

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

Subject:

ORDINANCE #3-16/17 – Amending Chapter 16, “Nuisances in General,” regarding the process for filing a Nuisance Complaint. Amended and passed first reading on 10/3/17. ROLL CALL VOTE. Passage requires majority vote.

Position:

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

The following are proposed changes to the Public Nuisance Affecting Public Health and Safety:

- 1) Amending Section Sec. 16-3. Public Nuisances Affecting Public Health and Safety.

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

...

(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.

...

(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.

...

Staff brought these amendments forward at the September 26th workshop and believe they 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.

At the Council meeting on October 3, 2016, the City Council further amended Sec. 16-3 (d) which is highlighted below.

(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

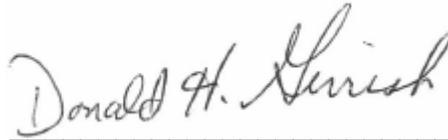
that ~~there is in fact such conditions as complained of~~ there are in fact such conditions that constitute a public nuisance. The hearing may be continued from time to time at the discretion of the City Council.

This change is not substantive and would not require a new first reading.

This amendment is in order for second reading and action.

Requested Action:

This item is in order for Council action.

A handwritten signature in cursive script that reads "Donald H. Gurish". The signature is written in black ink on a white background.

Interim City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

DON H. GERRISH
Interim City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. CARRINGTON
City Clerk

IN CITY COUNCIL

ORDINANCE #3-16/17

THE COUNCIL of the City of South Portland hereby ordains that Chapter 16, "Nuisances in General," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (additions are underlined; deletions are struck-out)

Chapter 16

NUISANCES GENERALLY*

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

(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

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

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.

. . .

- (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~~ there are in fact such conditions that constitute a public nuisance. The hearing may be continued from time to time at the discretion of the City Council.

. . .

Fiscal Note: Less than \$1,000

Dated: October 3, 2016