

This ordinance amendment has been drafted at the request of the City Council in order to improve the process by which complaints are made alleging that a nuisance condition exists. Following a recent complaint received by the City Council, it was recognized that the process could be improved.

Currently, the ordinance allows complaints to be made directly to the City Council without first requiring that an attempt be made to resolve the issue through code enforcement or the City administration. Furthermore, the City Council, upon receiving a complaint, is currently required to hold a public hearing, regardless whether the complaint has any merit. And finally, it has been pointed out that the only people eligible to sign a nuisance complaint petition are "real estate taxpayers of record", which excludes renters and others from filing a complaint.

The ordinance amendments, as presented, include the following:

1. Complaint would first be directed to Code Enforcement Officer for investigation
2. Any resident within 500 feet of the alleged nuisance may sign a petition, regardless whether property owner or renter
3. Code Enforcement Officer would issue finding and, if necessary, prescribe corrective action(s)
4. If Code Enforcement Officer finds that a nuisance condition does not exist, then complainant(s) may petition City Council for a public hearing
5. City Council would conduct a preliminary review of information, and if it determines that suitable evidence exists, may hold a public hearing, at its discretion

Staff believes these proposed amendments are fair and prudent to ensure the complaint process is efficient and methodical, and the ordinance continues to promote the health, safety, and general welfare of both property owners and abutters.


Assistant City Manager

SOUTH PORTLAND CODE OF ORDINANCES

Chapter 16

NUISANCES GENERALLY*

 * **Cross reference(s)**--Dangerous dogs a nuisance, § 3-45; when erection, continuance, use of building a nuisance, § 5-7; bitches in heat running at large declared a public nuisance, § 8-44.

State law reference(s)--Nuisances, generally, 17 M.R.S.A. § 2701 et seq.

Sec. 16-1. Purpose.

This ordinance is adopted pursuant to 30-A M.R.S.A. §3001 for the purpose of regulating and eliminating public health and safety hazards and public nuisances in order to promote the public health and safety.

(Code 1966, § 6-5-1 ; Ord. No. 4-12/13, 10/1/12 [Fiscal Note: Less than \$1000])

Sec. 16-2. Committing, creating or maintaining a nuisance prohibited.

No person shall commit, create or maintain any public nuisance.

(Code 1966, § 6-5-1 ; Ord. No. 4-12/13, 10/1/12 [Fiscal Note: Less than \$1000])

Sec. 16-3. Public Nuisances Affecting Public Health and Safety.

- (a) *Declaration of public nuisance.* The following conditions constitute a public nuisance affecting public health and/or safety:
- (i) failure to keep waste, refuse or garbage in an enclosed building or properly contained in a closed container designed for such purposes;
 - (ii) failure to maintain a structure so as to avoid health hazards;
 - (iii) allowing any discharge into the environment of toxic or noxious materials in such concentrations as to endanger the public health;
 - (iv) causing or allowing the effluent from any cesspool, septic tank, drain field or sewage disposal system to discharge upon the surface of the ground;
 - (v) causing or allowing the contamination of any well, cistern, stream, pond or other body of water by sewage, waste or other materials or substances;
 - (vi) carcasses of animals, birds or fowl not intended for human consumption which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death or as required by Maine law;
 - (vii) accumulations of manure from domestic animals and fowl that are handled, stored or disposed of in a manner that creates a health hazard;
 - (viii) accumulations of decayed animal or vegetable matter, trash, rubbish, garbage, rotting lumber, packing material, scrap metal or any substance in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed, live, nest or seek shelter but not including the composting of nontoxic agricultural, organic or domestic waste;

