

**South Portland City Council**  
***Position Paper of the Interim City Manager***

***Subject:***

**ORDER #65-16/17 – Public hearing and action on a public nuisance complaint regarding 611 Main Street. Passage requires majority vote.**

***Position:***

This item is returning to the Council following ORDER #24-16/17, approved by the City Council at its regular meeting on August 1, 2016. During the month of July, the City received a public nuisance complaint from residents of Aspen and Thirlmere Avenues relating to property at 611 Main Street (Tax Map 53, Lot 302 E) owned by CRT LXXIV LLC. Sec. 16-3 of the Code of Ordinances stipulates that the City Council, upon receiving a petition from at least 10 neighboring property owners, shall hold a hearing and determine whether a public nuisance condition exists. On August 1, 2016, the City Council set the date for a public hearing for October 17, 2016. The owner of the property has been notified of the public hearing.

Following receipt of the original complaint, City staff contacted the property owner and within a few days a maintenance crew arrived at the property and cured many of the issues cited by the neighbors. It was partly for this reason the City Council chose to defer the Public Hearing approximately two months from the August 1<sup>st</sup> meeting. Since that time, the state and condition of the property has remained largely unchanged. The property continues to be vacant and for sale. Recently, the Assistant City Manager reached out to several petitioners to inquire whether they feel the Public Hearing set for October 17<sup>th</sup> is necessary at this time. One of the petitioners sent an email (included in Council packet) stating the neighbors would agree to postpone the hearing and will continue monitoring the condition of the property.

***Public Hearing Process:***

Once the public hearing is started, the complainants should first be asked to present any witnesses or documents as evidence in support of the complaint. This would be followed by the property owner having an opportunity to respond to the complaint with witnesses and documents as evidence. The City Council should also allow members of the public to provide comment on the matter. At the conclusion of the public hearing, if the City Council finds that the condition on the property constitutes a public nuisance, the City Council may

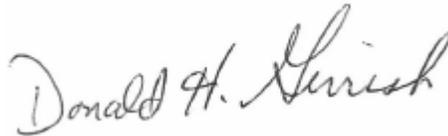
order the property owner to undertake specific action to abate the nuisance within 15 days of the date of the Council Order.

A proposed Council Order (in draft form) has been provided with some very basic findings of fact contained in it. Due to the nature of this proceeding, at the conclusion of the public hearing the City Council will need to flesh out, as it deems appropriate, the findings of fact, the basis for any determination that the conditions of the property constitute a public nuisance, and any specific action required of the property owner. Corporation Counsel will be present at the public hearing to assist with this process.

Sec. 16-3(a) of the Code of Ordinances sets forth the types of conditions that may constitute a public nuisance. A copy of the Nuisance Ordinance is included in the Council Packet.

***Requested Action:***

Staff recently visited the property to view it from the public way. There were no obvious public nuisance conditions. At this time, Staff is satisfied with the condition of the property and we request the hearing be postponed until December 19, 2016.

A handwritten signature in cursive script that reads "Donald H. Gurish". The signature is written in black ink and is positioned above a horizontal line.

Interim City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

DON H. GERRISH  
Interim City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

**IN CITY COUNCIL  
ORDER #65-16/17**

District One  
CLAUDE V. Z. MORGAN

\_\_\_\_\_

District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN C. ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

\_\_\_\_\_

District Five  
BRAD FOX

\_\_\_\_\_

At Large  
MAXINE R. BEECHER

\_\_\_\_\_

At Large  
THOMAS E. BLAKE

**WHEREAS**, pursuant to Sec. 16-3(b) of the Code of Ordinances of the City of South Portland, ten or more taxpayers have filed with the City Council a complaint of public nuisance conditions affecting public health and safety at property located at 611 Main Street (Tax Map 53, Lot 302 E) (the "Premises");

**WHEREAS**, the owner of the 611 Main Street, CRT LXXIV LLC, has been provided with notice of the public hearing at least 5 days in advance of the hearing;

**WHEREAS**, a public hearing pursuant to Sec. 16-3(d) of the Code of Ordinances on whether the conditions located at the Premises constitute a public nuisance was held by the City Council on October 17, 2016 at 7:00 p.m. in Council Chambers, South Portland City Hall;

