

South Portland City Council
Position Paper of the Interim City Manager

Subject:

**ORDER #68-16/17 – Amending the Transit Exclusion Policy on transit buses.
Passage requires majority vote.**

Position:

In July of 2008, staff requested the Council to adopt a policy statement to clarify and formalize what we expect from our passengers and give our bus drivers and staff another tool to ensure we can provide safe, reliable public transit.

Under Levell II, Inappropriate Conduct on Buses or in Other Facilities, we would like to adopt or clarify rules concerning smoking at bus stops and shelters.

A memo from Arthur Handman, Director of Transportation is included. He will be at Monday's meeting to answer any questions.

Requested Action:

Council passage of ORDER #68-16/17.



Interim City Manager



CITY OF SOUTH PORTLAND
TRANSPORTATION DEPARTMENT
46 O'Neil Street
South Portland, Maine
04106
(207) 767-5556

MEMO TO: Don Gerrish
Interim City Manager

FROM: Art Handman
Director, Transportation Department

DATE: October 3, 2016

RE: Rule Clarification – No Smoking at Bus Stops and Shelters

Here is some language the City Council can consider to adopt or clarify rules concerning smoking at bus stops and shelters.

“Use of tobacco products (including e-cigarettes and vaporizers) is not allowed on South Portland buses, at and within 20 feet of all bus stops, bus shelters, and the Mill Creek Transit Hub.”



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

DON GERRISH
Interim City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. SCULLY
City Clerk

IN CITY COUNCIL

ORDER #68-16/17

ORDERED, that the City Council hereby amends the attached ***South Portland Bus Service – Policy Statement – Rules of Conduct and Inappropriate Behavior – Transit Exclusion Policy and Procedures dated July 21, 2008***

Fiscal Note: Less Than \$1000

Dated: October 17, 2016

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

South Portland Bus Service

- Policy Statement -

- Rules of Conduct and Inappropriate Behavior - Transit Exclusion Policy and Procedures

I. Purpose

It is the mission of the South Portland Bus Service (SPBS), a department in the City of South Portland, through the efforts of dedicated, well-trained employees, to provide safe, reliable, convenient, and efficient public transportation to the citizens and visitors of the service area. SPBS has established this Behavior Policy to promote the safety and comfort of its riders, to facilitate the proper use of transit facilities and services, to protect transit facilities and employees, to assure the payment of fares and to ensure that SPBS vehicles and facilities are safe, welcoming and provide equitable access for SPBS passengers. Responses to inappropriate and/or illegal conduct are outlined here.

II. Overview and Definitions

No individual may engage in inappropriate conduct on, at or in the facilities of SPBS, including at Transfer Hubs, in shelters, at bus stops, and at administrative, operational, and maintenance facilities, or on buses used to provide SPBS fixed route services.

Inappropriate conduct includes any individual or group activity which is disruptive or injurious to other individuals lawfully using SPBS facilities or services; damaging or destructive to transit facilities or services; or disruptive, harassing, threatening or injurious to transit employees. Inappropriate conduct may also constitute a violation of an ordinance or criminal law. The fact that an individual is or is not charged or convicted of an incident of inappropriate conduct does not bar investigation and/or exclusion under this Policy.

The term South Portland Bus Service or SPBS means the City of South Portland, Transportation and Waterfront Department. The term "facilities" means all property and equipment of SPBS, including, without limitation, inside and outside areas of SPBS (City) property, bus shelters, bus stops, transfer points, signage and buses used to provide SPBS Transit service.

The term "SPBS Transit facilities" includes both the public and non-public areas of SPBS facilities.

The term "public area" of SPBS Transit facilities includes those portions of facilities that are open for public use for transit or transit related purposes.

The term "transit services" means fixed route bus service.

III. Level I Inappropriate Conduct on Buses

For any of the following inappropriate conduct on buses, persons will be given a **first warning by the Bus Operator** not to engage in the conduct. If further warning

by the Bus Operator is necessary for failure of the passenger to comply, a SPBS Dispatcher / Supervisor may be contacted. The Dispatcher / Supervisor is authorized to and may ask the passenger(s) to leave the bus. An individual who declines to leave a bus after being ordered to do so by the SPBS Dispatcher / Supervisor is subject to arrest and prosecution for trespassing and or disorderly conduct. The Dispatcher / Supervisor is authorized to request police assistance. Continuous repeat infractions may result in exclusion from buses for not less than 7 days or more than 6 months. See Section VI, Exclusion Procedure.

