97/98, 9/15/97 [Fiscal note: less than \$1000])

Sec. 14-622. Closing hours.

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 7:00 a.m.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92)

Sec. 14-623. Supervision.

At all times when open for business, a therapeutic massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and assure that no violations of this Article occur.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-624. List of employees.

The therapeutic massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the Police Chief or his authorized deputy and the City Clerk or his representative, upon request.

(Ord. No. 21-90/91, 5-20-91; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

DIVISION 4. PENALTIES AND APPEALS

Sec. 14-625. Violations; penalties.

The violation of any provision of this Article shall be punished by a fine not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the City may enjoin or abate any violation of this Article by appropriate action, including but not limited to revocation of the license.

(Ord. No. 21-90/91, 5-20-91, Ord. No. 12-91/92, 4-6-92, Ord No. 5-97/98, 9/15/97 [Fiscal note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-626. Appeals.

An appeal from any final decision of the City Clerk may be taken to the City Council within thirty (30) days. An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 808 of the Maine Rules of Civil Procedure. Any denial, suspension or revocation shall be in writing and shall include notification of the right to and procedure for appeal.

(Ord. No. 16-93/94, 2-7-94; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

ARTICLE XIII ADULT USE ESTABLISHMENT LICENSE**Sec. 14-700. Purpose**

The purpose of the Adult Use Establishment License Ordinance is to regulate uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas or when they are in proximity to residences, schools, houses of worship or public parks or recreational areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area or in proximity to residences, schools, houses of worship or public parks or private recreational areas.

Sec. 14-701. Definitions.

(a) "Adult amusement store." An establishment having as a substantial or significant portion of its sales or stock in trade "sexual devices" or films for sale or viewing on premises that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "Specified sexual activities" or "Specified anatomical areas," or an establishment with a segment or section devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin-operated booths, the exclusion of minors from the establishment's premises, or any other factors showing that the establishment's primary purpose is to purvey such material. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic or any establishment primarily dedicated to providing medical or healthcare products or services. Furthermore, nothing in this definition shall be construed to include any single location of an establishment physically located in South Portland and open to the public that:

- (1) meets any one or more of the following criteria as certified in writing by the establishment to the Police Chief or his designee upon request:

- a) ten percent (10%) or less of the establishment's displayed merchandise consists of "sexual devices"; or
- b) ten percent (10%) or less of the wholesale value of the establishment's displayed merchandise consists of "sexual devices"; or
- c) ten percent (10%) or less of the retail value (i.e., price charged to customers) of the establishment's displayed merchandise consists of "sexual devices"; or
- d) ten percent (10%) or less of the establishment's revenues derive from the sale of "sexual devices"; or
- e) the establishment maintains ten percent (10%) or less of its floor space for the display and/or sale of "sexual devices" (aisles and walkways used to access said items shall be included in the floor space maintained for the display and/or sale of said items); or
- f) the establishment maintains less than five hundred square feet (500 s.f.) of its floor space for the display and/or sale of "sexual devices" (aisles and walkways used to access said items shall be included in the floor space maintained for the display and/or sale of said items); and

(2) meets one or both of the following criteria:

- a) "sexual devices" are displayed or packaged in such a way that they are blocked from view by minors, as part of the invited general public, by an opaque screen, border or cover; and/or
- b) "sexual devices" are displayed in such a way that minors, as part of the invited general public, are warned in advance of the adult nature of the establishment's display of "sexual devices" by signage of sufficient size (in no event less than one and one half square feet (1.5 s.f.) in area), location and number from all access points to the establishment's display of "sexual devices."

(b) *"Adult motion picture theater."* An enclosed building used regularly and routinely for presenting motion picture material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified sexual activities" or "Specified anatomical areas," for observation by patrons therein.

