

Table of Contents

ARTICLE I. IN GENERAL	1
Sec. 2-1. Seal described.	1
Sec. 2-2. Executive department.....	1
Sec. 2-3. Legal department established.....	1
Sec. 2-4. Duties of legal department.	1
Sec. 2-5. Authority to engage additional counsel.	2
Sec. 2-6. Position of sealer of weights and measures created.....	2
Sec. 2-7. Appointment of sealer of weights and measures.	2
The sealer of weights and measures shall be appointed by the municipal officers.	2
Sec. 2-8. Powers, duties of sealer of weights and measures.	2
Sec. 2-9. Planning director.	3
Sec. 2-10. Department of public works created; composition.	3
Sec. 2-11. Duties of department of public works.....	3
Sec. 2-12. Appointment of director of public works.....	3
The director of public works shall be appointed by the city manager.	4
Sec. 2-13. General duties of director of public works.	4
Sec. 2-14. General powers of director.....	4
Sec. 2-15. Director of public works to administer department.	4
Sec. 2-16. Repealed.....	4
Sec. 2-17. City engineer.....	4
Secs. 2-18, 2-19. Reserved.	5
Sec. 2-20. Department of pollution abatement created.....	5
Sec. 2-21. Organization.....	5
Sec. 2-22. Duties and responsibilities of director of pollution abatement.	5
Secs. 2-23--2-25. Reserved.	6
ARTICLE II. CITY COUNCIL*	1
DIVISION 1. GENERALLY	1
Sec. 2-26. Reserved.....	1
Sec. 2-27. Reserved.....	1
Sec. 2-28. Fiscal note.	1
Secs. 2-29--2-32. Reserved.	1

DIVISION 2. Reserved.....	2
Sec. 2-33. Reserved.....	2
Sec. 2-34. Reserved.....	2
Sec. 2-35. Reserved.....	2
Sec. 2-36. Reserved.....	2
Sec. 2-37. Reserved.....	2
Sec. 2-38. Reserved.....	2
Sec. 2-39. Reserved.....	2
Sec. 2-40. Reserved.....	3
Sec. 2-41. Reserved.....	3
Sec. 2-42. Reserved.....	3
Sec. 2-43. Reserved.....	3
Sec. 2-44. Reserved.....	3
Sec. 2-45. Reserved.....	3
Sec. 2-46. Reserved.....	3
Sec. 2-47. Reserved.....	3
Sec. 2-48. Reserved.....	3
Sec. 2-49. Reserved.....	4
Sec. 2-50. Reserved.....	4
Sec. 2-51. Reserved.....	4
Sec. 2-52. Reserved.....	4
Sec. 2-53. Reserved.....	4
Sec. 2-54. Reserved.....	4
Sec. 2-55. Reserved.....	4
Sec. 2-56. Reserved.....	4
Secs. 2-57--2-65. Reserved.	4
ARTICLE III. BOARDS AND COMMISSIONS*	1
DIVISION 1. GENERALLY	1
Sec. 2-66. Rules of procedure.	1
Secs. 2-67--2-75. Reserved.	1
DIVISION 2. CONSERVATION COMMISSION	1
Sec. 2-76. Commission established.....	1
Sec. 2-77. Purpose.....	2
Sec. 2-78. Qualifications.....	2

Sec. 2-79. Powers and duties.	2
Sec. 2-80. Officers, meetings and records.	3
Sec. 2-81. Limits of authority.	3
Secs. 2-82--2-95. Reserved.	3
DIVISION 3. BOARD OF APPEALS*	3
Sec. 2-96. Board of appeals established; powers.	3
Secs. 2-97--2-99. Reserved. Note--See the editor's note to Div. 3.	4
DIVISION 4. COMMUNITY DEVELOPMENT ADVISORY COMMITTEE.....	4
Sec. 2-101. Purpose.....	4
Sec. 2-102. Composition and quorum.	4
Sec. 2-103. Municipal officers to appoint members.	4
Sec. 2-104. Terms of office.....	5
Sec. 2-105. Duties generally.	5
Sec. 2-106. Meeting, agenda.....	5
Sec. 2-107---2-111. Reserved	5
DIVISION 5. PLANNING BOARD*	5
Sec. 2-112. Established.	5
Sec. 2-113. Composition and quorum.....	6
Sec. 2-114. Municipal officers to appoint members.	6
Sec. 2-115. Terms of office.....	6
Sec. 2-116. Duties generally.	6
Sec. 2-117. Meeting, agenda.....	7
Secs. 2-118--2-120. Reserved.	7
DIVISION 6. REPORTS AND VACANCIES.....	7
Sec. 2-121. Vacancies on boards and commissions.....	7
Sec. 2-122. Reporting actions and vacancies.....	8
Sec. 2-123. Removal for cause.....	8
DIVISION 7. ECONOMIC DEVELOPMENT COMMITTEE	8
Sec. 2-124. Established.	8
Sec. 2-125. Purpose.....	8
Sec. 2-126. Composition and quorum.	8
Sec. 2-127. Municipal officers to appoint members.	9
Sec. 2-128. Terms of office.....	9
Sec. 2-129. Qualifications.....	9
Sec. 2-130. Committee staffing.	9
Sec. 2-131. Duties generally.	9

Sec. 2-132. Rules and regulations.....	10
Sec. 2-133. Officers, meetings, and records.	10
DIVISION 8. ENERGY AND RECYCLING COMMITTEE	10
Sec. 2-134. Established.	10
An Energy and Recycling Committee is hereby established.....	10
Sec. 2-135. Purpose.....	10
Sec. 2-136. Composition and quorum	11
Sec. 2-137. Term of office	11
Sec. 2-138. Powers and Duties	12
Sec. 2-139. Officers, meetings and records	12
DIVISION 9. ARTS & HISTORIC PRESERVATION COMMITTEE	13
Sec. 2-140. Establishment and Purpose.	13
Sec. 2-141. Definitions.	13
Sec. 2-142. Composition; appointment; qualifications; and quorum.	13
Sec. 2-143. Terms of office.....	14
Sec. 2-144. Duties generally.	14
Sec. 2-145. Officers, meetings, and records.	15
ARTICLE IV. FISCAL CONTROLS*.....	1
DIVISION 1. GENERALLY	1
Sec. 2-146. Work programs.	1
Sec. 2-147. Classifications of proposed expenditures.....	1
Sec. 2-148. Budget detail.	2
Secs. 2-149--2-154. Reserved.	2
DIVISION 2. PURCHASING*	2
Sec. 2-155. Short title; applicability.....	2
Sec. 2-156. Definitions.....	2
Sec. 2-157. City purchasing agent.	3
Sec. 2-158. Requisition and estimates.	5
Sec. 2-159. Encumbrance of funds.	5
Sec. 2-160. Environmentally Preferable Products and Services.....	5
Sec. 2-161. Competitive bidding required.	6
Sec. 2-162. Formal bidding procedure.....	6
Sec. 2-163. Informal bidding procedure.	8
Sec. 2-164. Exemption from bidding procedures--Emergency purchases.....	9
Sec. 2-165. Exemption from bidding procedure--Special requirements.....	10

Sec. 2-166.	Exemption from bidding procedure--Negotiated purchases.	10
Sec. 2-167.	Exemption from competitive bidding--Cooperative purchasing; used equipment auctions.	11
Sec. 2-167A.	Exemption from competitive bidding--Alternative methods of project delivery for contracts for improvements.....	11
Sec. 2-167B.	Exemption from competitive bidding--Sole source.....	17
Sec. 2-168.	Inspection and testing.	17
Sec. 2-169.	Contracts for professional and other services.	18
Sec. 2-170.	Surplus stock.....	18
Sec. 2-171.	Sale of real property.....	19
Sec. 2-172.	Lease or rental of city property.....	21
Sec. 2-173.	Contract requirements.....	21
Sec. 2-174.	Separability.....	22
Secs. 2-175--2-185.	Reserved.....	22
ARTICLE V. CONFLICTS OF INTEREST AND PERSONAL BENEFITS		1
Sec. 2-186.	Declaration of Policy and Purpose.....	1
Sec. 2-187.	Definitions	1
Sec. 2-188.	Conflicts of Interest and Personal Benefits Prohibited.....	2
Sec. 2-189.	Participation and Vote Prohibited.....	2
Sec. 2-190.	Public Contracts and Purchasing	2
Secs. 2-191--2-199.	Reserved.....	3
ARTICLE VI. LEGAL COUNSEL AND INDEMNIFICATION		1
Sec. 2-200.	Legal counsel and indemnification to be provided.....	1
Secs. 2-201--2-205.	Reserved.....	2
ARTICLE VII. TREE ORDINANCE*.....		1
Sec. 2-206.	Position of city arborist created; appointment, qualifications.	1
Sec. 2-207.	Definitions.....	1
Sec. 2-208.	Duties of arborist.....	2
Sec. 2-209.	Authority of the city arborist.....	2
Sec. 2-210.	Permits required.....	3
Sec. 2-211.	Abuse or mutilation of public trees.....	4
Sec. 2-212.	Interference with city arborist.....	5
Sec. 2-213.	Protection of public trees.....	5
Sec. 2-214.	Placing materials on public property.....	5

Sec. 2-215. Arboricultural specifications and standards of practice.....5
Secs. 2-216--2-220. Reserved.....6

CODE OF ORDINANCES

Chapter 2

ADMINISTRATION AND LEGISLATION*

* **Cross reference(s)**--Personnel rules and regulations, Ch. 19.

Art. I. In General, §§ 2-1--2-25

Art. II. City Council, §§ 2-26--2-65

Div. 1. Generally, §§ 2-26--2-32

Div. 2. Rules of Procedure, §§ 2-33--2-65

Art. III. Boards and Commissions, §§ 2-66--2-126

Div. 1. Generally, §§ 2-66--2-75

Div. 2. Conservation Commission, §§ 2-76--2-95

Div. 3. Board of Appeals, §§ 2-96--2-99

Div. 4. Community Development Advisory Committee, §§ 2-101--2-111

Div. 5. Planning Board, §§ 2-112--2-120

Div. 6. Reports and Vacancies, §§ 2-121--2-123

Div. 7. Economic Development Committee, §§ 2-124--2-133

Div. 8. Energy and Recycling Committee, §§ 2-134--2-139

Div. 9. Arts & Historic Preservation Committee, §§ 2-140--2-145

Art. IV. Fiscal Controls, §§ 2-146--2-185

Div. 1. Generally, §§ 2-146--2-154

Div. 2. Purchasing, §§ 2-155--2-185

Art. V. Conflicts of Interest and Personal Benefits §§ 2-186--2-199

Art. VI. Legal Counsel and Indemnification, § 2-200—2-205

Art. VII. Tree Ordinance, §§ 2-206--2-220

ARTICLE I. IN GENERAL

Sec. 2-1. Seal described.

The city seal shall be a circular disc with the words "City of South Portland, Maine, 1898" on the periphery, and shall be as follows:

(Code 1966, § 1-1)

State law reference(s)--Authority to adopt a seal, 30 M.R.S.A. § 1902.

Sec. 2-2. Executive department.

There shall be an executive department within the city government. Such department shall consist of all administrative branches of the city government and shall be administered by the city manager.

(Code 1966, § 2-1)

Charter reference(s)--Powers and duties of city manager, § 302.

Sec. 2-3. Legal department established.

A legal department for the city is hereby established.

(Code 1966, § 2-9-1)

Charter reference(s)--Corporation counsel, § 231.

Sec. 2-4. Duties of legal department.