Level I Inappropriate Conduct on Buses:

- Refusing to vacate designated front seats and designated wheelchair areas in buses for senior citizens and people with disabilities when requested by those persons or by the driver on their behalf.
- Eating or drinking with the exception of bus operators who have permission to do so when vehicles are not in motion.
- Using an audio device (e.g. portable radio, tape, CD player, TV, etc.), unless such equipment is used with earphones so that sound is limited to person's own listening only
- Standing in front of the standee line at the front of the bus near the driver's seat.
- Bringing any animal on buses un-caged, except service animals that assist those with disabilities. Caged animals must fit on customer's lap.
- Bringing on-board any large articles, packages, baggage, non-collapsible strollers or baby buggies which block the aisle and restrict the free movement of passengers. Passengers are limited to one non-leaking bag of returnable bottles; "double bagging" may be necessary to eliminate spillage.
- Engaging in indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance. This is not intended to prohibit ordinary conversation between passengers in normal conversational tones.
- Having distracting conversations with SPBS Bus Operators.
- Engaging in unauthorized canvassing, selling, soliciting or distributing any material on-board buses.
- Changing a child's diaper.
- Exhibiting inappropriate personal hygiene, i.e., an individual whose bodily hygiene is so offensive as to constitute a nuisance to other passengers.
- Boarding unattended minors: children five years of age and under must be closely accompanied at all times by an older responsible individual.
- Roller-skating, roller-blading, or skateboarding on buses.
- Hanging or swinging from stanchions or other bus equipment with feet off the floor.
- Hanging out, reaching out, or putting anything out of bus windows.
- Willfully refusing to pay a fare, or show specific fare media to the bus operator.
- Using of or bringing a Segway (or like device) on the bus.
- Otherwise disorderly or inappropriate conduct which is inconsistent with the orderly and comfortable use of buses for their intended purpose

IV. Level II Inappropriate Conduct on Buses or in Other Facilities The following conduct is prohibited in all SPBS facilities, including but not limited to, buses, Transfer Hubs, park & ride lots, and bus shelters except as specifically limited below. Any individual

observed engaging in the conduct may be told by a Bus Operator or Dispatcher / Supervisor or other authorized individual to leave the facilities immediately and may be subject to arrest by proper authorities. The Bus Operator is authorized to request police assistance if necessary. These offenses may also subject passenger(s) to the Exclusion Procedure, described in Section VI. Further legal action may be taken as applicable and appropriate.

- Smoking on buses. “Use of tobacco products (including 3-cigarettes and vaporizers) is not allowed on South Portland buses, at and within 20 feet of all bus stops, bus shelters, and the Mill Creek Transit Hub.” (See Section V below concerning lighting an incendiary device (e.g. match, lighter, or torch).
- Fighting.
- Bringing any items of a dangerous nature on-board buses including: weapons (pistols, rifles, knives or swords); flammable liquids; dangerous, toxic or poisonous substances; vessels containing caustic materials, chemicals, acids or alkalis; fishing rods which are not broken down or have unsecured or exposed hooks or lures, ski poles unless secured to skis or have tip covers; sheet glass and sharp objects. Fencing foils must be sheathed and left at the front of the bus with the bus operator.
- Behavior that is disruptive, harassing, or threatening in nature to SPBS passengers or employees. This includes following or stalking passengers or employees.
- Causing sounds that are unreasonable and highly disruptive of other individuals using SPBS facilities or services, including but not limited to: prolonged loud, abusive, indecent, profane or drunken conduct.
- Misuse of fare media
- Drinking alcoholic beverages or possessing open containers of alcoholic beverages.
- Otherwise disorderly or inappropriate conduct which is inconsistent with the safe and orderly use of transit facilities for their intended purpose

V. Level III Inappropriate Conduct/Emergency Situations

The following conduct in all SPBS vehicles and facilities, including buses, Transfer Hubs, Park & Ride Lots and bus shelters will be cause for police intervention, arrest and/or prosecution. An emergency situation can be defined as any situation in which an individual's actions present an imminent danger to the life or safety of him/herself or others, or to SPBS property. The Bus Operator is authorized to request police assistance. An individual found to have engaged in any of the following activities will be excluded from transit facilities and/or services pursuant to the process in Section VI, Exclusion Procedure.