- (c) "*Adult entertainment cabaret.*" A public or private establishment which: (i) features topless dancers, strippers, male or female impersonators, or erotic dancers; (ii) not infrequently features entertainers who display "Specified anatomical areas"; (iii) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or entertainers who engage in, or engage in explicit simulation of, "Specified sexual activities"; or (iv) offers Sadomasochistic acts or Bondage and discipline to patrons.
- (d) "*Adult relaxation spa*" or "*adult spa.*" An establishment or place primarily in the business of providing (1) a steam bath or sauna, (2) other bathing or hot tub services, or (3) "rub-down" or other pseudo-massage services by a person or persons not licensed or exempt from licensing under the South Portland Massage Ordinance.
- (e) "*Adult Use Establishment.*" Adult Use Establishments include, but are not limited to, Adult amusement stores, Adult movie theaters, Adult entertainment cabarets, Adult relaxation spas or Adult spas.
- (f) "*Erotic dance.*" A form of dance which seeks, through one or more dancers, to arouse or excite the sexual desire of a patron or patrons.
- (g) "*Sadomasochistic acts*" or "*Bondage and discipline.*" Flagellation, torture or punishment by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained while so clothed or by a person so clothed.
- (h) "*Sexual device.*" A device or object the primary purpose of which is to provide direct sexual stimulation to male or female genitals or anus. Nothing in this definition shall be construed to include devices primarily intended for preventing pregnancy or for protection against sexually transmitted diseases.
- (i) "*Specified sexual activities*" is defined as:
1. Human genitals in a state of sexual stimulation or arousal;
 2. Acts of human masturbation, sexual intercourse, any sexual act or sexual contact as defined by Maine law, or sodomy;
 3. Fondling or other touching of human genitals, pubic region, buttock or female breast.
- (j) "*Specified anatomical areas*" is defined as:
1. Less than completely and opaquely covered:
 - (a) human genitals, pubic region,
 - (b) buttocks or
 - (c) female breast below a point immediately above the top of the areola; and
 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Sec. 14-702. License required.

No person shall operate an Adult Use Establishment without a valid Adult Use Establishment License issued by the City, nor shall any property owner permit the use of his or her premises to be operated as an Adult Use Establishment without a valid Adult Use License issue by the City.

Sec. 14-703. Application; investigation and issuance of license.

(a) Application. An applicant for an Adult Use Establishment License shall:

- 1) Complete and file an application prescribed by the City Clerk;
- 2) Deposit the license fee and processing fee as specified in the Schedule of License, Permit and Application Fees established by City Council order in advance with the City Clerk;
- 3) Submit the completed application to the City Clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;
- 4) File an affidavit which will identify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for the immediately preceding three (3) years;
- 5) File the release authorized by 16 M.R.S.A. § 620(6) (Criminal History Record Information Act) with the application for each officer, owner, manager or partner of the applicant;
- 6) Submit evidence of right, title or interest in the premises in which the Adult Use Establishment will be sited, along with the written consent of the owner of the premises for such use if applicant is not the owner;
- 7) State the date of initiation of the Adult Use and the nature of the Adult Use.

(b) Investigation of applicant, officers. Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:

- 1) The Building Inspector shall verify that the premises at which the establishment will be located comply with all applicable ordinances of the City including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall report findings in writing to the City Clerk;

- 2) The Health Officer shall inspect the location or proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report findings in writing to the City Clerk;
- 3) The Fire Chief or his/her designee shall inspect the location or proposed location to determine if all City ordinances concerning fire and safety have been satisfied and shall report findings in writing to the City Clerk;
- 4) The Police Chief or his/her designee shall investigate the application, including the criminal history record information required under Section 14-703(a)(5), and shall report findings in writing to the City Clerk; and
- 5) The City Clerk shall arrange for public notice of the public hearing on the application in a newspaper of general circulation at least ten (10) days before the public hearing before the City Council, costs of which shall be paid by the applicant, and the City Clerk shall forward the application and other documents to the City Council for public hearing and action.

(c) Issuance of license. The City Council, after notice and public hearing, shall determine whether the application and documents submitted comply with all of the requirements of this Article. The license shall be issued upon determination by the Council, based upon the record, evidence and testimony at the public hearing, that the application meets the requirements of this Article. The license may not be transferred or assigned.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-704. Standards for denial.