The duties of the legal department shall be to:

- (1) Furnish the city with legal representation and counsel;
- (2) Defend the city in all actions and suits against the city, wherein the estates, rights, privileges, ordinances, resolves, orders or acts of the city government, or any branch thereof, may be brought in question before any court of this state;
- (3) Prosecute any suit on account of any estates, rights, privileges, claims or demands of the city.
- (4) Furnish the council or department heads of the city with opinions on legal subjects which may be requested by them and to render professional advice to any officers of the city government who may require legal opinions relative to the duties of their respective offices;

- (5) Supervise the overall operation of the legal department;
- (6) Do all and every professional act incident to the office or which may be required of it by the city government, or any special committee thereof, or any ordinance, resolve or order of the council.

(Code 1966, § 2-9-2)

Sec. 2-5. Authority to engage additional counsel.

Whenever, in the opinion of the city manager and the council, it may become necessary to have the aid of legal counsel in addition to the appointed corporation counsel, such counsel may be engaged at the expense of the city.

(Code 1966, § 2-9-3)

Sec. 2-6. Position of sealer of weights and measures created.

The position of sealer of weights and measures is hereby created.

(Code 1966, § 2-22)

State law reference(s)--Local sealers, generally, 10 M.R.S.A. § 2451 et seq.

Sec. 2-7. Appointment of sealer of weights and measures.

The sealer of weights and measures shall be appointed by the municipal officers.

(Code 1966, § 2-22)

State law reference(s)--Election of local sealers, 10 M.R.S.A. § 2451.

Sec. 2-8. Powers, duties of sealer of weights and measures.

The sealer of weights and measures shall be charged with such duties and empowered with such powers as prescribed by statute.

(Code 1966, § 2-22)

State law reference(s)--Powers and duties of local sealers, 10 M.R.S.A. § 2453.

Sec. 2-9. Planning director.

Pursuant to section 804 of the city charter, the office of planning director is hereby created. The appointment of such director and his duties and powers shall be as provided in said section of the charter.

(Code 1966, § 2-13)

Cross reference(s)--Planning board, § 2-112 et seq.

Sec. 2-10. Department of public works created; composition.

- (a) The department of public works for the city is hereby created.
- (b) The department shall consist of the divisions of sewers and streets.

(Code 1966, § 2-18-1)

Charter reference(s)--Establishment of department of public works, § 304.

Sec. 2-11. Duties of department of public works.

The duties of the department of public works shall be to:

- (1) Construct, repair and maintain all streets, sidewalks, bridges, street signs, culverts, fences and guardrails;
- (2) Plow and remove snow and control ice;
- (3) Collect rubbish and operate the city dump;
- (4) Operate the municipal garage;
- (5) Maintain and provide all automotive equipment owned by the city;
- (6) Plant and maintain or remove trees and other plants along highways to increase safety or preserve the beauty of public places;
- (7) Enforce the zoning ordinances as they may relate to rights-of-way.

(Code 1966, § 2-18-2)

Sec. 2-12. Appointment of director of public works.

The director of public works shall be appointed by the city manager.

(Code 1966, § 2-18-1)

Charter reference(s)--Appointive powers of city manager, § 302.1.

Sec. 2-13. General duties of director of public works.

The duties of the director of public works shall be to:

- (1) Supervise and execute the overall duties of the public works department;
- (2) Keep all streets safe and convenient for travelers;
- (3) Make himself acquainted with the lines and bounds of streets and place monuments thereon;
- (4) Supervise the rights-of-way of streets with regard to the erection of utility poles, fences and other obstructions;
- (5) Issue permits pursuant to sections 23-2, 23-3, 23-9--23-11 and 26-9.

(Code 1966, § 2-18-3)

Sec. 2-14. General powers of director.

The director of public works shall be empowered to execute all the duties of his office, or as the manager shall direct.

(Code 1966, § 2-18-4)

Sec. 2-15. Director of public works to administer department.

The department of public works shall be administered by the director of public works.

(Code 1966, § 2-18-1)

Sec. 2-16. Repealed.

(Code 1966, § 1-3-22; Ord. No. 36-71, 2-7-72, Ord. No. 15-98/99, 4/21/99, [Fiscal Note: Less than \$1000])

Sec. 2-17. City engineer.

- (a) An office of city engineer is hereby established.

- (b) The city engineer shall be appointed by the city manager and shall be a certified engineer. The city engineer, or his designated representative, shall have the following duties:
- (1) To attend all meetings of the planning board and to advise and make recommendations to the planning board;
 - (2) To make inspection of all engineering facilities within the city;
 - (3) To review and inspect engineering work performed for or on behalf of the city; and
 - (4) To have other duties as specified within and throughout the Code of Ordinances for the City of South Portland or as specified by the city manager.

(Ord. No. 7-78, 4-19-78)

Secs. 2-18, 2-19. Reserved.

Sec. 2-20. Department of pollution abatement created.

A department of pollution abatement is hereby created.

(Ord. No. 6-78, 4-19-78)

Sec. 2-21. Organization.

- (a) The director of the department of pollution abatement shall be appointed by the City Manager.
- (b) The department shall include all personnel employed at the sewer treatment plant and supporting facilities and such other persons as designated by the city manager.

(Ord. No. 6-78, 4-19-78)

Sec. 2-22. Duties and responsibilities of director of pollution abatement.

The duties and responsibilities of the director of the department of pollution abatement shall be to:

- (1) Operate, maintain and supervise the sewage treatment plant and supporting facilities;
- (2) Perform routine maintenance and cleaning of sanitary and combined sewers;
- (3) Review, plan and coordinate in conjunction with the city engineer the maintenance and upgrading of the city's sanitary and combined sewer system, including applying for and reviewing applications for external funds associated therewith;

- (4) Prepare and submit the budget for the department;
- (5) Coordinate the city's activities regarding all pollution, including, but not limited to, those activities prescribed by the Clean Air Act Amendments of 1977, Safe Drinking Water Act of 1974, Noise Control Act of 1972, Resource and Conservation Act of 1976, and other related or successor acts; and
- (6) Such other duties as specified by the city manager.
(Ord. No. 6-78, 4-19-78)

Secs. 2-23--2-25. Reserved.

ARTICLE II. CITY COUNCIL*

* **Charter reference(s)**--Duties of city clerk, § 220; procedure for passage of ordinances, §§ 221--225.

DIVISION 1. GENERALLY

Sec. 2-26. Reserved.

(Code 1966, § 1-2; Ord. No. 21-71, 9-8-71; Ord. No. 23-86/87, 5-18-87, Ord. #2-15/16, 9/9/2015, [Fiscal Note: Less than \$1000])

Sec. 2-27. Reserved.

(Code 1966, § 1-3-8, Ord. #2-15/16, 9/9/2015, [Fiscal Note: Less than \$1000])

Charter reference(s)--Procedure for the passage of ordinances, §§ 221--225.

Sec. 2-28. Fiscal note.

Any ordinance, order or resolve placed before the city council for consideration shall include a fiscal notation prepared by the city manager stating the budget implications of such action. Where the actual annual cost is not available, the manager shall prepare an estimate of cost impact in the current and next fiscal year. If the actual or estimated cost is less than one thousand dollars (\$1,000.00) or when the cost is too speculative to reasonably calculate, the fiscal note may simply state less than one thousand dollars (\$1,000.00). The fiscal note shall be incorporated into the text of the order or resolve. In the case of an ordinance, the fiscal note shall be listed within the parenthetical note listing the number and date of the ordinance amendment. This requirement shall not apply to appointments made by the council. The validity of the ordinance, order or resolve shall not be affected by any variances in the cost estimates.

(Ord. No. 22-93/94, 4-20-94)

Secs. 2-29--2-32. Reserved.

DIVISION 2. RESERVED

Sec. 2-33. Reserved.

(Code 1966, § 1-3-2; Ord. No.2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Cross reference(s)--Duty of chairman to invoke quarantine upon positive diagnosis of rabies, § 3-33.

Sec. 2-34. Reserved.

(Code 1966, § 1-3-1; Ord. No. 2-15/16, 9/9/15 [Fiscal Note: Less than \$1000])

Sec. 2-35. Reserved.

(Code 1966, § 1-3-16; Ord. No. 25-89/90, 6-4-90; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-36. Reserved.

(Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-37. Reserved.

(Code 1966, § 1-3-14; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-38. Reserved.

(Code 1966, § 1-3-14; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-39. Reserved.

(Code 1966, § 1-3-18; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-40. Reserved.

(Code of 1966, § 1-3-15; Ord. No. 1-88/89, 7-18-88; Ord. No. 25-89/90, 6-4-90; Ord. No. 17-95/96, 1-3-96; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-41. Reserved.

(Code 1966, § 1-3-20; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-42. Reserved.

(Code 1966, § 1-3-4; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-43. Reserved.

(Code 1966, § 1-3-7; Ord. No. 17-88/89, 5-1-89; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-44. Reserved.

(Code 1966, § 1-3-5; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-45. Reserved.

(Code 1966, § 1-3-19; Ord. No. 2-15/16, 9/9/15 [Fiscal Note: Less than \$1000])

Sec. 2-46. Reserved.

(Code 1966, § 1-3-6; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-47. Reserved.

(Code 1966, § 1-3-6; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-48. Reserved.

(Code 1966, § 1-3-12; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-49. Reserved.

(Code 1966, § 1-3-3; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-50. Reserved.

(Code 1966, § 1-3-10 ; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note : Less than \$1000])

Sec. 2-51. Reserved.

(Code 1966, § 1-3-17; Ord. No.2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-52. Reserved.

(Code 1966, § 1-3-17; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-53. Reserved.

(Code 1966, § 1-3-9; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-54. Reserved.

(Code 1966, § 1-3-11; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-55. Reserved.

(Code 1966, § 1-3-21; Ord. No. 1-67, § 1, 2-6-67; Ord. No. 6-90/91, 9-5-90; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Sec. 2-56. Reserved.

[Ord. No. 20-95/96, 4-10-96 [Fiscal note: less than \$1000]; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Secs. 2-57--2-65. Reserved.

ARTICLE III. BOARDS AND COMMISSIONS*

 * **Cross reference(s)**--Board of registration, § 6-16 et seq.; library advisory board, § 13-33 et seq.; board of zoning appeals, § 27-35 et seq.

DIVISION 1. GENERALLY

Sec. 2-66. Rules of procedure.

Except as otherwise required by law or expressly permitted by ordinance, the rules of procedure prescribed for the city council, as the same may be amended from time to time, shall govern the conduct of all city boards; provided, however, any rules regarding order of business and speaking restrictions on a question shall apply only to the city council.

(Ord. No. 18-85/86, 11-18-85; Ord. No. 2-15/16, 9/9/2015 [Fiscal Note: Less than \$1000])

Editor's note--Ord. No. 18-85/86, adopted Nov. 18, 1985, repealed § 2-66, establishing a board of zoning appeals, derived from Code 1966, § 2-23, and Ord. No. 23-80/81, adopted Nov. 3, 1980; and enacted in lieu thereof the rules of procedure which are set out hereinabove at § 2-66. Provisions relative to said board of appeals are located at Div. 3 following, and also at Art. V of Ch. 27.

Secs. 2-67--2-75. Reserved.

DIVISION 2. CONSERVATION COMMISSION

Sec. 2-76. Commission established.

A conservation commission is hereby established to consist of seven (7) members appointed by the city council, all of whom shall be residents of the city, and who shall serve without pay. There shall be no more than three (3) members from any one voting district. Vacancies created by members moving from their districts or from the city shall be governed by Code of Ordinances Sec. 2-121(c). The terms of office shall be three (3) years except that initial appointments after the date of adoption of this article shall be such that the terms of no more than four (4) members shall expire in any single year.

A quorum of the commission shall consist of a majority of appointed members. All decisions of the commission shall be in the form of resolutions duly passed by a majority of members who are present and voting.

All members shall satisfy the attendance requirements for all boards and commissions in the City of South Portland as established in Sec. 2-121(d).

