

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

***Subject:***

**ORDINANCE #14-13/14 - Amending Chapter 27, "Zoning," Regarding Zone Text and Zone Map Change creating the Main Street Community Commercial (MSCC) zoning district. Passed first reading on 5/5/14. ROLL CALL VOTE. Passage requires five (5) affirmative votes.**

***Position:***

This request is brought forward by the City to rezone an area along Main Street by creating the Main Street Community Commercial (MSCC) district.

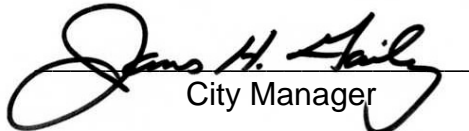
The purpose of the MSCC zone is to provide a higher density, mixed residential and commercial hub within the Thornton Heights neighborhood. This is a destination business district that effectively balances pedestrian accessibility and safety with the need to maintain vehicular mobility. It is a mixed-use center providing services to the surrounding neighborhood as well as to Main Street motorists.

This amendment was discussed at the March 10<sup>th</sup> and April 28<sup>th</sup> workshops. The Planning Board held public hearings on February 25<sup>th</sup> and April 22<sup>nd</sup>. The Board recommends approval of the new zoning district.

This ordinance amendment passed first reading on May 5, 2014 and is in order for second reading and action.

***Requested Action:***

Council passage of ORDINANCE #14-13/14.

  
City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT  
Mayor

JAMES H. GAILEY  
City Manager

SUSAN M. MOONEY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #14-13/14

**THE COUNCIL** of the City of South Portland hereby ordains that the text of Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as shown below (additions are underlined; deletions are ~~struck-out~~) and that the Official Zoning Map of the City of South Portland dated September 8, 2010, as amended, be and hereby is amended to change the zoning designation of the properties highlighted on the attached sketch map to the Main Street Community Commercial (MSCC) zoning district. (The attached sketch map is for general reference purposes only. The Official Zoning Map of the City of South Portland as amended is available for review and inspection at the Planning and Development Office and the City Clerk's Office.)

District One  
MICHAEL R. POCK

District Two  
PATRICIA A. SMITH

District Three  
MELISSA E. LINSKOTT

District Four  
LINDA C. COHEN

District Five  
GERARD A. JALBERT

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

Chapter 27

ZONING

ARTICLE II. Definitions

Sec. 27-201. Definitions

... Alternative financial establishment. A car title loan business, check cashing business, or money transfer business. An alternative financial establishment does not include state or federally chartered banks, savings and loan associations, or credit unions. An alternative financial establishment does not include an establishment that provides financial services that are accessory to another main use.

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Assisted living facility. Residences for the frail elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide other services, such as recreational activities, financial services, and transportation.

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Bed & breakfast inn. A private residence that offers sleeping accommodations to lodgers in 12 or fewer rooms for rent, in the innkeeper's (owner or operator) principal residence while renting rooms to lodgers, and serves breakfasts at no extra cost to its lodgers. For the purpose of this definition, a lodger means a person who rents a room in a bed & breakfast establishment for fewer than 30 consecutive days.

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Energy generation facility, accessory. An electric power production facility that is accessory to the primary use of the property and whose energy is chiefly used by the primary use. Accessory energy generation facilities may use renewable and/or nonrenewable energy sources, but, except in cases of emergency back-up power production and back-up power maintenance and testing, they shall not emit smoke or odors detectable at the property boundary.

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Lot coverage. The portion of a site that is impervious (i.e., does not absorb water). This includes but is not limited to all areas covered by buildings and structures and, except for those areas with pervious paving, parking lots, driveways, and roads.

...

Pawn shop. Any business that loans money on deposit of personal property or deals in the purchase of possession of personal property on condition of selling the same back again to the pledger or depositor, or loans or advances money on personal property by taking chattel mortgage security thereon, and takes or receives such personal property.

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Setback. The minimum distance by which any building or structure must be separated from a street right-of-way or lot line.

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Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such as usable or unused under-floor space shall be considered as a story.

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Warehouse discount store. Off-price or wholesale retail/warehouse establishment exceeding 30,000 square feet of gross floor area and offering general merchandise for sale to the public.