- Use of counterfeit or stolen fare media
- Assault or threat of assault.
- Stealing or willfully damaging, defacing or destroying SPBS property. The City will prosecute anyone who steals or willfully damages, defaces or destroys SPBS property.
- Lighting an incendiary device (e.g. match, lighter, torch).
- Obstructing or interfering with the Bus Operator's safe operation of the bus
- Indecent exposure

- Entering or remaining on SPBS buses after having been notified by an authorized individual not to do so, or boarding or remaining on SPBS buses during the period when an individual has been banned from the premises. See Non-compliance with Exclusion Order (VIII).

VI. Transit Exclusion Procedure

After staff determine that there have been repeated or serious incidents of inappropriate conduct by an individual, and it is determined that the individual involved should be excluded from transit facilities and/or services or that conditions should be placed on the individual's continued use thereof:

A. The Operations Supervisor will issue, or cause to be issued, to the individual involved a written exclusion letter from SPBS facilities, including services as may be warranted. The letter shall indicate the reasons for the exclusion, the time period of the exclusion, and the facilities and/or services to which the exclusion order applies. If continued use of transit facilities and/or services is made subject to safety conditions or restrictions (e.g., presence of a parent or guardian in the case of a juvenile; accompaniment by a personal care attendant or aide), a conditional exclusion letter may be issued specifying that the individual will be subject to exclusion unless the imposed restrictions are complied with. The letter shall also advise the individual of his/her right to appeal the decision and include a copy of the appeal procedure. The Operations Supervisor shall provide a copy of the letter to the Director and will inform all staff involved, who have a need to know, about the reasons for and length of the exclusion.

B. At the discretion of the Operations Supervisor, a juvenile may be restricted to use of SPBS services only when the juvenile is accompanied by a responsible designated adult for a designated period of time. The juvenile's parent or guardian must be notified of the restriction via certified mail. Failure to abide by the restriction may lead to exclusion under this policy.

VII. Appeal Procedure

A. Any appeal by or on behalf of the party subject to an exclusion order shall be submitted in writing to the Director within ten days after service by mail of the Operations Supervisor's determination. The communication shall state with specificity the grounds for the appeal. The determination of the Operations Supervisor to exclude an individual shall be stayed pending appeal to the Director. The Director shall review and may reconsider or modify the decision to exclude an individual, following investigation of the matter and shall specify in writing within fourteen business days of receipt of the appeal the reasons for rescission or modification, if applicable, to the appellant. The Director will seek review of a draft written response by the City's Corporation Counsel before issuing the response to an individual subject to an exclusion order

B. The aggrieved party may appeal the Director's determination within ten days after service by mail of the Director's determination, by written notice of appeal filed with both the Director and the City Manager c/o South Portland City Hall, 25 Cottage Road, South

July 21, 2008

Portland, Maine 04106. The City Manager shall hold a hearing within 30 days after the notice has been filed. Notice of the hearing including a statement of the time, place and nature of the hearing shall be mailed to the aggrieved party and the Director at least ten (10) days prior to the hearing. Exclusion orders for Level I violations shall be stayed pending appeal to the City Manager. Exclusion orders for Level II and Level III violations shall not be stayed pending an appeal, unless the City Manager finds that a stay is warranted and necessary under the particular circumstances. A request for stay shall be made in writing by the aggrieved party stating the specific reasons for the request. Hearing. At the hearing, the appellant may be represented by counsel, may present evidence, and may call and examine witnesses and cross-examine witnesses of the other party. The City Manager shall conduct the hearing. The staff shall record all of the proceedings on tape.

D. Decision. Within 30 days of the completion of the hearing, the City Manager shall issue a written decision. The City Manager shall make a finding on whether it is more probable than not that the excluded individual engaged in the conduct which was the basis for the exclusion. Based on testimony and the evidence in the record, the City Manager shall have the power to affirm or reverse the written determination or to remand it to the Director with instructions for reconsideration consistent with its decision. The decision, except for remand, shall be a final determination for the purposes of judicial review.

VIII Non-Compliance with Exclusion Order: Trespassing

If an individual subject to an exclusion order enters the specified facilities or services before the return date listed in the exclusion letter, police will be called and individual will be subject to arrest an/or prosecution under city ordinances.

Adopted by the South Portland City Council – COUNCIL ORDER #15-08/09, July 21, 2008; amended Council ORDER #67-16/17, October 17, 2016