(Ord. No. 4-89/90, 8-21-89; Ord. No. 22-96/97, 6/16/97, Fiscal note: less than \$1000, Ord. No. 3-99/00, 10/4/99, [Fiscal Note: Less than \$1000]; Ord. No. 9-07/08, 2/20/08, [Fiscal Note: Less than \$1000]; Ord. No. 15-13-14, 5/5/14 [Fiscal Note: Less than \$1000]; Ord. No. 8-14/15, 1/5/15 [Fiscal Note: Less than \$1000]; Ord. No. 13-16/17, 2/22/17 [Fiscal Note: Less than \$1000])

Sec. 2-77. Purpose.

The purpose of the conservation commission shall be to serve as a research, advisory and advocacy group on environmental and conservation issues relating to the city.

(Ord. No. 4-89/90, 8-21-89)

Sec. 2-78. Qualifications.

All members of the commission shall be selected upon the basis of their knowledge of conservation, environmental science or related fields.

(Ord. No. 4-89/90, 8-21-89)

Sec. 2-79. Powers and duties.

The commission:

- (a) Shall keep records of its meetings and activities and make an annual report to the city council;
- (b) Shall conduct research in conjunction with the planning board into local land areas;
- (c) Shall seek to coordinate the activities of conservation bodies organized for similar purposes;
- (d) Shall keep an index of all open areas within the city, whether publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information relating to the proper protection, development or use of those open areas. The commission may recommend to the city council or to any board of the city or to any body politic or public agency of the state a program for the better protection, development or use of such open areas, which may include the acquisition of conservation easements;
- (e) May advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it considers necessary;
- (f) Shall assist the city in promotion of its open space and park plans, including the Greenbelt Master Plan, the Clarks Pond Study and the Recreational Area/Open Space Study and Linkage Plan; and
- (g) Shall undertake any other conservation or environmental activity referred to it by the city council.

(Ord. No. 4-89/90, 8-21-89)

Sec. 2-80. Officers, meetings and records.

- (a) The members shall annually elect from their membership a chairman, a vice-chairman and a secretary.
- (b) All meetings of the commission shall be open to the public. Notice of each meeting shall comply with the city's notice policies.
- (c) Minutes shall be kept of all meetings with a copy filed with the city clerk. An annual report of the commission's activities shall be submitted to the city council in January of each year.

(Ord. No. 4-89/90, 8-21-89; Ord. No. 22-96/97, 6/16/97, Fiscal note: less than \$1000)

Sec. 2-81. Limits of authority.

Nothing contained within this section shall supersede the provisions of the City Charter, the Code of Ordinances, Chapter 2, Article IV, Tree Ordinance, or Chapter 18, Parks and Recreation. No powers and duties which may be exercised by conservation commissions under state statute which are not explicitly provided in this article may be exercised by the commission created herein.

(Ord. No. 4-89/90, 8-21-89)

Secs. 2-82--2-95. Reserved.

DIVISION 3. BOARD OF APPEALS*

* **Editor's note**--Ord. No. 16-85/86, adopted Nov. 18, 1985, repealed Div. 3, §§ 2-96--2-99, and enacted in lieu thereof a new § 2-96 to read as herein set out. Former Div. 3, §§ 2-96--2-99, relative to the "municipal appeals board," derived from Ord. No. 22-80/81, adopted Nov. 3, 1980.

Cross reference(s)--Board of appeals, § 27-35 et seq.

Sec. 2-96. Board of appeals established; powers.

A board of appeals is hereby established with the power to hear zoning appeals as expressly provided by Chapter 27 and to hear any other appeal required by law. The composition of the board and the appointment and term of its members shall be as provided in Chapter 27, as the same may be amended from time to time. The incumbent members of the board of zoning appeals shall constitute the appointees of the board of appeals for the duration of their original appointments.

(Ord. No. 16-85/86, 11-18-85)

Secs. 2-97--2-99. Reserved. Note--See the editor's note to Div. 3.

DIVISION 4. COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

A Community Development Advisory Committee is hereby established.

Sec. 2-101. Purpose

In order to encourage participation in economic and community development within the City, the City will develop a Community Development Advisory Committee (CDAC).

The CDAC is responsible for providing advice to the City Manager and City Council on the Housing and Community Development needs and priorities of the city. These include the social, economic, housing and neighborhood revitalization needs and their relative priorities within the community. The CDAC shall also recommend annual activities that implement relevant strategies and funding under the Housing and Community Development Program. CDAC also advises the City Manager and City Council as to the program's performance.

Sec. 2-102. Composition and quorum.

The Community Development Advisory Committee shall consist of seven (7) members, all of whom shall be residents of the city. There shall be no more than three (3) members from any one voting district. A quorum shall consist of four (4) members.

(Ord. No. 15-13/14, 5/5/14 [Fiscal Note: less than \$1000])

Sec. 2-103. Municipal officers to appoint members.

Appointment to the Community Development Advisory Committee established herein shall be made by the municipal officers.

Sec. 2-104. Terms of office.

The terms of office of the members of the Community Development Advisory Committee shall be three (3) years except that initial appointments after the date of this amendment shall be such that the terms of office of no more than three (3) members shall expire in any single year.

Sec. 2-105. Duties generally.

The duties of the Community Development Advisory Committee shall be as set forth in the applicable Code of Federal Regulations under the Housing and Community Development Act of 1974. Title 1 of the Housing and Community Development Act of 1974 authorizes the creation of the Community Development Block Grant program (24 CFR Part 84 & 85). The Community Development Advisory Committee may adopt written rules and regulations to govern its meetings and to aid in carrying out its duties as prescribed by the federal regulations and city ordinance; provided, such rules and regulations shall not be inconsistent with any such federal regulations and/or city ordinances.

Sec. 2-106. Meeting, agenda.

The Community Development Advisory Committee shall provide notice of each meeting in compliance with the City's notice policies and Maine's Freedom of Access Act prior to a meeting or public hearing. Notice shall be displayed at the following locations: City Hall; the Community Center; the Main and Branch Libraries; the Code Enforcement Office, the City of South Portland web page, and the Planning Office.

(Ord. No. 15-03/04, 1/5/04 [Fiscal Note: Less than \$1000]; Ord. No. 6-09/10, 10/19/09 [Fiscal Note: Less than \$1000])

Sec. 2-107---2-111. Reserved**DIVISION 5. PLANNING BOARD***

* **Cross reference(s)**--Planning director, § 2-9; subdivisions, Ch. 24.

State law reference(s)--Planning board, generally, 30 M.R.S.A. § 4952.

Sec. 2-112. Established.

Pursuant to section 801 of the city charter, a planning board is hereby established.

(Code 1966, § 2-12-1; Ord. No. 7-80/81, 7-21-80)

Sec. 2-113. Composition and quorum.

The planning board shall consist of seven (7) members, all of whom shall be residents of the city. There shall be no more than three (3) members from any one voting district. A quorum shall consist of a majority of appointed members.

(Code 1966, § 2-12-2; Ord. No. 12-73, 4-2-73; Ord. No. 7-80/81, 7-21-80; Ord. No. 15-13/14, 5/5/14 [Fiscal Note: Less than \$1000])

Sec. 2-114. Municipal officers to appoint members.

Appointment to the planning board established herein shall be made by the municipal officers.

(Code 1966, § 2-12-2)

Charter reference(s)--Municipal officers defined § 202.

Sec. 2-115. Terms of office.

The terms of office of the members of the planning board shall be three (3) years except that initial appointments after the date of this amendment shall be such that the terms of office of no more than three (3) members shall expire in any single year.

(Code 1966, § 2-12-2; Ord. No. 7-80/81, 7-21-80; Ord. No. 11-82/83, 4-20-83)

Sec. 2-116. Duties generally.

The duties of the planning board shall be as set forth in the applicable state statutes and city ordinances. The planning board may adopt written rules and regulations to govern its meetings and to aid in carrying out its duties as prescribed by state statute and city ordinance; provided, such rules and regulations shall not be inconsistent with any such state statutes or city ordinances.

(Code 1966, § 2-12-3; Ord. No. 7-80/81, 7-21-80; Ord. No. 17-84/85, 3-18-85)

Sec. 2-117. Meeting, agenda.

The planning board shall meet each month for the purpose of conducting its business and holding public hearings. No item of business or plan shall be in order to be placed on the planning board agenda unless such item or plan shall have been submitted to the planning director not less than fifteen (15) days prior to the date of such meeting.

(Ord. No. 6-74, 5-20-74; Ord. No. 9-76, 5-13-76)

Secs. 2-118--2-120. Reserved.**DIVISION 6. REPORTS AND VACANCIES****Sec. 2-121. Vacancies on boards and commissions.**

A vacancy on any appointive board or commission of the city shall exist upon the occurrence of any of the following events:

- (a) Death of a member.
- (b) Resignation of a member.
- (c) Moving by a member of the member's place of residence from the City of South Portland, or the moving by a member of the member's place of residence from the voting district in which the member resided at the time of appointment to another voting district and such move causes the board or commission to have more than three (3) members from any one voting district. When a member moves from the City of South Portland, the vacancy shall occur immediately and the member shall not serve at any further meetings. When a member moves to a different voting district within the City and causes the board or commission to have more than three (3) members from any one voting district, the vacancy shall occur six weeks after the date the member moves, and the member shall continue to serve for this six week period. If a member's voting district of residence changes following a change to the voting district boundaries and such change causes the board or commission to have more than three (3) members from any one voting district, the redistricted member shall continue to serve until the expiration of his or her respective term.
- (d) Failure of a member to attend four (4) consecutive regular meetings or failure of a member to attend at least seventy-five (75) per cent of all meetings during the preceding twelve-month period, subject to the provisions of section 2-122.

(Ord. No. 13-75, 5-19-75; Ord. No. 17-89/90, 3-5-90; Ord. No. 3-99/00, 10/4/99 [Fiscal Note: less than \$1000]; Ord. No. 2.04/05, 8/2/04 [Fiscal Note: Less than \$1000]; Ord. No. 15-13/14, 5/5/14 [Fiscal Note: Lss than \$1000])

Sec. 2-122. Reporting actions and vacancies.

The chairman of each board or commission of the city shall certify or cause the secretary of the board or commission to certify to the city council each month the actions of said board or commission, together with the record of absences of members. In such report, the chairman or secretary of each such board or commission shall notify the city council of any vacancy occurring on such board or commission. In the event that a vacancy occurs as defined under section 2-121(d) the board or commission may, by majority vote of its membership exclusive of the member affected, recommend to the city council that the attendance provision be waived for cause, in which case no vacancy shall exist until the city council disapproves the recommendation.

(Ord. No. 13-75, 5-19-75; Ord. No. 17-89/90, 3-5-90)

Sec. 2-123. Removal for cause.

The city council may remove any member of an appointive board or commission during the term of such member for cause, after notice to such member and hearing.

(Ord. No. 13-75, 5-19-75)

DIVISION 7. ECONOMIC DEVELOPMENT COMMITTEE

Sec. 2-124. Established.

An Economic Development Committee is hereby established.

Sec. 2-125. Purpose.

The purpose of the Economic Development Committee (EDC) is to assist in fostering a robust economy in South Portland so as to maintain and improve employment opportunities, retain existing business, attract new commercial investment, support a superior level of municipal services, and advance the general prosperity.

Sec. 2-126. Composition and quorum.

The Economic Development Committee shall consist of seven (7) members, all of whom shall be residents of the city. There shall be no more than three (3) members from any one voting district. A quorum shall consist of four (4) members.

(Ord. No. 15-13/14, 5/5/14 [Fiscal Note: Less than \$1000])

Sec. 2-127. Municipal officers to appoint members.

Appointment to the Economic Development Committee shall be made by the municipal officers.

Sec. 2-128. Terms of office.

The terms of office of the members of the Economic Development Committee shall be three (3) years except that initial appointments after the date of this amendment shall be such that the terms of office of no more than three (3) members shall expire in any single year.

Sec. 2-129. Qualifications.