An application for an Adult Use Establishment License shall be denied by the City Council in the following circumstances:

- (a) the applicant is a corporation not licensed to do business in the State of Maine;
- (b) the applicant is an individual who has been convicted of any crime in the five years immediately preceding the application;
- (c) the applicant is a corporation and any principal officer, any person having an ownership interest, or any person having management authority over the corporation has been convicted of any crime in the five years immediately preceding the application;
- (d) the applicant is an individual who is less than 18 years of age;

- (e) the applicant has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the City Clerk or City Council that is reasonably necessary to determine whether the license is issuable;
- (f) the applicant, if an individual, or any person having an ownership or management interest, if a corporation, has been denied an Adult Business License for knowingly making an incorrect statement of a material nature within the immediately preceding five years;
- (g) the applicant, if an individual, or any person having an ownership or management interest, if a corporation, has had a license granted pursuant to this Article or a similar ordinance provision in any other municipality revoked for any reason during the immediately preceding five years;
- (h) the applicant, if an individual, or any person having an ownership or management interest, if a corporation, has violated the South Portland Massage Ordinance, Public Indecency Ordinance, Paid Sexual Contact Ordinance or a similar ordinance in any other municipality within the immediately preceding five years; or
- (i) the site on which the Adult Use Establishment is proposed is a prohibited site under Section 14-708.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-705. Standards for suspension, revocation.

Any Adult Use Establishment License may be suspended or revoked by the City Council in the following circumstances:

- (a) the licensee fails to notify the City Clerk of any change in material fact set forth in the application for such license;
- (b) the licensee violates any provision of this Article;
- (c) the licensee is convicted of any crime;
- (d) the licensee violates the South Portland Massage Ordinance, Public Indecency Ordinance, Paid Sexual Contact Ordinance, or any other South Portland Ordinance;
- (e) any officer or employee of the licensee provides sexual intercourse, a sexual act or sexual contact, as defined by Maine law, for any direct or indirect payment of money or any other object of value.

Sec. 14-706. Age restriction.

No Adult Use Establishment may permit any person under the age of 18 years on the premises in which the Adult Use Establishment is located.

Sec. 14-707. License, fees, and names of owners or officers to be prominently displayed.

An Adult Use Establishment Licensee must display the Adult Use Establishment License at all times in an open and conspicuous place in the Adult Use Establishment for which the license has been issued. Adult Use Establishment licensees must also display at all times in an open and conspicuous place in the Adult Use Establishment, a complete list of the names of owners and officers of the Adult Use Establishment and a complete list of fees, prices and charges for all food beverages, goods, wares, merchandise or services offered by the Adult Use Establishment. The list of owners and officers and the list of prices and charges must be written in clearly visible letters and figures of a size not less than 14 point.

Sec. 14-708. Prohibited sites.

An Adult Use Establishment may not be sited within 1,000 feet of the lot lines of any of the following:

- (a) a church, synagogue or other house of religious worship;
- (b) a public or private elementary or secondary school;
- (c) a lot zoned residential or used as a residence;
- (d) a public park or public or private recreational facility or site;
- (e) a lot on which another Adult Use Establishment is sited.

The distance cited in this section shall be measured between the lot line of the proposed site for the Adult Use Establishment and the lot line of the site of the use listed in (a) through (e) above at their closest points.

Sec. 14-709. Prohibited activities.

- (a) All acts of Public indecency, as defined in the South Portland Public Indecency Ordinance, are prohibited in Adult Use Establishments that meet the definition of "Public place" in the Public Indecency Ordinance;
- (b) Dancers, performers, employees, owners or officers of an Adult Use Establishment shall not fondle or caress any patron or client and patrons and clients shall not fondle or caress dancers, performers, employees, owners or officers of the Adult Use Establishment;
- (c) Patrons or clients shall not directly pay or give any gratuity or object of value to any dancer, performer, employee, owner or officer of the Adult Use Establishment and dancers, performers, employees, owners or officers shall not solicit any pay, gratuity or object of value from any patron or client;

- (d) Dancers, performers, employees, owners or officers of an Adult Use Establishment shall not (1) perform, offer to perform or agree to perform sexual intercourse with each other or any patron or client, or (2) commit, offer to commit or agree to commit any sexual act with each other or any patron or client or (3) make, offer to make or agree to make sexual contact with each other or any patron or client; and
- (e) Patrons and clients of Adult Use Establishments shall not (1) perform sexual intercourse with any dancers, performers, employees, owners or officers of the Adult Use Establishment, or (2) commit any sexual act with any dancers, performers, employees, owners or officers of the Adult use Establishment, or (3) make sexual contact with any dancers, performers, employees, owners or officers of the Adult Use Establishment.