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**Secs. 27-786 – 27-800**~~789~~. **Reserved.**

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**MAIN STREET COMMUNITY COMMERCIAL MSCC**

**Sec. 27-800.** **Purpose (MSCC).**

To provide a higher density, mixed residential and commercial hub within the Thornton Heights neighborhood of South Portland. This is a destination business district that effectively balances pedestrian accessibility and safety with the need to maintain vehicular mobility. It is a mixed-use center providing services to the surrounding neighborhood as well as to Main Street motorists.

**Sec. 27-801.** **Permitted Uses (MSCC).**

**(a) Residential:**

- 1. Single-family detached dwellings, exclusive of mobile homes, in existence as of April 1, 2014. After this date, new single-family detached dwellings are not permitted.**
- 2. Attached single-family, two-family, and multi-family dwellings, exclusive of mobile homes.**

3. Congregate care facilities, assisted living facilities, and nursing homes.
4. Combined living/working spaces, including, but not limited, to artist residences with studio space.
5. Congregate housing individual unit ownership facilities.
6. Community homes.

(b) Hotels, motels, or other accommodation services:

1. Hotels, motels, tourist lodging, not including trailers or mobile homes, but including a maximum of two (2) dwelling units for resident operators of tourist accommodations. Effective April 1, 2014, the conversion of any of these structures to dwellings is only permitted if both of the following standards are met:
  - (a) Each dwelling unit is at least 600 sq. ft. in floor area and provides complete housekeeping facilities for one family; and
  - (b) The building containing the dwelling units meets the design standards and all other standards applicable to new buildings in the Main Street Community Commercial zoning district.
2. Bed & breakfast inns.

(c) Commercial:

1. Medical, business, and professional offices.
2. Retail stores and service establishments, provided that such facilities may not be open to the public between the hours of 12:00 a.m. and 6:00 a.m. This provision does not include outdoor sales and service, gasoline filling stations, junkyards, salvage operations, warehouse discount stores, pawn shops, and alternative financial establishments.
3. Drive-through facilities for stores, shops, banks, and offices; drive-through facilities for restaurants or other establishments selling food or beverages are not permitted. Any microphone, speaker, or other device used for oral communication between customers in vehicles and service providers shall be a

minimum of 25 feet from the property line and shall be situated and designed so as to minimize off-site aural impacts.

4. Personal and business services.
5. Restaurants and other places for the serving of food or beverages, provided that such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m.

(d) Public assembly, institutional, or community facilities:

1. Churches and parish houses.
2. Museums and art galleries.
3. Funeral homes, not including cemeteries.
4. Public and private educational facilities, including child, adult, or combined day care centers.
5. Municipal buildings and uses.
6. Charitable and philanthropic organizations.

(e) Utility and related facilities:

1. Municipal uses, including pumping stations.

(f) Other:

1. Accessory uses, including but not limited to accessory energy generation facilities.
2. Multiple/Mixed uses.
3. Studios for artists and craftspeople.

**Sec. 27-802**      **Special Exceptions (MSCC).**

(a) Residential:

1. Accessory dwelling units subject to the provisions of Sec. 27-1576 et seq.

(b) Commercial:

1. Outdoor sales, display and services, other than accessory uses as defined in Sec. 27-201, subject, in addition to other ordinance requirements, to the following terms and conditions:
  - (i) The Planning Board may limit the percentage of area coverage;
  - (ii) The Planning Board may restrict the outdoor sales, display, and services to a specific portion of the lot in question;
  - (iii) The Planning Board may limit the time and/or number of units involved in such outdoor sales, display or service.
2. Motor vehicle repair shops provided that no unlicensed vehicles, or junked or wrecked vehicles will be permitted to be parked or stored on the premises, and no trucks, trailers, or buses will be permitted to remain parked upon the premises unless being worked upon or being serviced by employees of the shop.
3. Farmers' markets subject to the provisions of Sec. 27-1580 et seq.

(c) Public assembly, institutional, or community facilities:

1. Recreational or community activity facilities, whether operated on a for-profit or not-for-profit basis.
2. Theaters not exceeding 12,000 square feet in total building floor area.

(d) Transportation-related facilities:

1. Surface parking lots.
2. Multi-storied parking structures.

(e) Utility and related facilities:

1. Public utility facilities, including substations.
2. Radio, television, or wireless antennas, provided that telecommunication towers are not permitted.