All members of the Economic Development Committee shall be selected upon the basis of their knowledge of business and commercial operations as well as their familiarity with the City of South Portland.

Sec. 2-130. Committee staffing.

The City Manager will determine the amount and form of staff assistance to be provided to the Economic Development Committee, if any.

There may be an Economic Development Director appointed by the City Manager who shall be the regular technical advisor of the EDC and who shall have such other authority, duties, and responsibilities under the direction and control of the City Manager as the City Manager may require and establish.

Sec. 2-131. Duties generally.

The duties of the Economic Development Committee shall **include**:

- (a) Making recommendations to the City Manager and the City Council regarding implementation of the City's economic development strategies as contained in the South Portland Comprehensive Plan and in any economic development plans that the City Council from time to time may adopt;
- (b) Guiding the drafting and updating of such economic development policy documents and making recommendations for new economic development programs;
- (c) If approved by the City Council, developing economic development incentive programs in addition to, or funded by, tax increment finance (TIF) districts, such as revolving low-interest loan programs, and, after following prescribed application, public notice, and review procedures, making awards and disbursements to successful applicants. However, this shall not include programs and functions overseen by the Community Development Advisory Committee.

(d) Carrying out such other duties as may be required or established by the City Manager and/or City Council.

Sec. 2-132. Rules and regulations.

The Economic Development Committee may adopt written rules and regulations to govern its meetings and to aid in carrying out its duties as prescribed by federal and State regulations and city ordinance; provided, such rules and regulations shall not be inconsistent with any such federal/State regulations and/or city ordinances.

Sec. 2-133. Officers, meetings, and records.

(a) The members shall annually elect a chairman from their membership. If not provided to the Economic Development Committee by the City Manager, the members shall also annually elect a secretary for the purpose of taking minutes and related duties.

(b) All meetings of the Economic Development Committee shall be open to the public. The EDC shall provide notice at least seven (7) days in advance of each meeting. Notice shall be displayed at the following locations: City Hall; the Community Center; the City's libraries; the Planning & Development Office; and on a page in the City of South Portland's web site.

(c) Minutes shall be kept of all meetings with a copy filed with the City Clerk. An annual report of the EDC's activities shall be submitted to the City Council in January of each year.

(Ord. No. 8-07/08, 2/20/08 [Fiscal Note: Less than \$1000])

DIVISION 8. ENERGY AND RECYCLING COMMITTEE

Sec. 2-134. Established.

An Energy and Recycling Committee is hereby established.

Sec. 2-135. Purpose.

The City of South Portland is increasingly challenged by competing demands for raising funding for new public infrastructure, providing quality services to residents and businesses, ensuring economic

development, and protecting the environment. Good planning for maximizing recycling and energy efficiency, implemented on a community wide process, will provide options for saving on long term operating costs while protecting the environment through the reduction of greenhouse gases.

The purpose of the Energy and Recycling Committee is to assist the city in an advisory capacity by examining opportunities for local sustainability through renewable resources and alternative transportation and fuels and by making recommendations to the City Council on ways to improve energy efficiency in residential, commercial and municipal buildings within the city. Committee members will be expected to seek collaborative solutions that will provide the greatest benefit to the citizens and businesses of the city.

The Energy and Recycling Committee will review and advise on methods for the city to reduce its dependence on imported fossil fuels, increase recycling percentages, and reduce greenhouse gases and other adverse impacts on the environment.

The Committee will focus on increasing recycling efforts, energy conservation, renewable energy, and greening city operations through a variety of approaches including education, programs and studies, data analysis, ordinance modifications, and public/private collaborations.

Sec. 2-136. Composition and quorum

- (a) The composition of the Committee is designed to involve interested citizens, business leaders, and other stakeholders to ensure that a variety of voices are heard and different sectors of the community are represented.

Accordingly, the Committee shall be made up of the following:

The Public Works Director or his/her designee (non-voting);

The School Department Facilities and Grounds Director or his/her designee (non-voting); and

Fourteen representatives appointed by the City Council, all of whom shall be residents of the city. There shall be no more than four (4) voting members from any one voting district.

- (b) A quorum of the Committee shall consist of a majority of appointed members.

(Ord. No. 15-13/14, 5/5/14 [Fiscal Note: Less than \$1000]; Ord. No. 8-14/15, 1/5/15 [Fiscal Note: Less than \$1000])

Sec. 2-137. Term of office

The terms of office of the members of the Energy and Recycling Committee shall be three (3) years except that initial appointments after the date of this amendment shall be such that the terms of office of no more than six (6) voting members shall expire in any single year.

(Ord. No. 8-14/15, 1/5/15 [Fiscal Note: Less than \$1000])

Sec. 2-138. Powers and Duties

- (a) The Committee shall research best practices for energy efficiency and recycling.
- (b) The Committee may advertise, prepare, print and distribute books, maps, charts, and plans and pamphlets which are considered necessary, with approval of the City Manager or the City Manager's designee.
- (c) The Committee shall assist the city in promoting energy conservation and recycling efforts.
- (d) The Committee shall develop a long-range strategy for solid waste management initiatives related to waste reduction, reuse, and recycling.
- (e) The Committee shall identify tools, materials and funding for public education programs, including presentations, on waste reduction, waste diversion, recycling and composting.
- (f) The Committee shall develop a strategy for source separation of recyclable products at commercial, industrial and institutional facilities, including but not limited to card-board at grocery stores and cans at schools.
- (g) The Committee shall develop a strategy to encourage the city, businesses and residents to initiate large scale recycling to maximize revenues.
- (h) The Committee shall develop a strategy to enhance the collection of waste oil locally.
- (i) The Committee shall develop a baseline of the city's current energy usage and needs in order to establish priorities and develop goals and plans for greater energy efficiency.
- (j) The Committee shall develop sustainable energy solutions based on the baseline described in subsection (i) recommend to the City Council proposed actions and provide a cost-benefit analysis for each recommended action.
- (k) The Committee shall explore ways for the residents, businesses and the city to reduce their carbon footprints and greenhouse gas emissions.

Sec. 2-139. Officers, meetings and records

- (a) The Committee members shall annually elect from their membership a chairperson, a vice chairperson and a recording secretary.
- (b) Generally, the Committee shall meet monthly. However, the chairperson may cancel scheduled meeting if a quorum will not be convened, if there are no items for the agenda, or for other good cause. In no event shall the Committee meet less often than quarterly.
- (c) All decisions of the Committee shall be in the form of resolutions duly passed by a majority of voting members who are present and voting. The Committee shall strive to reach consensus on issues; in the event it does not reach consensus, minority recommendation shall be included with its communication to the City Council.

- (d) All meetings of the Committee shall be open to the public. Notice of each meeting shall comply with the city's notice policies and Maine's Freedom of Access Act.
- (e) Minutes shall be kept of all meetings and a copy shall be filed with the city clerk. An annual report of the Committee's activities shall be submitted to the City Council in January of each year.
- (f) All voting members shall satisfy the attendance requirements for all boards and commissions in the City of South Portland as established in Sec. 2-121(d).

(Ord. No. 12-07/08, 3/17/08 [Fiscal Note: Less than \$1000]; Ord. No. 15-13/14, 5/5/14 [Fiscal Note: Less than \$1000]; Ord. No. 8-14/15, 1/5/15 [Fiscal Note: Less than \$1000])

DIVISION 9. ARTS & HISTORIC PRESERVATION COMMITTEE

Sec. 2-140. Establishment and Purpose.

An Arts & Historic Preservation Committee is hereby established. The purpose of the Arts & Historic Preservation Committee (AHPC) is to assist the City Council in preserving the historical and architectural integrity of South Portland, fostering beautification of public areas, and promoting the educational, cultural, economic, aesthetic value, and general welfare of South Portland.

Sec. 2-141. Definitions.

For purposes of this Division 9, the following terms shall have the following meaning:

Historic Preservation. The protection, rehabilitation, restoration and/or reconstruction of sites, buildings, structures, and artifacts significant in history, architecture or culture.

Public Art. Works of art placed in areas accessible to the public that are reflective of the community, its history and values. Examples of public art include, but are not limited to, murals, fountains, sculptures, landscaping, hardscaping, historic displays, and paintings.

Sec. 2-142. Composition; appointment; qualifications; and quorum.

- (a) The AHPC shall consist of nine (9) members, all of whom shall be residents of the City. There shall be no more than three (3) members from any one voting district. There shall be one member who is a representative of the South Portland Historical Society and one member who is a representative of Greater Portland Landmarks.
- (b) Appointment to the AHPC shall be made by the City Council. It shall serve as an advisory body to the City Council and the Planning Board.

- (c) All members of the AHPC shall be selected upon the basis of their interest in art, historic preservation and familiarity with the City of South Portland. The City Council should strive to include members representative of a diverse community.
- (d) A quorum shall consist of five (5) members.

Sec. 2-143. Terms of office.

The terms of office of the members of the AHPC shall be three (3) years, except that initial appointments after the date of establishment of the committee shall be such that the terms of office of no more than three (3) members shall expire in any single year.

Sec. 2-144. Duties generally.

Duties of the AHPC include, but are not limited to, the following:

- (a) Providing a resource of information and expertise to help and encourage those interested in rehabilitation of structures that have historic, cultural or architectural significance;
- (b) Preparing and maintaining an inventory of historic, cultural and architectural areas, sites, structures and objects in South Portland;
- (c) Developing proposed policies, priorities, and plans for promoting and advancing historic preservation in South Portland;
- (d) Fostering and encouraging preservation, restoration, rehabilitation, designation, and reconstruction that respects the historic, cultural and architectural significance of distinctive areas, sites, structures and objects;
- (e) Making recommendations to the City Council that assure that City projects and City-funded activities enhance the historic qualities of identified historic properties when this is feasible and appropriate;
- (f) Making recommendations to the City Council that assure that City construction projects consider the quality of architecture when this is feasible and appropriate;
- (g) Working collaboratively with the South Portland Historical Society, Greater Portland Landmarks and others to identify and preserve the City's historic, cultural and architectural areas, sites, structures and objects;
- (h) Assisting City staff with seeking grants, donations of funds and/or works of art for purposes of promoting and advancing historic preservation in South Portland;

- (i) Making recommendations to the City Council regarding allocation and budgeting of funds for historic preservation projects, the acquisition or commissioning of Public Art and/or for the maintenance of Public Art;
- (j) Developing proposed policies, priorities, and plans for promoting, advancing, and maintaining Public Art in South Portland;
- (k) Encouraging the promotion of Maine artists in City art projects;
- (l) Encouraging citizen input and involvement in the City's design and selection of Public Art;
- (m) Coordinating with the private sector and other governmental agencies in promoting arts and cultural excellence as a tool for the encouragement of economic development, business relocation and tourism;
- (n) Assisting City staff with seeking grants, donations of funds and/or works of art for purposes of expanding the Public Art collection or the maintenance of the collection including landscaping and hardscaping of public art;
- (o) Organizing and promoting Public Art that celebrates the City and its unique cultural heritage;
- (p) Carrying out such other duties as may be required or established by the City Manager and/or City Council; and
- (q) Development of a proposed set of incentives in support of the above.

Sec. 2-145. Officers, meetings, and records.

- (a) The members shall annually elect a chairman from their membership. If not provided to the AHPC by the City Manager, the members shall also annually elect a secretary for the purpose of taking minutes and related duties.
- (b) All meetings of the AHPC shall be open to the public. Notice of each meeting shall comply with the City's notice policies and Maine's Freedom of Access Act.
- (c) Minutes shall be kept of all meetings with a copy filed with the City Clerk. An annual report of the AHPC's activities shall be submitted to the City Council in January of each year.

(Ord. No.18-13/14, 6/16/14 [Fiscal Note: Less than \$1000])

ARTICLE IV. FISCAL CONTROLS*

* Charter reference(s)--Department of finance, Art. IV; budget, Art. V; borrowing for capital improvements, Art. VI; tax administration, Art. VII.