**WHEREAS**, following the public hearing, Sec. 16-3(b) of the Code of Ordinances requires the City Council to determine whether such conditions constitute a public nuisance; and

**WHEREAS**, the City Council finds the following facts to be true based on the evidence presented at the public hearing:

- (a) The Premises is improved with a church building;
- (b) Residents of Aspen Avenue and Thirlmere Avenue stated in their petition that there is an accumulation of waste, garbage and refuse, chemical pesticides, herbicides and bacterial material not properly disposed of, human and animal fecal matter, failure to maintain the structure, a portion of the fence on the south side of the church has collapsed, no maintenance of grass or bushes, evidence of people living on the Premises and several police calls dealing with vagrancy and attempted break-ins in our neighborhood;
- (c) On \_\_\_\_\_, 2016 and \_\_\_\_\_, 2016, the South Portland Police Department responded to the neighborhood on complaints about \_\_\_\_\_ with respect to the Premises;

- (d) \_\_\_\_\_;
- (e) \_\_\_\_\_;
- (f) \_\_\_\_\_;
- (g) \_\_\_\_\_

**NOW, THEREFORE**, the City Council finds that the conditions present on the Premises \_\_\_\_\_ do \_\_\_\_\_ do not constitute a public nuisance for the following reason(s):

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**AND IT IS THEREFORE ORDERED** that

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Fiscal Note: Less than \$1,000

Dated: October 17, 2016

## PETITION

We request that the City of South Portland require the owners of The Saint John's church properties to clean up and maintain the properties on a regular basis. We are citing the Nuisance Property Law. Listed below are the concerns regarding the property as being a public health and safety hazard and a public nuisance.

1. Accumulation of waste, garbage, and refuse on the properties.
2. Chemical pesticides, herbicides, bacterial material not disposed of and left in open containers.
3. Evidence of human and animal fecal matter.
4. Failure to maintain a structure so as to avoid a health hazard.
  - A large section of the fence on the south side of the church has collapsed.
  - Serious disrepair of church building (gutters filled with debris with one gutter emptying into a stairwell filled with standing water.) Roof in serious disrepair.
  - Storage building attached to the school broken into and wide open to elements with evidence of open food containers and people living there. Open chemical containers. Garbage and fecal matter piled up by fence near storage shed. Odor of garbage and fecal matter.
  - No maintenance of grass and bushes since last year.
5. There has been evidence of people living on the properties such as bedding and personal belongings on the front steps of the church for many weeks. Two trucks parked by fallen in fence that were owned by two men living on the property for several weeks. They

were seen urinating and dressing in view of neighbors. After three police visits to sight they were told to leave.

- 6. Five police calls to the area in last two weeks to deal with vagrancy on the properties and an attempted break in at the church where 2 men were arrested.

	Signature	Address	Printed Signature
1.	<i>Scott H. McKen</i>	29 Thirlmere Ave	SCOTT H. MCKEEN
2.	<i>Bethany M. McKen</i>	29 Thirlmere Ave	Bethany M. McKen
3.	<i>Gloria M. Carter</i>	12 Aspen Ave	Gloria M. Carter
4.	<i>Martha Martenson</i>	26 Thirlmere Ave	Martha Martenson
5.	<i>Joyce Mendoza</i>	13 Thirlmere Ave	Joyce Mendoza
6.	<i>Melissa Kardouy</i>	23 Thirlmere Ave	Melissa Kardouy
7.	<i>James V. Thompson</i>	58 Thirlmere Ave	James V. Thompson
8.	<i>Amy Thompson</i>	33 Thirlmere Avenue	Amy Thompson
9.	<i>Blaine Thompson</i>	33 THIRLMERE AVENUE	BLAINE THOMPSON
10.	<i>Ann Marie Wong</i>	25 Thirlmere Ave	ANN-MARIE WONG
11.	<i>Loretta A. Steinhilber</i>	30 THIRLMERE AVE	LORETTA STEINHILBER
12.	<i>Barbara A. Nee</i>	34 Aspen Ave	BARBARA A. NEE
13.	<i>Heidi A. Libby</i>	43 Aspen Ave	HEIDI A. LIBBY
14.	<i>Philip L. Carter</i>	12 Aspen Ave	Philip L. Carter
15.			
16.			
17.			
18.			
19.			
20.			

