Agenda Item #10

Meeting of August 1, 2016

South Portland City Council
Position Paper of the Interim City Manager

Subject:

ORDER #24-16/17 – Setting August 15, 2016 as the date of the public hearing on a public nuisance complaint relating to property at 611 Main Street. Passage requires majority vote.

Position:

This item is brought forward to set August 15, 2016 as the date of the public hearing on the public nuisance complaint made by ten or more resident taxpayers of Aspen Avenue and Thirlmere Avenue relating to property at 611 Main Street (Tax Map 53, Lot 302E) and owned by CRT LXXIV LLC.

Sec. 16-3 of the Code of Ordinances provides that the City Council may declare conditions at a property to be a public nuisance and order the owner(s) to abate the nuisance. This process can be commenced by a complaint by any city official or department head or by a petition signed by ten real estate taxpayers of record within 500 feet of the subject property. In this case, residents within 500 feet of 611 Main Street have submitted a complaint to the City Council.

Subsequent to receiving the complaint, Assistant City Manager Josh Reny contacted Greg Nolan, representative of the property owner (Cafua) to discuss the problem. Friday, July 22nd, Mr. Nolan dispatched a crew to 611 Main Street to address grounds and maintenance issues.

Following the receipt of the complaint, Sec. 16-3(b) of the Code of Ordinances requires the City Council to, by order, establish a date, time and place for a public hearing in order to determine whether such condition is a public nuisance. The ordinance also requires the City Clerk to notify the owner of the property of the public hearing by both first class and certified mail, return receipt requested, at least five days before the hearing.

Accordingly, this Order sets the date, time and place for a public hearing on the complaint and orders the City Clerk to so notify the property owners in the manner and within the time period specified. (More information on the complaint will be provided to the City Council in advance of the public hearing.)

Requested Action:
Council passage of ORDER #24-16/17 and set August 15, 2016 for public hearing and action.

Donald H. Gerrish

Interim City Manager

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.	Scott H McKeen	29 Thirlmere Ave	Scott H McKeen
2.	Bethany M McKeen	29 Thirlmere Ave	Bethany M McKeen
3.	Gloria M Carter	12 Aspen Ave	Gloria M. Carter
4.	Martha Martenson	26 Thirlmere Ave	Martha Martenson
5.	Joyce Mendoza	13 Thirlmere Ave	Joyce Mendoza
6.	Melissa Kurdoy	23 Thirlmere Ave	Melissa Kurdoy
7.	James V Whitlock	52 Thirlmere Ave	James Whitlock
8.		33 Thirlmere Avenue	Amy Thompson
9.	Blaine Thompson	33 THIRLMERE AVENUE	BLAINE THOMPSON
10.	Ann-Marie Wong	25 Thirlmere Ave	Ann-Marie Wong
11.	Loretta A Stoehr	30 Thirlmere AVE	LORETTA STOEHR
12.	Barbara A Nee	34 Aspen Ave.	BARBARA A NEE
13.	Heidi Libby	43 Aspen Ave Ave	HEIDI A. LIBBY
14.	Philip L Carter	12 Aspen Ave.	Philip L. Carter
15.			
16.			
17.			
18.			
19.			
20.			

July 18, 2016

Collapsed Fence and Debris #1

Collapsed Fence #2

Attached Shed - School rear

Church Side Door Stair Well where gutter spills into

Church side door where gutter spills into stairwell

Open Trash container

Open Trash can

Open trash can

Example of overgrown property

Example of tall weeds and overgrown property

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.

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 hazds 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])

CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

DON GERRISH
Interim City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

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

IN CITY COUNCIL

ORDER #24-16/17

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

WHEREAS, upon the City Council's receipt of such a complaint, Sec. 16-3(b) of the Code of Ordinances requires the City Council, by order, to establish a date, time and place for a public hearing to determine whether such conditions constitute a public nuisance;

NOW, THEREFORE, IT IS ORDERED, that 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 is hereby set for the Council meeting of August 15, 2016 at 7:00 p.m. in Council Chambers, South Portland City Hall; and

BE IT FURTHER ORDERED, that the City Clerk be, and hereby is, ordered to mail a notice of the public hearing, by both first class and certified mail, return receipt requested, to the owner of the Premises not less than five (5) days before the date of the hearing as set forth above.

Fiscal Note: Less than $1,000

Dated: August 1, 2016

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