DIVISION 1. GENERALLY

Sec. 2-146. Work programs.

Work programs with requested allotments shall be submitted to the city manager as prescribed in section 403 of the city charter, and the manager shall be obliged to conduct such reviews and to perform in accordance with sections 403, 404 and 405 of the charter.

(Code 1966, § 2-5-2)

Sec. 2-147. Classifications of proposed expenditures.

The proposed budget required by section 502 of the city charter shall have the proposed expenditures itemized so that it shall include, but not be limited to, the following five (5) classifications:

- (1) Personal services;
- (2) Contractual services;
- (3) Supplies and materials;
- (4) Fixed charges;
- (5) Capital outlay.

(Code 1966, § 2-5-5.1)

Charter reference(s)--Proposed expenditures, § 525.

Sec. 2-148. Budget detail.

All annual city budget items costing one thousand dollars (\$1,000.00) or more shall be specifically listed, line by line, for all departments, boards and agencies in the final budget document prior to any public hearings.

(Ord. No. 10-79, 5-22-79)

Secs. 2-149--2-154. Reserved.

DIVISION 2. PURCHASING*

* **Editor's note**--Ord. No. 22-89/90, adopted June 4, 1990, amended Div. 2 to read as herein set out in §§ 2-155--2-174. Prior to inclusion of said ordinance, Div. 2, §§ 2-155--2-170 pertained to similar subject matter and derived from Ord. No. 9-82/83, adopted Jan. 17, 1983, and amended Feb. 8, 1983.

Charter reference(s)--Purchasing generally, Art. IV.

Sec. 2-155. Short title; applicability

This division shall be known as the "Purchasing Ordinance of the City of South Portland." Except where expressly provided otherwise, all provisions herein apply to municipal and school department purchases.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-156. Definitions.

For the purposes of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) *City*: The City of South Portland.
- (2) *City council*: The council of the City of South Portland.
- (3) *City purchasing agent or agent*: The purchasing agent of the City of South Portland.

- (4) *Environmentally preferable products and services*: Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This applies to raw material acquisition, as well as product manufacturing, packaging, distribution, use, reuse, operation, maintenance or disposal of the product or service.
- (5) *General services*: All telephone, gas, water, electric light and power service; towel and cleaning service; insurance; leases for all grounds, buildings, office or other space required by the using departments; the rental, repair or maintenance of equipment and other city-owned personal property; and maintenance of city-owned real property. The term shall not include professional and other services which are in their nature unique and not subject to competition and shall not include arrangements for the lease or rental of any real property owned by the city.
- (6) *Equipment*: All non-consumable durable goods, including but not limited to machinery, tools, vehicles, furniture and computers.
- (7) *Improvements*: All construction, reconstruction, alteration, repair, or renovation of real property owned or leased by the city.
- (8) *Supplies*: All consumable, nondurable goods.
- (9) *Using department*: Any department, agency, commission, bureau or other unit in the city government using supplies or procuring general services or improvements as provided for in this ordinance, except that it shall not include the school department for purposes of procuring general services nor for purposes of procuring improvements costing one thousand dollars (\$1,000.00) or less.
- (10) **Written approval**: Where written approval is required in this ordinance, this requirement may be satisfied by a written, signed statement or by electronic approval.

(Ord. No. 22-89/90, 6-4-90; Ord. #1-03/04, 7/21/03 [Fiscal note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-157. City purchasing agent.

The city purchasing agent shall be the head, and have general supervision, of the division of purchases. The agent shall perform all duties required of a division head by law, and shall have the powers and duties prescribed by the ordinance.

- (1) *Position specifications*. The agent shall:
 - (a) **Appointment**. Be appointed according to the personnel policy and section 302.1 of the city charter.
 - (b) **Experience requirement**. Preferably have had, prior to his appointment, at least two (2) years experience in a purchasing office of a public or private corporation.

- (2) *Scope of purchasing authority.* The agent shall have the power and it shall be his duty:
- (a) Purchase or contract. To purchase or contract for all supplies and contractual services and improvements needed by any using department of the city, in accordance with purchasing procedures as prescribed by this division and such rules and regulations as the agent shall adopt for the internal management of the division of purchasing, including the purchasing manual, and such other rules and regulations as shall be prescribed by the city manager, finance director or the city council.
 - (1) Exceptions prohibited. The authority to the agent to make all purchases for all using departments shall not be abridged by excepting any particular using department.
 - (2) Unauthorized purchases. Except as herein provided, it shall be unlawful for any city officer or officers to order the purchase of any supplies, general services or improvements or make any contract within the purview of this ordinance other than through the division of purchasing, and any purchase ordered or contract made contrary to the provisions hereof shall not be approved by the city officials, and the city shall not be bound thereby.
- (3) *Other powers and duties.* In addition to the purchasing authority conferred in subsection (2) above and in addition to any other powers and duties conferred by this ordinance, the agent shall:
- (a) Minimize expenditures. Act to procure for the city the highest quality in supplies and contractual services at the least expense to the city.
 - (b) Encourage competition. Endeavor to obtain as full and open competition as possible on all purchases and sales.
 - (c) Rules and regulations. Establish, and amend when necessary, all rules and regulations authorized by this ordinance and any others necessary to its operation as approved by the city manager and finance director.
 - (d) Purchasing analysis. Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the city the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations.
 - (e) Forms. Prescribe and maintain such forms as he shall find reasonably necessary to the operation of this ordinance.
 - (f) Bulk purchases. Explore the possibilities of buying "in bulk" so as to take full advantage of discounts.
 - (g) Tax exemptions. Act so as to procure for the city all federal and state tax exemptions to which it is entitled.

- (h) Disqualification of bidders. Have the authority to declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time with the approval of the city manager and finance director.
- (i) Specifications. Prepare and secure with the cooperation of the city departments standard written specifications for supplies used by the using departments.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-158. Requisition and estimates.

All using departments, either by or with the authorization of the department head, shall file with the agent detailed requisitions or estimates of their requirements in supplies, general services, and improvements in such manner, at such times, and for such future periods as the agent shall prescribe.

- (1) *Unforeseen requirements.* A using department shall not be prevented from filing, in the same manner, with the agent at any time a requisition or estimate for any supplies, contractual services, and improvements the need for which was not foreseen when the original detailed estimates were filed.
- (2) *Revisory power in agent.* The agent shall examine each requisition or estimate and shall have the authority to revise it as to quantity, quality or estimated cost with prior written approval by the proper authority.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-159. Encumbrance of funds.

Except in cases of emergency, the agent shall not issue any order for delivery on a bid or other purchase until the finance director shall have certified after pre-audit that there is to the credit of the using department concerned a sufficient unencumbered appropriation balance, in excess of all obligations, to defray the amount of such order.

(Ord. No. 22-89/90, 6-4-90)

Sec. 2-160. Environmentally Preferable Products and Services.

The City supports the purchase of environmentally preferable products and services as evidenced by its commitment to sustainability set forth in City Council Resolve #1-10/11. Where practicable, City departments should endeavor to ensure that specifications do not discriminate against environmentally preferable products and services; evaluate environmentally preferable products and services to determine the extent to which they may be used by the department; and review and revise specifications to include environmentally preferable products and services.

(Ord. No. 22-89/90, 6-4-90, Ord. 15-98/99, 4/21/99, [Fiscal note less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-161. Competitive bidding required.

All purchases of and contracts for supplies, general services, equipment and improvements, and all sales of real and personal property which have become obsolete and unusable shall, except as specifically provided herein, be based wherever possible on competitive bids. For purposes of this ordinance, the term "competitive bid" shall mean that three or more vendors have submitted bids. Where fewer than three bids are submitted, the purchasing agent shall state that the bid is not competitive and provide a written explanation why the purchase was not competitively bid.

The purchasing agent shall be responsible for all bid specifications for purchases subject to competitive bidding requirements, and may consult with the city departments and vendors to determine appropriate specifications. The city shall not issue bid specifications drafted by vendors who will be bidding on the item described unless the bid specifications state that allowable alternates are permissible or a reasonable explanation is provided.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-162. Formal bidding procedure.

All supplies, general services, equipment and improvements except as otherwise provided in this ordinance, when the estimated cost thereof shall exceed fifteen thousand dollars (\$15,000.00), shall be purchased by formal written bid from the lowest responsive, responsible bidder, after due notice inviting proposals. All final bid awards for non-competitively bid purchases of supplies, general services, equipment or improvements in excess of fifteen thousand dollars (\$15,000.00), must be approved by the city council. All final bid awards for competitively bid purchases of supplies, general services, equipment or improvements in excess of forty thousand dollars (\$40,000.00) must be approved by the city council. The City Manager shall provide to Council on a quarterly basis a report of all expenditures between \$10,000.00 and \$40,000.00.

Notwithstanding any other provision of this division to the contrary, fuel supplies may be purchased pursuant to Sec. 2-163(5).

(1) Notice inviting bids.

- (a) Newspaper. Notice inviting bids shall be published once in a newspaper having general circulation in the city and at least five (5) days preceding the last day set for the receipt of bids.
 - 1. Scope of notice. The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.
- (b) Bidders list. The agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "Bidders List" which the agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will

acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

- (2) *Bid deposits.* When deemed necessary by the agent, bid deposits in a form satisfactory to him shall be prescribed in the bid material. Unsuccessful bidders shall be entitled to return of surety where the agent has required such. A successful bidder shall forfeit any surety required by the agent upon failure on his part to enter a contract within such time as prescribed by the agent.
- (3) *Bid opening procedure.*
- (a) Sealed. Bids shall be submitted in a sealed envelope to the agent and shall be identified as bids on the envelope.
- (b) Opening. Bids shall be opened in public at the time and place stated in the public notices.
- (4) *Rejection of bids.* The agent shall have the authority to reject any or all bids, parts of all bids, or all bids for any one (1) or more supplies, general services or improvements included in the proposed contract, when the public interest will be served thereby.
- (5) *Award of bid.*
- (a) Authority in agent. The agent shall have the authority to award bids solicited under the formal bidding procedure only with the prior, written approval of the city manager and only where the city manager otherwise has the authority to award bids solicited.
- (b) Authority in city manager. The city manager shall have the authority to award bids solicited under the formal bidding procedure for supplies, general services, equipment and improvements with an actual cost less than or equal to forty thousand dollars (\$40,000.00) that (i) has been included as a line item budget item approved by the city council as part of the general fund, sewer user or capital improvement portion of the City's overall budget; (ii) for which the City has received bids from three or more vendors; and (iii) for which the award of bid would be consistent with the line item budgeted amount approved by the city council. Otherwise, city council approval is required.
- (c) Lowest responsive, responsible bidder. Bids shall be awarded to the lowest responsive, responsible bidder. A **responsive bid** is one that meets all the terms, conditions and specifications of the bid. In determining the "lowest responsive, responsible bidder," in addition to price and compliance with all applicable bid terms, conditions and specifications, the agent, city manager or city council where appropriate, shall consider:
1. The ability, capacity and skill of the bidder to perform the bid or provide the service required.
 2. Whether the bidder can perform the bid or provide the service promptly, or within the time specified, without delay or interference.

3. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
 4. The quality of performance of previous bids.
 5. The previous existing compliance by the bidder with laws and ordinances relating to the bid.
 6. The sufficiency of the financial resources and ability of the bidder to perform the bid.
 7. The quality, availability and adaptability of the supplies, or general services to the particular use required.
 8. The ability of the bidder to provide future maintenance and service for the use of the subject of the bid.
 9. The number and scope of conditions attached to the bid.
 10. Such other factors as may be indicated in writing by the agent demonstrating that the bid is not in the city's best interest and does not promote the underlying purposes of this ordinance.
- (d) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the agent and filed with the other papers relating to the transaction.
- (e) Tie bids.
1. Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the bid shall be awarded to the bidder whose principal place of business is located in the city.
 2. Outside vendors. Where subparagraph 1 is not applicable, the agent shall award the bid to one of the tie bidders by drawing lots in public.
- (6) *Prohibition against subdivision.* No contract or purchase shall be subdivided to avoid the requirements of this section.

