

## **SOUTH PORTLAND CITY COUNCIL**

### *POSITION PAPER OF THE CITY CLERK*

**SUBJECT:** ORDINANCE #11-15/16 – Amending Chapter 14, “Licenses, Permits and Business Regulations Generally”. Passed first reading 06/20/16. ROLL CALL VOTE. Passage requires majority vote.

#### **POSITION:**

At the City Council Workshop on May 9, 2016, the City Council reviewed a number of proposed changes to Chapter 14 brought forward by the City Clerk. Ordinance #11-15/16 contains proposed amendments to Secs. 14-2, 14-8, 14-12, 14-24, 14-104, 14-404, and 14-405.

Proposed changes to Sec. 14-12, regarding “Renewal of licenses”, add language that expressly recognizes an existing practice, that the City Clerk may defer action on a business license renewal application and refer the matter to the City Council for hearing and action.

Proposed changes to Sec. 14-24, regarding “Use of public sidewalk for outdoor seating”, add language that allows the City Clerk to renew an outdoor seating license granted in the prior year, applying the same review standards for renewal of the license as applied in the initial issuance of the license; however, subsection (e) [regarding notice to abutters of a public hearing] will not apply in the instance of a renewal application. Under Sec. 14-12, the City Council will still have the ability to hear a renewal application if the City Clerk defers action on it.

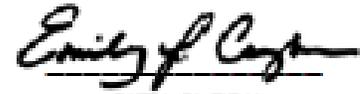
Proposed changes to Sec. 14-104, regarding “Mobile, temporary and non-permanent stationary vending units”, add language that allows mobile, temporary and non-permanent stationary vending units to be exempt from Planning Board site plan review and approval when said licensed activity is part of a special event. In turn, a definition of the term “special event” is proposed to be added to Sec. 14-2, regarding definitions.

Proposed changes to Sec. 14-404, regarding “License required” & “Notice of hearing” for Coin Operated Game Machines, remove language requiring the publication of notice of a renewal in a newspaper of general circulation in the City.

Note that as staff was working on preparing these proposed amendments, it came to our attention that Ch. 14 does not expressly require (although it has been long-standing Parks and Recreation Department practice) that, for special events on City property, the event sponsor carry liability insurance and name the City as an additional named insured. The proposed change to Sec. 14-8 adds this requirement.

**REQUESTED ACTION:**

Council passage of Ordinance #11-15/16.

  
CITY CLERK



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

JAMES H. GAILEY  
City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

District One  
CLAUDE V. Z. MORGAN

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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

**IN CITY COUNCIL**

**ORDINANCE #11-15/16**

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 14, "Licenses, Permits and Business Regulations Generally," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

**ARTICLE I. IN GENERAL**

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**Sec. 14-2. Definitions.**

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

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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.

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

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(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; ~~or~~
- (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.

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**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.

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**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.

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## **ARTICLE VI. FOOD, FOOD HANDLERS AND FOOD SERVICE ESTABLISHMENTS**

### **DIVISION 1. GENERALLY**

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#### **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.

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## **ARTICLE X. COIN OPERATED GAME MACHINES ORDINANCE**

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### **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; ~~provided, however, license renewals shall require publishing a notice in a newspaper of general circulation in the City.~~

**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; ~~provided, however, license renewals shall require publishing a notice in a newspaper of general circulation in the City.~~

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Fiscal Note: Less than \$1,000

Dated: June 20, 2016