Sec. 14-710. Physical layout of Adult Use Establishment.

- (a) Any Adult Use Establishment having available for customers, patrons or members, any booth, room or cubicle for any private viewing of any adult entertainment shall comply with the following requirements.
 - (1) Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the Adult Use Establishment, and shall be unobstructed by any door, lock or other control-type devices.
 - (2) Construction. Every booth, room or cubicle shall meet the following construction requirements:
 - (a) Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.
 - (b) Each booth, room or cubicle must have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room or cubicle.
 - (c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light-colored, non-absorbent, smooth textured and easily cleanable.
 - (d) The floor must be light-colored, non-absorbent, smooth textured and easily cleanable.
 - (e) The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten foot candles at all times, as measured from the floor.

(3) Occupants. No more than one individual shall occupy a booth, room or cubicle at any time. No occupant of a booth, room or cubicle shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

(b) Any Adult Motion Picture Theater shall comply with the following requirements.

(1) Aisle lights and overhead lights in the theater shall be kept on during business hours and shall illuminate to a minimum of ten foot candles except when motion pictures are being shown;

(2) No standing shall be allowed in the theater;

(3) Signs shall be posted warning patrons that sexual activity is prohibited in the theater and informing them of the presence of surveillance cameras; and

(4) Theater employees shall regularly patrol the theater during business hours and eject persons found to be engaged in sexual intercourse, a sexual act, sexual contact or any criminal activity. Incidents of sexual intercourse, sexual acts, sexual contact or criminal activity in the theater shall be immediately reported to the South Portland Police Department.

(c) Rest rooms must be individual rooms and shall not contain facilities for more than one person at a time. No more than one person shall be in the rest room with the door closed at any time.

In the event the Adult Use Establishment licensee is a lessee of the premises on which the Adult Use Establishment is located, both the licensee and the owner shall be responsible for compliance with this section, and both the licensee and the owner shall be legally responsible for any violation.

Sec. 14-711. Dancers and other performers.

An Adult Use Establishment must observe the following restrictions on dancers and other performers:

(a) All dancing or other performances must occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.

(b) No dancing or other performance shall occur closer than ten feet from any patron, and no patron shall be allowed to be closer than ten feet from any dancer or other performer.

Sec. 14-712. Amortization of existing Adult Use Establishments.

Any Adult Use Establishment lawfully operating on October 20, 1997, that is in violation of Section 14-708 of this Article shall be deemed to be a nonconforming use. This nonconforming use shall be permitted to continue through December 31, 1998, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use may not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more Adult Use Establishments are within 1,000 feet of one another and otherwise in a permissible location, the Adult Use Establishment which was first established and continually operating at a particular location is the conforming use and the later-established Adult Use Establishment is nonconforming.

Any Adult Use Establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the Adult Use Establishment license, of a church, synagogue or other house of religious worship, public or private elementary or secondary school, public park or public recreational facility or site, or residential zone or use within 1,000 feet of the Adult Use Establishment. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-713. Violations; penalties.

In addition to revocation or suspension of an Adult Use Establishment License as provided in Section 14-705, the violation of any provision of this Article shall be punished by a fine not less than one thousand dollars (\$1000) nor more than two thousand five hundred dollars (\$2500) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the City may enjoin or abate any violation of this Article by appropriate action, including but not limited to revocation of the license.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-714. Enforcement.

This Article shall be enforced by the South Portland Police Chief, or his/her designee in the South Portland Police Department, in conjunction with the Corporation Counsel or other authorized legal counsel for the City. Notice of violations by Adult Use Establishment

licensees of other provisions of the South Portland Code of Ordinances shall be provided to the Police Chief or Corporation Counsel.

Sec. 14-715. Severability.

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Sec. 14-716. Appeals.

An appeal from any final decision of the City Council may be taken by any party to Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. Any denial, suspension or revocation shall be in writing and shall include notification of the right to and procedure for appeal.