(Ord. No. 22-89/90, 6-4-90; Ord. No.1-03/04, 7/21/03 [Fiscal Note: Less than 1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000]; Ord. No. 1-12/13, 7/2/12 [Fiscal Note: Less than \$1000])

Sec. 2-163. Informal bidding procedure.

All purchases of supplies, general services, and improvements estimated to be fifteen thousand dollars (\$15,000.00) or less may be made in the open market, without the required newspaper advertisement

and without observing the procedure prescribed by section 2-162 for the award of formal bids. The agent shall have the authority to award bids under five thousand dollars (\$5,000.00) solicited under the informal bidding procedure and shall have the authority to award such bids between five thousand dollars (\$5,000.00) and fifteen thousand dollars (\$15,000.00) with the prior written approval of the city manager.

- (1) *Minimum number of bids.* All informal bids shall, wherever possible, be based on at least three (3) competitive bids, and shall be awarded to the lowest responsive, responsible bidder in accordance with the standards set forth in subsection (5)(c) of section 2-162 above.
- (2) *Notice of inviting bids.* The agent shall solicit bids by (a) direct mail request to prospective vendors and (b) by telephone.
- (3) *Recording.* The agent shall keep a record of all informal bids and the bids submitted in competition thereon, and such records shall also be open to public inspection.
- (4) *Purchasing Cards.* Notwithstanding the other provisions of this section, each city department head shall have the authority to make purchases in an amount less than two thousand five hundred dollars (\$2,500.00) on so-called purchasing cards in such manner and on such cards as may be prescribed by the agent.
- (5) *Fuel supplies.* Notwithstanding any other provision of this division to the contrary, for fuel supplies (e.g., #2 fuel oil, diesel fuel, unleaded fuel, propane and natural gas) with prices that vary daily, it may be to the City's advantage to lock into a low, guaranteed fixed price for fiscal year fuel supply expenditures. The director of finance is authorized, after consultation with the city manager and following a competitive bid process consistent with the informal bidding procedure, to execute and deliver on behalf of the City such agreement(s) as he deems necessary to effectuate such fuel supply purchases, containing such terms not inconsistent herewith, as the director of finance may approve by his execution thereof, provided that (i) such fuel supply has been included as a line item budget item (or items) approved by the city council as part of the City's overall budget; and (ii) for which the award of bid would be consistent with the line item(s) budgeted amount approved by the city council.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 7-01/02, 11/5/01 [Fiscal note: less than \$1000] Ord. No. 1-03/04, 7/21/03 [Fiscal Note: less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000]; Ord. No. 1-12/13, 7/2/12 [Fiscal Note: Less than \$1000])

Sec. 2-164. Exemption from bidding procedures--Emergency purchases.

- (1) *By agent.* In case of an apparent emergency which requires immediate purchase of supplies, general services or improvements, the city manager shall be empowered to authorize the agent to secure by the informal bidding procedure as herein set forth, at the lowest obtainable price, any supplies or general services regardless of the amount of the expenditure.
 - (a) *Recorded explanation.* A full written report of the circumstances of an emergency purchase for an amount in excess of fifteen thousand dollars (\$15,000.00) shall be submitted by the city manager to the city council with a copy to the purchasing agent. This report shall be available for public inspection.

- (2) *By head of departments.* In case of actual emergency, and with the approval of the city manager, the head of any using department may purchase directly any supplies, general services or improvements whose immediate procurement is essential to prevent delays in the work of the using department which may vitally affect the life, health or convenience of citizens or employees.
- (a) Recorded explanation. The head of such using department shall send to the city manager, with a copy to the agent, a requisition and a copy of the delivery record together with a full written report of the circumstances of the emergency. The report shall be filed with the city manager, and where the amount of the purchase exceeds fifteen thousand dollars (\$15,000.00), to the city council.
- (b) Emergency procedure. The agent may prescribe by rules and regulations the procedure under which emergency purchases by heads of using departments may be made.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-165. Exemption from bidding procedure--Special requirements.

The formal and informal bidding procedures shall not be required in connection with any purchases of supplies, general services or improvements funded or reimbursable by state or federal sources where such source requires a different procurement process to be followed and procurement is effected through or in accordance with such process.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-166. Exemption from bidding procedure--Negotiated purchases.

Where there has been competitive bidding either formal or informal but no bids were received or the city manager has rejected all bids because the bid prices were unreasonable or none of the bids met specifications, the purchasing agent and/or department head or division manager may negotiate for purchases if he/she determines:

- (1) That it is not feasible or practical to re-bid the purchase;
- (2) Each qualified and responsible supplier on the bidders' list has been notified of the city's intention to negotiate and is given reasonable opportunity to negotiate; and
- (3) The final negotiated price is the lowest negotiated price offered by any qualified and responsible supplier.

A purchase by negotiation shall be approved by the city manager or, if in excess of fifteen thousand dollars (\$15,000.00), by the city council.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-167. Exemption from competitive bidding--Cooperative purchasing; used equipment auctions.

- (1) The agent shall have the authority to join with other units of government in cooperative purchasing plans when the best interests of the city would be served thereby. The requirements of formal and informal bidding shall not apply to such cooperative arrangements.
- (2) *Electricity supply.* The director of finance is authorized, after consultation with the city manager and following participation in a cooperative purchase plan, including, without limitation, any aggregation services, to execute and deliver on behalf of the City such agreement(s) as he deems necessary to effectuate electricity supply purchases, containing such terms not inconsistent herewith, as the director of finance may approve by his execution thereof, provided that (i) such electricity supply has been included as a line item budget item (or items) approved by the city council as part of the City's overall budget; and (ii) for which the award of bid would be consistent with the line item(s) budgeted amount approved by the city council.
- (3) The City Council may authorize the City Manager or his designee, on an item by item basis, to purchase used equipment at public auction without using either formal or informal bidding procedures where the City Council has determined:
 - (a) that to do so would be in the City's best financial interest; and
 - (b) would not undermine the legitimate public interests in competitive bidding.

Any such City Council authorization shall be supported by a written report demonstrating compliance with these standards and shall contain a maximum expenditure amount and date of expiration, and must be authorized by a vote of at least two thirds (2/3) of the Councilors present and voting.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 6-93/94, 8-16-93; Ord. No. 1-12/13, 7/2/12 [Fiscal Note: Less than \$1000])

Sec. 2-167A. Exemption from competitive bidding--Alternative methods of project delivery for contracts for improvements.

- (1) *Definitions.* For purposes of this section, the following terms, phrases and words shall have the meaning given herein.
 - (a) "Construction manager-advisor method" means a method of project delivery in which the City engages a single firm for a fee to advise and consult with the City as to design and construction and may include consultation as to the selection of one or more design professionals to furnish the design when trade contracts for performance are held directly by the City.
 - (i) The construction manager-advisor is contractually bound to manage the schedule and budget to ensure adherence to both by the trade contractors.

- (ii) The construction manager-advisor shall not hold subcontracts for the project or provide project bonding for the project.
 - (iii) The construction manager-advisor shall competitively bid all construction trade work in accordance with the bidding procedure set forth in Sec. 2-167A (3)(d).
- (b) “Construction manager-at-risk method” means a method of project delivery in which the City engages a single firm for a fee to advise and consult with the City as to design and construction and separately engages one or more design professionals to furnish the design, and in which the construction manager-at-risk is responsible to the City for schedule and price.
- (i) The construction manager-at-risk provides a maximum guaranteed price to perform the work as general contractor.
 - (ii) If the construction manager-at-risk is to hold all trade contracts and purchase orders, it shall furnish a 100% performance and payment bond and guarantee the entire project. The construction manager-at-risk shall competitively bid all construction trade work in accordance with the bidding procedure set forth in Sec. 2-167A(3)(f).
 - (iii) If the City is to hold all trade contracts and purchase orders, the City shall competitively bid all construction trade work in accordance with the bidding procedure set forth in Sec. 2-161. The portion of the project not covered by the trade contracts and purchase orders is to be bonded and guaranteed by the construction manager-at-risk. The construction manager-at-risk shall be permitted to submit bids and self-perform work if it is the successful bidder.
- (c) “Design-build method” means a method of project delivery in which a single firm is contractually responsible to perform design, construction and related services.
- (d) “Design-build team” means representatives of an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a prequalification package in response to a request for qualifications under this Section.
- (e) “Proposer” means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal.
- (f) “Quality” means those features that the City determines are most important to the project. “Quality” includes design quality; feasibility of construction; long-term maintenance costs; life-cycle costs, particularly energy efficiency; service life; and other factors the City Council determines to be in the best interests of the City.

(2) *Use of a Construction Manager.* To the extent otherwise permitted by law, the City Council may authorize any City improvement, including any improvement by any department (including the School Department), agency, commission, bureau or other unit in City government, costing more than \$1,000 to be executed by a construction management contract with a construction manager after the public notice and competition prescribed by this Ordinance. The use of a construction manager shall be carefully considered by the City Council, which must also carefully consider the School Board’s recommendation on school projects. The City Council shall compare the benefits and risks of employing a construction

manager, and shall find the existence of one or more of the following circumstances prior to deciding to proceed with the use of a construction manager:

- (a) The project has significant schedule ramifications, and concurrent design and construction is necessary to meet these critical deadlines and to shorten the overall duration of the construction process.
- (b) The project is one where the phasing and/or complexity are so extremely difficult that complete design and other preconstruction services cannot be completed effectively without the direct involvement of a construction manager.
- (c) Early construction manager input during the design process is anticipated to contribute to significant cost savings.
- (d) The project presents significant technical complexities that will require the hiring of additional personnel to manage the process.

(3) *Selection of a Construction Manager.* The construction manager-at-risk method must be substantially consistent with the concepts set forth in a standard form of agreement between an owner and a construction manager when the construction manager is also the constructor as established by national architect or general contractor organizations. The construction manager-advisor method must be substantially consistent with the standard scope of services employed by the City in improvement projects. The final procedures and documents for either the construction manager-at-risk or the construction manager-advisor method of delivery shall be determined at the discretion of the City Council.

Selection of the construction manager shall be as follows:

- (a) The City shall publish in at least one newspaper of general circulation in the City and at least one construction industry print publication that covers the Maine market (such as, by way of example only, the Dodge report), a request for qualifications that must contain the evaluation criteria upon which proposals are evaluated. Evaluation criteria include project size and scope, and relevant experience and financial and staff capability of proposers. The City shall evaluate the proposals and determine which proposers, if any, are qualified to perform the project. The City may select such number of firms as it deems appropriate to receive the request for proposals.
- (b) Proposers determined to be qualified must be invited to submit a fee proposal. The City shall, in advance of soliciting a fee proposal, publish the evaluation criteria upon which the proposers are evaluated. Evaluation criteria at a minimum must include the following:
 - (i) Fee;
 - (ii) Technical capacity;
 - (iii) Management plan and project schedule if available;
 - (iv) Experience;

- (v) Past performance;
- (vi) If for a construction manager-advisor, composition of the project team, with individual resumes;
- (vii) If for a construction manager-at-risk, technical approach;
- (viii) If for a construction manager-at-risk, composition and qualifications of the proposers' workforce.

As part of the selection process, proposers may be required to make oral presentations to the selection panel established herein.