**Sec. 27-803. Space and bulk regulations (MSCC).**

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|---|--|
| <u>Minimum lot area:</u>  | <u>3,500 sq. ft.</u>   |
| <u>Maximum residential density:</u>   | <u>Twenty-four (24) dwelling units per net residential acre.</u>   |
| <u>Minimum building height for buildings constructed after April 1, 2014:</u> | <u>Twenty-four (24) feet.</u>  |
| <u>Maximum building height:</u>   | <u>Fifty (50) feet.</u>  |
| <u>Maximum number of stories:</u>   | <u>Three (3).</u>  |
| <u>Minimum front yard setback:</u>  | <u>Five (5) feet, provided that for construction of new structures after April 1, 2014, and further limited to front yards defined by Main Street, the area between a front wall of the structure and the front property line may not be used for parking or vehicular access, except for driveways.</u>   |
| <u>Maximum front yard setback:</u>  | <u>Fifteen (15) feet.</u>  |
| <u>Minimum side and rear yard setbacks:</u>                                   | <u>Side setback = none; rear setback = 20 feet; provided, however, (i) where the side or rear yard abuts a residential zoning district, the buffering requirements of this Chapter shall be met; and (ii) where the side or rear yard abuts a residential zoning district and the principal or accessory building height exceeds thirty (30) feet, the applicable setback shall be a minimum of fifty (50) percent of the building height.</u> |
| <u>Minimum street frontage:</u>   | <u>Twenty-five (25) feet.</u>  |
| <u>Maximum lot coverage:</u>  | <u>Eighty (80) percent.</u>  |



**Sec. 27-804. Off-street parking (MSCC)**

- (a) Off-street vehicle parking shall be provided in accordance with the requirements of Sec. 27-1556 of this Chapter.
- (b) A minimum of 1.0 bicycle spaces per 30 required non-residential off-street parking spaces, or 3.0 bicycle spaces, whichever is greater, and 0.5 bicycle spaces per residential dwelling unit must be provided. Bicycle spaces shall be supplied through bicycle racks or other facilities providing secure storage for individual bicycles. Bicycle spaces shall be at least 2 feet 6 inches in width and 6 feet in length, with a minimum overhead vertical clearance of 7 feet. Racks and other fixtures must be securely affixed to the ground and allow for the bicycle to be locked and chained. The spaces may be indoors or outdoors and shall be located within 50 feet of the primary entrance. The spaces shall not be located behind any wall, shrubbery, or other visual obstruction lying between the principal building and the bicycle spaces. If required bicycle spaces are not visible from the street, signs must be posted indicating their location. Areas used for required bicycle parking shall be paved, drained, and well lighted. Spaces within offices and commercial facilities, located on balconies, or within residential dwelling units shall not be counted toward required parking.

**Sec. 27-805. Buffering (MSCC)**

Sec. 5-58(5)(a) and other sections of the Code notwithstanding, any use in the Main Street Community Commercial zoning district that requires Site Plan approval from the Planning Board and that abuts a residential property in another zone must provide a buffer strip to physically separate and screen the use from abutting residential properties in a manner acceptable to the Planning Board. The buffer shall consist of trees, shrubs, fences, walls, berms, or any combination thereof. It must be a minimum of six (6) feet wide and extend along the entire length of any property line that is in or adjacent to the other zone. The screening from the buffer must be sufficient to ameliorate commercial or other non-residential views that otherwise would be detrimental to the quality of life of the abutting residential occupants and/or to their property values. Uses with driveways or other access ways at least ten (10) feet wide adjacent to a residential zoning district may satisfy the buffer width requirement by providing a fence or other screening between the drive/access way and the abutting lot without a width requirement for the fence or screening. In all cases the Planning Board shall determine the adequacy of the quality, function, height, and other characteristics of any proposed fencing, landscaping, or other buffering.

**Sec. 27-806.**      **Signs (MSCC)**

Signs shall be regulated in accordance with the requirements of Sec. 27-1561 et seq. of this Chapter.