(Ord. No. 11-97/98, 11/3/97; [Fiscal note: Less than \$1000])

Sec. 14-717—14-724. Reserved

ARTICLE XIV. TRANSFER STATIONS FOR MUNICIPAL SOLID WASTE

Sec. 14-725. Title, purpose and definitions.

- (a) This article shall be known and may be cited as the "Municipal Solid Waste Transfer Station Ordinance for the City of South Portland, Maine."
- (b) The purpose of this Article is to ensure compliance of the licensee with the provisions of South Portland Code of Ordinances Chapter 27, Zoning, as those provisions pertain to Transfer Stations for Municipal Solid Waste.
- (c) The definition of "transfer station for municipal solid waste" in this Article shall be the same as the definition contained in South Portland Code of Ordinances, Chapter 27, Zoning, which definition is incorporated by reference herein as if fully set forth.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-726. License required; application procedure and term of license

- (a) No person or business entity may operate a transfer station for municipal solid waste in the City of South Portland without a valid license issued by the City Clerk.
- (b) Applications for licenses to operate transfer stations for municipal solid waste must be made in writing on forms provided by the City Clerk and be filed with the City Clerk during regular business hours at the office of the City Clerk. Each application must state the name of the applicant; the address of the applicant; the name, title and authority of the person submitting the application; the location where the transfer station for municipal solid waste will be located; whether the applicant has ever had a license for a transfer station for municipal solid waste suspended or revoked for any reason and any additional information deemed necessary by the municipal officers or the City Clerk for the issuing or renewal of the license. The application must be accompanied by the required fee as established in Section 14-3 in order for it to be processed or approved.

The City Clerk shall deny a license where the application is incomplete, the applicant has misstated or omitted any material

fact from the application, the applicant has had a previous license to operate a transfer station for municipal solid waste revoked, or the application does not comply with any federal, state or local law or ordinance, including but limited to the provisions of South Portland Code of Ordinances Chapter 27, Zoning, as those provisions pertain to transfer stations for municipal solid waste.

All license applications must be reviewed and approved by the Code Enforcement Officer, the Health Inspector, the Fire Chief or designee, and any other applicable municipal official whose review is necessary to determine compliance with federal, state and local laws and ordinances.

- (c) A license shall be valid for one year from the date of issuance.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-727. Inspections, enforcement, suspension and revocation.

- (a) The licensee shall permit inspection of the premises by agents of the City, including but not limited to the Code Enforcement Officer, Health Inspector, Fire Chief or their designees at any reasonable time.
- (b) Authority to enforce compliance with this Article shall be in the City Clerk, Code Enforcement Officer and Corporation Counsel, who may designate other City staff as needed to assist in any enforcement action. The Corporation Counsel is authorized to commence and prosecute legal action as necessary to enforce compliance or seek penalties for violations. Any violation of this Article is punishable by a fine of not more than two thousand, five hundred dollars (\$2500), plus costs. Each day a violation exists shall constitute a separate offense.
- (c) The City Clerk shall suspend or revoke any license where non-compliance with any provisions of this Article has been shown by a preponderance of the evidence. When a license has been revoked, the licensee may not apply for a new license until the expiration of the one-year license period.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-728. Appeal of denial, suspension or revocation to the City Council

Any denial by the City Clerk of an application for a license to

operate a transfer station for municipal solid waste or any suspension or revocation by the City Clerk of a license to operate a transfer station for municipal solid waste may be appealed to the City Council. Any such appeal must be submitted in writing to the City Clerk's office during regular business hours within ten (10) business days of the denial, suspension or revocation. A timely filed appeal shall be placed on the agenda for the next regularly scheduled Council meeting for which it is in order under the Council's Standing Rules. After a public hearing on the appeal, the City Council may vacate the denial, suspension or revocation and order the license issued or reinstated upon a finding that the applicant or licensee currently complies with all federal, state and local laws and ordinances and that the issuance or reinstatement of the license will not adversely affect public health, safety or welfare.

(Ord. No. 5-00/01, 8/7/00; [Fiscal note: Less than \$1000])

Sec. 14-729 – 14-750. Reserved.