- (c) The City Council shall appoint members of a selection panel for municipal projects, which shall be comprised of six (6) voting members. The selection panel for school projects shall be comprised of six (6) voting members, with five (5) voting members appointed by the School Board and one (1) voting member appointed by the City Council. The selection panel may also include up to three non-voting members, including the designer, if selected. Any non-voting members shall be appointed by the City Council for municipal projects and by the School Board for school projects. The selection panel shall conduct any interviews of proposers and shall make a recommendation on the selection of the construction manager to the City Council.
- (d) For the construction manager-advisor method of delivery, the City Council must select, from among the proposals submitted, the construction manager-advisor with the most advantageous proposal that meets the published evaluation criteria as recommended by the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative construction manager-advisor is in the City's best interests. The City Council shall award the position of general contractor to the lowest responsive, responsible bidder as recommended by the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative general contractor is in the City's best interests. The City Council shall award additional trade contracts, if any, to the lowest responsive, responsible bidder or bidders.
- (e) For the construction manager-at-risk method of delivery, the City Council must select, from among the proposals submitted, the construction manager-at-risk with the most advantageous proposal that meets the published evaluation criteria as recommended by the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative construction manager-at-risk is in the City's best interests.
- (f) For the construction manager-at-risk method of delivery, subcontractors must be selected in accordance with the following provisions. The City shall create a subcontractor prequalification panel, composed of a representative from the designer, the construction manager and the affected City department. The construction manager shall develop detailed bid packages based on the industry standard practice. The City shall advertise in at least one newspaper of general circulation in the City and at least one construction industry print publication that covers the Maine market (such as, by way of example only, the Dodge report) for requests for qualifications for each trade. The subcontractor prequalification panel shall, from the qualifications submitted, determine a list of trade

contractors who must be permitted to submit bids in accordance with the bid package requirements, pursuant to a publicly advertised process and deadline. Bids must be opened publicly and be awarded by the City Council to the lowest responsive, responsible bidder.

(4) *Use of a Design-Builder.* To the extent otherwise permitted by law, the City Council may authorize any City improvement, including any improvement by any department (including the School Department), agency, commission, bureau or other unit in City government, costing more than \$1,000 to be executed by a design-build contract with a design-builder after the public notice and competition prescribed by this Ordinance. The use of a design-builder shall be carefully considered by the City Council, which must also carefully consider the School Board's recommendation on school projects. The City Council shall compare the benefits and risks of employing a design-builder, and shall find the existence of one or more of the following circumstances prior to deciding to proceed with the use of a design-builder:

- (a) The project has significant ramifications, and concurrent design and construction is necessary to meet these critical deadlines and to shorten the overall duration of the construction process. Potential time savings must be substantiated and may include operational and financial data that justify early project completion.
- (b) The design-builder's concurrent employment of design and construction professionals is anticipated to contribute to significant cost savings.
- (c) The size of the project, or contract value, is of sufficient size to justify the risks for both the City and the design-builder.
- (d) The project presents significant technical complexities that are best addressed by a design-builder. Technical complexities that may influence the decision to use a design-builder include:
 - (i) Program requirements that can be defined by performance criteria or regulatory standards;
 - (ii) Public safety;
 - (iii) Price guarantees that allow the City greater cost reliability and effective management of the budget process;
 - (iv) Historic preservation and/or difficult remodeling projects with many unknown factors; and
 - (v) Constructability challenges requiring complex phasing or highly coordinated scheduling.

(5) *Selection of a Design-Builder.* The design-build method must be substantially consistent with guidelines approved by a national architect, general contractor or design-build organization or a combined or modified version of the guidelines approved by those entities, with the final design-build procedures and documents determined at the discretion of the City Council. The City may prequalify design-build teams using criteria that must include at a minimum those set forth in 5 M.R.S.A. § 1747, as may be amended, and may also include additional criteria considered appropriate by the City.

Selection of the design-build team shall be as follows:

- (a) Prior to publication of a request for qualifications, the City shall develop concept and schematic designs incorporating a detailed set of program requirements for the project using the services of a qualified architect, engineer or other professional who is selected using the City's professional services selection procedures. Individuals who are involved in developing the project's program requirements may not be part of the design-build team.
- (b) For each project, the City shall publish a request for qualifications in at least one newspaper of general circulation in the City and at least one construction industry print publication that covers the Maine market (such as, by way of example only, the Dodge report). The City shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. The selection panel established herein shall evaluate and rate all firms submitting a responsive statement of qualifications and the City Council shall select the most qualified firms to receive a request for proposals based on the recommendation of the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that alternative qualified firms are in the City's best interests. Selection criteria at this stage include the ability of the competitor to satisfactorily carry out the project design and construction requirements, past performance, relevant experience, financial capacity to perform and such other criteria determined to be in the best interests of the City. The City Council may select such number of firms as it deems appropriate and qualified to receive the request for proposals. The City may pay a reasonable stipend to all responsive proposers who were not selected. The amount of the stipend must be published together with the evaluation criteria in the request for proposals.
- (c) The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that the City determines have a substantial impact on the cost or quality of the project and the project development process. The request for proposals must include the criteria for acceptable proposals and state clearly what weight will be assigned to each criterion. A description of the scoring process and quality criteria to be used to judge the proposals must also be contained in the request for proposals. As part of the selection process, proposers may be required to make oral presentations to the selection panel established herein.
- (d) The City Council shall appoint members of a selection panel for municipal projects, which shall be comprised of six (6) voting members. The selection panel for school projects shall be comprised of six (6) voting members, with five (5) voting members appointed by the School Board and one (1) voting member appointed by the City Council. The selection panel may also include up to three non-voting members. Any non-voting members shall be appointed by the City Council for municipal projects and by the School Board for school projects. The selection panel shall conduct any interviews of proposers and shall make a recommendation to the City Council at both the request-for-qualifications and request-for-proposals phase of the project.
- (e) Each proposal must be submitted to the City in two separate components: a sealed technical proposal and a sealed price proposal. These two components must be submitted simultaneously. The selection panel shall first open and evaluate and score

each responsive technical proposal based on the quality criteria contained in the request for proposals. Nonresponsive proposals must be rejected. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential. After completion of the evaluation of the technical proposals, the selection panel shall publicly open and read each price proposal. The City Council shall award the contract to the proposer with the lowest price per quality score point as recommended by the selection panel, as long as that proposal meets all request-for-proposals requirements, unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative proposer is in the City's best interests.

(Ord. No. 9-10/11, 12/6/10 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-167B. Exemption from competitive bidding--Sole source.

Occasions may arise when competition among vendors is not possible for a particular purchase. These situations may occur when (a) there is clearly and legitimately only one source capable of supplying the subject matter in a timely fashion; (b) the purchase is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the subject matter; or (c) the federal or state government or other provider of funds for the subject matter being purchased has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor. The city manager and the director of finance may approve negotiated procurement of goods or services without requiring bids if it is determined from all information submitted by the department head to the purchasing agent that steps were taken to verify that the necessary features provided by the proposed vendor are not available from other vendors; that the use of a specific product, manufacturer or vendor is required to maintain consistency of equipment; and that no similar standard goods would reasonably satisfy the city's requirements.

(Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-168. Inspection and testing.

The agent shall inspect, or supervise the inspection of, all deliveries of supplies or general services to determine their conformance with the specifications set forth in the order or contract.

- (1) *Inspection by using department.* The agent shall have the authority to authorize using departments having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations which the agent shall prescribe.
- (2) *Tests.* The agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the agent shall have the authority to make use of laboratory facilities of any department of the city government or of any outside laboratory.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-169. Contracts for professional and other services.

- (a) The city manager shall have the authority to contract for professional and other services which are in their nature unique and not subject to competition, provided that all such contracts in excess of fifteen thousand dollars (\$15,000.00), or which when added to all such contracts with the same person or entity within the current fiscal year of the city exceed fifteen thousand dollars (\$15,000.00), shall be approved by the city council.
- (b) The school board may contract for services as authorized by the general law.

(Ord. No. 22-89/90, 6-4-90)

Sec. 2-170. Surplus stock.

All using departments shall submit to the agent, at such times and in such form as he shall prescribe, reports showing stocks of all supplies and equipment which are no longer used or which have become obsolete, worn out or scrapped.

- (1) *Transfer.* The agent shall have the authority to transfer surplus stock to other using departments.
- (2) *Sale.* The agent shall have the authority to sell all supplies and equipment which have become obsolete, unusable, or otherwise unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies or equipment. Sale of surplus property shall be accomplished by a competitive bidding procedure, open sale or auction. The type of sale shall be determined by the purchasing agent, with the approval of the city manager. Open sales and auctions may be electronic, and the purchasing agent may create a continuous electronic auction to which new supplies and equipment are added as deemed appropriate. Supplies or equipment not sold within sixty (60) days of being offered may be deemed by the purchasing agent to have no value and be disposed of in an appropriate manner. A report of all sales and the disposition of all unsold supplies and equipment shall be made to the city council.
 - (a) *Competitive bidding.* Sales under the competitive bidding procedure shall be made to the highest responsive, responsible bidder and in conformance with section 2-162. The agent shall have the authority to award bids, provided that all awards of bid of ten thousand dollars (\$10,000.00) or more shall be approved by the city council.
 - (b) *Open sale.* The agent may periodically conduct an open sale of surplus supplies and equipment. The date and location of such sales shall be publicized in a newspaper of general circulation and shall be publicized in any other manner which will be likely to inform the public of the pending sale. Approval of the city council shall be required prior to the open sale of all supplies and equipment which the purchasing agent has valued at five thousand dollars (\$5,000.00) or more.
 - (c) *Auction.* The agent may periodically conduct an auction of surplus supplies and equipment. The date and location of such auctions shall be published in a newspaper of general circulation and shall be publicized in any other manner which will be likely to inform the

public of the pending auction. Approval of the city council shall be required prior to the auction of all supplies and equipment which the purchasing agent has valued at ten thousand dollars (\$10,000.00) or more.

- (3) *Disposition of Computer Hardware.* Notwithstanding any other ordinance provision to the contrary, computer hardware taken out of service after its useful life may be sold to City employees (other than the purchasing agent and director of information technology) in a manner determined by the purchasing agent. The purchasing agent and the director of information technology shall determine a reasonable market value of the computer hardware in an “as is, where is” condition, and the purchasing agent shall endeavor to sell the computer hardware for at least that amount.

(Ord. No. 2 -89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-171. Sale of real property.

- (1) *General policy.* The sale of all real property owned by the city, including any interests therein, shall be governed by this ordinance. As a general rule, the city shall charge fair market value for the conveyance of any interest in real property, except as specifically provided below, and convey its interest by quit claim deed.
- (2) *Classification of property interest.* For the purpose of this division, real property interests owned by the city shall be classified and the disposition of those interests shall be as follows:
- (a) Tax acquired.
1. The director of finance shall maintain a list of all tax acquired property and shall send a list of the most recent tax acquired property to the planning board each year for its recommendation as to the disposition thereof.
 2. The planning board shall review said annual list and forward its written recommendation to the city council indicating whether said properties should be retained by the city. The city council shall then review the planning board's recommendation and determine which properties, if any, to offer for public sale. Residential properties which are occupied by the prior owner and for which regularly scheduled payments are being made shall not be offered for sale.
 3. If a property to be offered for sale is prior owner occupied single-family property, it shall first be offered to the previous owner for a price to be determined by the city council; provided, however, that in no event shall such price be less than the total of all back taxes, interest, costs, and any and all other charges properly assessed thereon by the city.
 4. Thereafter for those properties to be offered for sale, the city council shall determine the method of sale. Methods may include, but are not limited to, brokerage sale, negotiated sale or public bid process. The city reserves the right to establish such conditions or restrictions on the subsequent use of the property as it deems in the best interest of the city. If the property is put out to public bid for sale to the highest bidder, the city shall reserve the right to establish a minimum bid, to reject any bid less than the stated minimum bid, and to

establish such other conditions or restrictions on the bid it deems in the best interest of the city.