**Sec. 27-807.**      **Site plan review (MSCC)**

Any use allowed in this District, involving new construction which, when added to new construction within the preceding two (2) years, exceeds one thousand (1,000) square feet of floor area, shall be subject to the site plan review requirements of Article XIV; provided, that this section shall not apply to single-family detached dwellings or their accessory buildings. For purposes of this section, “new construction” means (a) the construction of a new structure, (b) an addition to an existing structure, or (c) any interior construction for the purpose of converting an existing building from one use to another use if the conversion will significantly increase off-site impacts. A “use” shall be any use listed in the zoning district in which the site is located. The impacts to be considered include, but are not limited to, increases in: traffic generation; parking area; utilization of City services; stormwater runoff; or noise, odors, or other annoying or dangerous emissions detectable at lot boundaries.

In determining the relative degree of impact of a proposed use, the comparison shall be to either (i) the most recent lawful use of the building or (ii) any lawful use of the building within the last two (2) years (but, in the latter case, only if such use was evidenced by a certificate of occupancy on file in the Code Enforcement Officer’s office), whether such use was as a permitted use, special exception use, or a nonconforming use.

**Sec. 27-808.**      **Design standards (MSCC).**

All building construction or remodeling projects within the Main Street Community Commercial zoning district must comply with the Design Standards for Neighborhood Activity Centers in Sec. 27-1572 et seq.

**Sec. 27-809.**      **Applicability date (MSCC)**

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the applicability date of Ordinance #14-13/14 adopting this zoning district is March 10, 2014, the date it first appeared on a City Council agenda.

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## PERFORMANCE STANDARDS – GENERAL

### **Sec. 27-1521. Accessory energy generation facilities.**

- (a) Ground-mounted solar photovoltaic installations may not exceed a maximum rated output of electrical power production in direct current (DC) of 250 kW.
  
- (b) Wind energy systems may be roof-mounted or, under certain conditions, free-standing. Free-standing wind energy systems are only allowed on lots greater than 0.5 acre in size and may not exceed the height of the zone or 45 feet, whichever is less. Other space and bulk standards notwithstanding, the setback from any property line for a free-standing wind energy system shall be a minimum of 110% of the height of the system. In all cases, the noise standards set out in Chapter 30, Control of Noise from New Development, shall be met.

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## OFF-STREET PARKING AND LOADING STANDARDS

### **Sec. 27-1556. Off-street parking regulations.**

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- (b) The Planning Board may reduce the number of off-street parking spaces required to be provided for any use by up to twenty-five percent (25%) as part of a Post-Construction Stormwater Management Plan if the applicant demonstrates that the parking proposed to be provided is adequate for the use based upon national parking demand studies such as Parking Demand published by the Institute of Traffic Engineers or by data on actual parking demand for similar uses in similar situations and/or consideration of the availability of transit service or other alternative transportation that reduces the demand for on-site parking. The following minimum off-street parking requirements shall be provided and maintained in case of new construction, alterations and changes of use; except that, in the Main Street Community Commercial zoning district and in the District One/Knightville Design Review District section of the VC zoning district, the minimum number of required off-street parking spaces for office retail, service, and restaurant uses — Sec. 27-1556(b)(4)a., b., and c., Sec. 27-1556(b)(5) and Sec. 27-1556(b)(6) — shall be 50% of the amount otherwise indicated:
  - (1) For residential structures:
    - a. Single-family detached: Two (2) parking spaces.

- b. Single-family attached: One and one-half (1 1/2) parking spaces.
- c. Multifamily (non-elderly): One and one-half (1 1/2) parking spaces per dwelling unit.
- d. Multifamily (elderly): ~~One-third~~ one-half parking spaces per dwelling unit.

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(12) For hospitals, sanitariums, assisted living facilities, and nursing or convalescent homes, one parking space for each four (4) patient beds (excluding bassinets) plus one space for each staff or visiting doctor and one space for each three employees including nurses. Loading and unloading space for hospital ambulances and similar vehicles shall not be included in the spaces required herein.

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## **DESIGN STANDARDS FOR NEIGHBORHOOD ACTIVITY CENTERS**

### **Sec. 27-1573. Applicability.**

These design standards apply to all building construction or remodeling projects affecting the exterior of buildings within the following zoning districts that require a special exception, site plan, or subdivision approval and/or a non-single family dwelling unit building permit:

- The Village Commercial–Willard VCW Zoning District
- The Main Street Community Commercial MSCC Zoning District

Where such a project is associated with an existing building, such as an addition or partial remodeling, these design standards apply only to the new construction or the part of the building being remodeled.

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Fiscal Note: Less than \$1,000

Dated: May 5, 2014