ARTICLE XV. AUTOMOBILE GRAVEYARDS, AUTOMOBILE RECYCLING BUSINESSES AND JUNKYARDS

Sec. 14-751. Purpose.

The purpose of this Article is to protect the public health, safety and welfare by regulating automobile graveyards, automobile recycling businesses and junkyards.

Sec. 14-752. License required.

No person may operate an automobile graveyard, automobile recycling facility or junkyard in the City of South Portland without a license from the City Council. A license issued by the City Council for an automobile graveyard or junkyard is valid until the first day of October of the following year. A license issued by the City Council for an automobile recycling business is valid for five years from the date of issuance and is renewable provided that the licensee furnishes a sworn statement, annually, on the anniversary date of the granting of the license, that the facility complies with the standards of operation applicable at the time the license is granted. A person operating a business that involves the recycling of automobiles may operate under a permit for an automobile graveyard or a permit for an automobile recycling business. For automobile recycling businesses licensed for five years, by October 1 of each year that the license is in effect the City Clerk shall submit a written report to the City Council stating whether the licensee is in compliance with this Article and all other applicable local, state and federal laws and regulations.

Sec. 14-753. Limitations on licenses.

- A. A new license shall not be granted for an automobile graveyard or junkyard that is established after October 3, 1973 and located within 100 feet of any highway.
- B. A new license shall not be granted for an automobile graveyard or junkyard that is 1) located within 300 feet of a public building, public park, public playground, public bathing beach, school, church or cemetery and 2)

within ordinary view from a public building, public park, public playground, public bathing beach, school, church or cemetery.

- C. A license shall not be granted for an automobile graveyard or automobile recycling business that is not in compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of 29-A M.R.S.A. Chapter 9. The City Council may grant a limited-term license conditioned upon an automobile graveyard's or automobile recycling business's demonstrating compliance with the provisions of Title 29-A Chapter 9 within ninety (90) calendar days of the issuance of the limited-term license.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-754. Definitions.

The terms "automobile graveyard," "automobile recycling business" and "junkyard" shall be defined for purposes of this Article as they are defined in Code of Ordinances Section 27-55.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-755. Application for license.

Every applicant for a license to operate an automobile graveyard, automobile recycling business or junkyard shall:

- A. Complete and file an application on the form prescribed by the City Clerk, which shall require the following information as well as any other information determined by the City Clerk to be relevant:
1. The property owner's name, address and telephone number and the name, address and telephone number of the person or entity who will operate the site. If the property is owned by more than one person or entity, the name, address and telephone number of each owner must be listed. If the property is owned in whole or in part by a corporation, the name, address and telephone number of the corporation's registered agent in Maine must be listed. The name, address and telephone number of the person or entity to whom the City should send official notices or correspondence must also be listed.

- B. Deposit the license fee as specified in the Schedule of License, Permit and Application Fees established by City Council order in advance with the City Clerk;
- C. Submit the completed application to the City Clerk, together with proof of corporate or other business entity status and evidence of authority to conduct business in the State of Maine, as well as a list of all officers of the applicant;
- D. Pay the required processing fee and costs of published and mailed notices as specified in the Schedule of License, Permit and Application Fees established by City Council order;
- E. Provide a copy of special exception approval from the South Portland Planning Board.

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

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-756. Hearing.

The City Council shall hold a public hearing before granting a license to establish a new automobile graveyard, automobile recycling business or junkyard and before relicensing these facilities. The applicant shall provide to the Council before the public hearing on the license request proof of mailing of notice of the hearing to abutting property owners. The City Council shall cause notice to be posted in at least 2 public places in the City at least seven (7) days and not more than fourteen (14) days before the hearing, and shall also publish notice in one newspaper having general circulation in the City. Before the hearing on an application for the licensing of a new automobile graveyard or automobile recycling business, the City Council shall provide written notice of the application to the automobile dealer licensing section of the Department of the Secretary of State, Bureau of Motor Vehicles by mailing a copy of the application as least 7 and not more than fourteen (14) days before the hearing. The City Council shall give written notice to any public water supplier of the application for any automobile graveyard, automobile recycling business or junkyard located within its source water supply area, which notice may be given by mailing a copy of the application at least 7 and not more than fourteen (14) days before the hearing.