- (ix) any chemical and/or biological material that is stored, used or disposed of in such quantity or manner that creates a public health hazard;
- (x) any condition or situation which renders a structure or any part thereof unsanitary, unhealthy or unfit for human habitation, occupancy or use, or renders any property unsanitary or unhealthy;
- (xi) failure to comply with any law, rule or ordinance regarding sanitation and health, including, but not limited to: plumbing; water supplies, including wells and surface waters; waste disposal; and storage of chemical pesticides or herbicides; and
- (xii) the outdoor storage for more than fifteen (15) days of items of personal property that (a) are worn out, broken, deteriorated, dismantled or, based on their physical condition, have been discarded or abandoned, and (b) pose a sanitation, fire, health or safety risk at the property or to neighboring properties, such as, in both instances, household furnishings, appliances and fixtures, used or salvaged building materials, packing, clothing, equipment and machinery or parts thereof, tires, scrap metal, scrap lumber, masonry blocks, large limb piles, boxes, containers, bins, cabinets, covered electronic devices as defined in 38 M.R.S.A. § 1610(2)(C), as may be amended from time to time; provided, however, that this restriction shall not apply to any construction site for which a valid building and/or land use permit issued by the City is in effect or to any property for which the sale of such items is otherwise allowed under law; and provided, further, that the Code Enforcement Officer must first notify the property owner or occupant of the need to remove the items prior to any further proceedings under this Ordinance.

(b) Complaint and establishment of hearing. Upon complaint to the ~~City Council~~ Code Enforcement Officer by any City official or department head of such conditions, or ~~upon receipt by the City Council of a petition signed by at least~~ by written complaint signed by ten (10) or more residents ~~real estate taxpayers of record~~ living within five hundred (500) feet thereof complaining of such conditions, the ~~City Council~~ Code Enforcement Officer shall notify the property owner(s) where the alleged nuisance condition exists and investigate the complaint. Upon completing the investigation, the Code Enforcement Officer shall notify the owner in writing whether a nuisance condition exists, and, if so, specify the evidence supporting such a finding and prescribe any necessary corrective action(s) and the time period for compliance. If the Code Enforcement Officer finds that a public nuisance as defined in this ordinance does not exist, then the original complainant(s) may petition the City Council to request a public hearing. Upon receipt of such a petition or a report from the Code Enforcement Officer that the property owner(s) have not complied with a Code Enforcement Officer corrective action directive, if the City Council determines, based upon a preliminary review of information provided by the Code Enforcement Officer, that it is more likely than not that a nuisance condition exists at the property, it may, by order, establish a date, time and place for a public hearing to determine whether or not such condition is in fact a public nuisance within the purview of this section.

(c) Notice of public hearing. The City Clerk shall, by both first class and certified mail, return receipt requested, give notice to the owner of the premises as shown upon the last tax rolls of the City, and such mailing thereof shall be considered sufficient notice to the owner of such hearing, and such notice shall be given not less than five (5) days next prior to the date of the hearing as established by Council order.

(d) Hearing procedure. At the date, time and place as designated by Council order, the City Council shall hear and consider the complaints as rendered in subsection (b), and shall hear and consider the objections to the proposed findings, if any. At the conclusion of the hearing, the City Council shall, by Council order, find or not find that there is in fact such conditions as complained of that constitute a public nuisance. The hearing may be continued from time to time at the discretion

of the City Council.

- (e) *Abatement order.* Should the City Council find and pass such order that such condition complained of is a nuisance, then such order shall contain a directive and order to the owner thereof, as shown on the last tax roll of the city to abate the nuisance and condition within fifteen (15) days from the date of the order of abatement. A copy of the Council order shall be sent to the owner and occupants (if different than the owner) of the premises.
- (f) *Violation and penalties.* Whenever the City Council, after the hearing, issues an order declaring that a nuisance exists, and after ordering the same to be abated by the owner of the property on which same is situated, no person shall refuse or fail to abate such nuisance within fifteen (15) days from the date of the notice to abate issued by the City Council. Any person, including but not limited to the owner, owner's agent, lessee, or contractor who commits, creates or maintains a public nuisance in violation of this ordinance shall be penalized in accordance with 30-A M.R.S.A. §4452, as may be amended from time to time. Each day in which a violation is proved to exist shall constitute a separate offense. In addition to the penalties provided herein, the City may bring an action in the Superior Court or District Court for injunctive relief to abate the public nuisance, for collection of penalties, and for such other relief as may be provided by law.

(Ord. No. 4-12/13, 10/1/12 [Fiscal Note: Less than \$1000])

Sec. 16-4. Applicability.

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the amendments to this Ordinance, as evidenced by Ordinance #4-12/13, when enacted, shall govern any condition existing as of September 24, 2012, the applicability date of the amendments, or thereafter.

(Ord. No. 4-12/13, 10/1/12 [Fiscal Note: Less than \$1000])