July 18, 2016

## SOUTH PORTLAND CODE OF ORDINANCES

## Chapter 16

## NUISANCES GENERALLY\*

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 \* **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.  
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**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, drainfield 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 by any City official or department head of such conditions, or upon receipt by the City Council of a petition signed by at least ten (10) real estate taxpayers of record within five hundred (500) feet thereof complaining of such condition, the City Council shall, 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 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])

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
*X* *Joel Lynn Blaisdell*  Agent  Addressee

B. Received by (Printed Name) *ALB* C. Date of Delivery *AUG 3 2016*

D. Is delivery address different from item 1?  Yes  
 If so, enter delivery address below:  No

**Mr. Greg Nolan**  
**280 Merrimack St Ste A**  
**Methuen, MA 01844**



9590 9402 1462 5329 5999 77

2. Article Number (Transfer from service label)  
**7010 2780 0003 6488**

- Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

**OFFICE OF THE CITY CLERK**

**EMILY CARRINGTON**  
City Clerk

**JESSICA HANSCOMBE**  
Deputy City Clerk

**KAREN L. MORRILL**  
Assistant City Clerk

August 3, 2016

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Mr. Greg Nolan,

This letter is to inform you as the representative of the property owner (Cafua) of the premises at 611 Main Street, South Portland, ME that the South Portland City Council has scheduled a public hearing in response to a public nuisance complaint relating to property at 611 Main Street, South Portland, ME to determine whether the conditions located at the premises constitute a public nuisance pursuant to Chapter 16 of the City of South Portland's Code of Ordinances.

Attached is a copy of the amended Council order as passed by the City Council at the City Council meeting on August 1, 2016, setting the date of the public hearing for **October 17, 2016 at 7:00pm in Council Chambers, South Portland City Hall, 25 Cottage Road**. Members of the public will be given five minutes to speak on this item during public comment.

If you have any questions, please contact Joshua Reny, Assistant City Manager, at (207) 767-7606.

Sincerely,

**Emily Carrington**  
 City Clerk  
 City of South Portland

## Reny,Joshua

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**From:** Reny,Joshua  
**Sent:** Sunday, October 09, 2016 5:22 PM  
**To:** Joyce Mendoza  
**Cc:** Gerrish,Don  
**Subject:** Re: 611 Main Street

Thank you Joyce. Staff will recommend that City Council postpone the hearing. Best regards, Josh

*Sent from my Verizon 4G LTE Smartphone*

----- Original message-----

**From:** Joyce Mendoza  
**Date:** Sun, Oct 9, 2016 3:53 PM  
**To:** Reny,Joshua;  
**Cc:**  
**Subject:** Re: 611 Main Street

Hi, Josh. I checked in with the neighbors who coordinated with the Sentry to get the article published about the deterioration of the church property. We all agree to postpone the hearing to continue to keep pressure on the owner. We'll see what happens in the coming months as the seasons advance. Joyce

On 10/6/2016 9:16 AM, Reny,Joshua wrote:

Good Morning Joyce,

It's been a couple months since the cleanup at St John's Church property. As you may recall the City Council postponed the hearing until October in order to monitor the situation. We would like to know whether you and your neighbors feel there is a need for a hearing at this time, or if it should be postponed again. Please feel free to give me a call at your convenience, 767-7606.

Thank you,  
Josh

Joshua Reny  
Assistant City Manager  
Economic Development Director  
City of South Portland  
25 Cottage Road  
South Portland, ME 04116-9422  
Tel. (207) 767-7606  
[www.southportland.org](http://www.southportland.org)



Please be advised that pursuant to Title 1 M.R.S.A. Section 402(3), a public record includes any written, printed, or graphic matter or any mechanical or electronic data in the possession or custody of an agency or public official that has been received or prepared for use in connection with the transaction of public or