The applicant must show that appropriate measures controlling stormwater run-off are on-site and in compliance with best management practices to prevent contamination or pollution of the site or neighboring properties. Upon recommendation of the Director of Water Resources Protection, the City Council may require, before granting a license or as a condition of approval of a license, that the applicant test the site of the facility for contaminants or pollution in the soil or groundwater. When on-site test results show levels of contaminants or pollutants that are greater than the initial test results submitted to the Planning Board for Special Exception approval and that exceed the limits of State law or local regulation, whichever is stricter, and which have not been caused by someone other than the licensee, the City Council may also require the applicant to test, or cause to be tested, abutting property for contaminants or pollution of soil or groundwater, provided that the owner of the abutting property consents to the testing.

Any conditions of the special exception approval by the Planning Board shall be deemed to be conditions of the license granted by the City Council.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-757. Right of entry.

The Code Enforcement Officer or other person designated by the City Manager may, to carry out the provisions of this Article or to determine compliance with any laws, ordinances, license approvals, decisions or conditions:

- A. Enter any automobile graveyard, automobile recycling business or junkyard property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the general laws or this Article; and
- B. Enter any building on the property with the consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the general laws or this Article.

(Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])

Sec. 14-758. Violations.

- A. Enforcement. The Code Enforcement Officer, Corporation Counsel or other person designated by the City Manager may enforce the provisions of this Article pursuant to:
1. The enforcement of land use laws and ordinances under 30-A M.R.S.A. § 4452;
 2. The litter control provisions of 17 M.R.S.A. Chapter 80; or
 3. The abatement of nuisances provisions of 17 M.R.S.A. Chapter 91.
- B. Penalties. Violations of this Article are subject to the penalty provisions of 30-A M.R.S.A. § 4452; 17 M.R.S.A. §§ 2264-A and 2264-B; or 17 M.R.S.A. Chapter 91. Each day the violation continues is a separate offense.
- C. Abatement. If the City is the prevailing party in an action taken pursuant to the provisions of the this Article or Title 30-A M.R.S.A. or Title 17 M.R.S.A. as identified in subsection (B) above and the violator does not complete any ordered correction or abatement in accordance with the ordered schedule, the Code Enforcement Officer or other person designated by the City Manager may enter the property and may act to abate the site in compliance with the order. To recover any actual and direct expenses incurred by the City in the abatement of the nuisance, the City may:
1. File a civil action against the owner to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action;
 2. File a lien on real estate where the junkyard, automobile graveyard or automobile recycling business is located; or
 3. Assess a special tax on real estate where the junkyard, automobile graveyard or automobile recycling business is located. This amount must be included in the next annual warrant to the City's Tax Collector, for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the City pursuant to 36 M.R.S.A. § 505 in the year in which the special tax is assessed accrues on all unpaid balances of the special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest must be added to and becomes a part of the tax.

- D. Revocation or suspension of permit. Violation of any condition, restriction or limitation in a license is cause for revocation or suspension of the license by the City Council. A license may not be revoked or suspended without a hearing and notice to the owner of the operator of the automobile graveyard, automobile recycling business or junkyard. Notice of hearing must be sent to the owner or operator by registered mail at least 7 but not more than fourteen (14) days before the hearing. The notice must state the time and place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations in the license.
- E. Removal of all materials after permit denial or revocation or expiration of license without renewal. The owner or operator of a junkyard, automobile graveyard or automobile recycling business for which a license has been denied or revoked or for which the license has expired without renewal shall, not later than ninety (90) days after all appeals have been denied, begin the removal of all vehicles, vehicle parts and materials associated with the operation of that junkyard, automobile graveyard or automobile recycling business. The property must be free of all scrapped or junked vehicles and materials not later than one hundred and eighty (180) days after denial of all appeals. An alternative schedule for removal of junk or vehicles may be employed if approved by order of the City Council.

(Ord. No. 10-05/06, 10/17/05 [Fiscal Note: Less than \$1000]; Ord. No. 18-09/10, 6/21/10 [Fiscal Note: Less than \$1000])