5. Following approval of the method of sale by the city council, the city manager is authorized to complete the sale, including execution and delivery of the deed and such other paperwork reasonably incident to the sale. The proceeds of the sale shall be distributed in the following manner to the extent that funds are received from the sale: first, all taxes, interest and cost under the tax lien foreclosure process shall be paid to the city, including all costs incident to the sale of the property; and second, all outstanding assessments or other lawful charges incurred by the city in providing services to the property. Any such distributions shall not be considered part of the “net proceeds” of the sale for purposes of Section 18-76(4) of the Code of Ordinances.

(b) City owned.

1. The sale of all real property interests not classified as "Tax Acquired" or "Streets and Rights-of-Way" shall be governed by this paragraph.
2. Any proposed sale of "city-owned" property shall first be referred to the planning board for its recommendation as to the disposition thereof.
3. After review of the planning board's written report, the city council shall decide whether to sell such property. If the city council decides to offer the property for sale, the city council shall determine the method of sale. Methods may include, but are not limited to, sealed bid, sealed request for proposals, auction, brokerage sale or negotiated sale.
4. In evaluating the proposals to purchase such property, depending on the method of sale, the city council may consider factors such as price, annual property tax generation, proposed land use, economic benefit, job creation, environmental benefit or detriment, historical or architectural significance of any existing improvements on the property, community need or neighborhood benefits when awarding the sale. Consistent with the above, the city council shall indicate the factors it will consider for each property at the time the method of sale is determined.
5. The city council may set reasonable conditions on the future use of the property through deed restrictions to ensure that the property will be used in the best interests of the City.

(c) Streets and rights-of-way.

1. The sale or discontinuation/vacation of property interests in streets and rights-of-way shall be governed by this paragraph and the requirements of state law.
2. The city's property interest in streets and rights-of-way shall not be sold or discontinued/vacated until the planning board has reviewed the matter and issued a written recommendation thereon to the city council.

3. The city council shall then decide whether to sell or discontinue/vacate such interests. The assessment of damages shall be left to the discretion of the city council.
- (3) *Miscellaneous considerations.* The city council may waive any of the above requirements where the public interest so requires and where i) An abutting property owner has a unique interest in the property; ii) in the case of a street or right-of-way, a replacement of equal quality is given; or iii) a charitable, nonprofit, or other governmental agency offers to purchase property to be used for a charitable, nonprofit, or governmental purpose. The city council may authorize such a waiver only upon full public disclosure and an affirmative vote of not less than five (5) councilors.
 - (4) That portion of the net proceeds (sales price less any past due taxes, interest and costs) of all real property sold pursuant to this Section, as determined in accordance with Section 18-76(4) of the Code of Ordinances, shall be deposited into the South Portland Land Bank account.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 17-91/92, 6-15-92; Ord. No. 8-03/04, 10/6/03 [Fiscal Note: less than \$1000]; Ord. No. 10-04/05, 2/23/05 [Fiscal Note: Less than \$1000]; Ord. No. 17-09/10, 7/19/10 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000]; Ord. No. 11-13/14, 3/17/14 [Fiscal Note: Less than \$1000])

Sec. 2-172. Lease or rental of city property.

- (a) The city manager may, on behalf of the city, enter into agreements for the lease or rental of city property, except as otherwise provided in subsection (b), for such purposes as will benefit the city. Any such agreement which is for a term of more than one (1) year, or can extend beyond a period of one (1) year, shall require city council approval.
- (b) The school board may enter into arrangements to lease school buildings as authorized by general law.

(Ord. No. 22-89/90, 6-4-90)

Sec. 2-173. Contract requirements.

All purchases of contractual services or improvements for an amount equal to or greater than one thousand dollars (\$1,000.00) shall be subject to the following requirements:

- (1) **Bonding.** For improvements equal to or greater than ten thousand dollars (\$10,000.00), a performance bond and a labor and material payment bond each in the full amount of the contract price shall be required; for improvements equal to or greater than one thousand dollars (\$1,000.00), but less than ten thousand dollars (\$10,000.00), the director of finance shall require surety in such form and amount as he deems necessary fully to protect the best interests of the city.
- (2) **Insurance.** All vendors providing general services pursuant to this ordinance shall provide the director of finance with proof of public liability and automotive liability insurance coverage with an insurance company licensed to do business in the State of Maine each in an amount not less than four hundred thousand dollars (\$400,000.00) single limit coverage or such greater amount as may be

required to protect the city's interest under the Maine Tort Claims Act, as the same may be amended from time to time, and shall also provide such workers' compensation coverage as is required by law.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: less than \$1000])

Sec. 2-174. Separability.

In the event that any section, subsection or any portions of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this ordinance.

(Ord. No. 22-89/90, 6-4-90)

Secs. 2-175--2-185. Reserved.

ARTICLE V. CONFLICTS OF INTEREST AND PERSONAL BENEFITS

Sec. 2-186. Declaration of Policy and Purpose

Our government is a representative democracy. Those who are elected, appointed and hired to serve the public accept a public trust. The public entrusts its power and resources to its servants to use only in the public interest. Public trust requires public servants to fulfill their public duties faithfully and honestly, and to subordinate any personal interest which conflicts with the public interest.

The City of South Portland recognizes that public servants are members of society and therefore share the same general personal and economic interests as all members of the community. Public servants retain their rights to publicly express their opinions on the effect of public action on their personal or economic interests or rights. Public servants and their families are entitled to engage in employment, professional or business activities, other than official duties, in order to support themselves and to maintain a continuity of professional or business activity, and are entitled to maintain investments.

The purpose of this article is to provide rules for avoidance of conflicts of interest that balance the need to avoid inappropriate personal profit of public servants with the need for the City to enter into contracts and make purchases that are in the public's best interest, which may sometimes mean a contract or purchase with a business in which a public servant has an interest. In addition to avoiding actual conflicts of interest as defined in this Article, public servants shall disclose any relationship or interest that could reasonably give the appearance of a conflict of interest on any matter.

Sec. 2-187. Definitions

For purposes of this Article, the following terms have the following definitions:

Benefit means: (a) anything having a monetary benefit in excess of \$50; or (b) anything, regardless of its monetary value, offered with the intent of influencing a public servant in the performance or non-performance of an official action.

Purchasing authority means the authority to make a final decision approving or denying a purchase or contract.

Public servant means any elected official, appointed board member, the City Manager, City Clerk, Corporation Counsel, Superintendent of Schools, all school principals, all department heads, the Assessor, the Code Enforcement Officer, the purchasing agent for the City and all City or School Department employees with authority to make purchasing decisions for amounts exceeding \$200.

Household member means a person who is related to a public servant by blood, marriage or affinity and who lives in the same household as the public servant.

Sec. 2-188. Conflicts of Interest and Personal Benefits Prohibited

- A. Except as otherwise permitted under applicable federal, state or local laws or policies, no public servant shall participate in any official action in which s/he or a household member has a direct financial interest.
- B. No public servant or household member of a public servant shall accept or receive any benefit from any person under circumstances in which a reasonable person would infer that the benefit is intended to influence the public servant in the performance of his or her official duty.

Sec. 2-189. Participation and Vote Prohibited

No public servant serving on a board shall participate in the discussion, debate, deliberation or vote or otherwise take part in the decision-making process on any agenda item before the board in which the public servant or a household member has a direct financial interest or could receive a direct benefit or about which the public servant cannot act fairly in the best interests of the public.

Sec. 2-190. Public Contracts and Purchasing

- A. If a public servant or household member has a financial interest in or a direct financial benefit from any contract or purchase with the City with a value greater than \$200, and the public servant has purchasing authority regarding the purchase or contract or is in a position to make a recommendation regarding the purchase to the purchasing authority, the public servant shall disclose such interest. This disclosure shall be made as soon as the public servant knows of the solicitation of a bid or contract, the bidding of a contract, the negotiation of a contract, or the approval of the contract or issuance of a purchase order by the appropriate City authority.
- B. For purchases or contracts in amounts greater than \$200 but less than \$10,000, the public servant with purchasing authority regarding the purchase shall not enter into a contract or make any purchase from which s/he or a household member has a direct financial interest or from which s/he or a household member will derive direct financial benefit.
- C. The City is prohibited from making any purchase or entering into any contract involving services or property in an amount of \$10,000 or more with a business in which a public servant or a household member has a direct financial interest or from which a public servant or household member will derive direct financial benefit.

- D. Any contract entered into in violation of this section may be voided by the City in an action commenced within one year of the date the authority approving of the contract knew or reasonably should have known that a violation of this section occurred.

- E. On an affirmative vote of a majority of City Councilors present and voting, the provisions of this section may be waived upon a finding that a contract otherwise in violation of this section is in the best interest of the City. If the public servant or household member who has the conflict of interest is a City Councilor, that Councilor must abstain from participation and vote on the matter.

* **Editor's note**--Ord. No. 6-86/87, enacted Sept. 15, 1986, repealed Art. VI in its entirety. Former Art. VI, §§ 2-186--2-190, pertaining to residency requirement, derived from Ord. No. 30-76, enacted Sept. 20, 1976. New Art. VI, §§ 2-186--2-190 - Ord. #15-98/99, 4/21/99 [Fiscal Note: Less than \$1000]

Secs. 2-191--2-199. Reserved.

ARTICLE VI. LEGAL COUNSEL AND INDEMNIFICATION

Sec. 2-200. Legal counsel and indemnification to be provided.

The city council shall in all cases provide competent legal counsel to defend the city, any of its boards and commissions, any city councilor, officer, employee or the member of any city board or commission who is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that said

person is or was a city councilor, officer, employee or board member of the city, and shall pay or indemnify such councilor, officer, employee or board member as against all expenses, fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, subject to the following:

(a) *Exceptions.* Nothing herein shall be construed to require the city to provide or pay for legal counsel or such indemnification for any city councilor, officer, employee or board member in the following situations:

- (1) In civil matters, where the councilor, officer, employee or board member is the plaintiff or moving party; or where it shall be finally adjudicated in any action, suit or proceeding that said councilor, officer, employee or board member shall not have acted in good faith and in the reasonable belief that his action was in the best interest of the city; or
- (2) In criminal matters, where the councilor, officer, employee or board member is the complaining party, or had reasonable cause to believe that such conduct was unlawful.

Termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement, or by plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith and in the reasonable belief that his action was in the best interests of the city nor, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

- (b) *Other legal counsel.* Nothing herein shall be construed to prohibit any such councilor, officer, employee or board member from seeking additional legal counsel at his own expense. However, nothing herein shall be construed as to require the city to pay any fees or other expenses incurred as a result of employment of such additional legal counsel.
- (c) *Other rights.* The rights provided for in this Article VII shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any other statute, ordinance, agreement or policy of the city.
- (d) *Corporation counsel responsibilities.* In circumstances involving litigation or other legal proceedings between two (2) legal bodies or individuals qualifying for the privileges granted herein, the corporation counsel may, but shall not be required to, represent or otherwise participate on behalf of either party.

Secs. 2-201--2-205. Reserved.

ARTICLE VII. TREE ORDINANCE*

 * **Editor's note**--Ord. No. 32-75, enacted Dec. 15, 1975, repealed former Art. IV, relative to the tree warden, and enacted in lieu thereof a new Art IV as set out in §§ 2-127--2-136. Former Art. IV was derived from Code 1966, §§ 7-8-4, 7-8-5, and Ord. No. 10-67, adopted Sept 6, 1967.

Sec. 2-206. Position of city arborist created; appointment, qualifications.

The position of city arborist is hereby created. The position shall be filled by appointment of the city manager. The city arborist shall be a person skilled and trained in the arts and sciences of municipal arboriculture, and shall hold a college degree or its equivalent in arboriculture, ornamental or landscape horticulture, urban forestry, or other closely related field. The city arborist shall have passed the state examination and shall hold a current regular arborists license from the State of Maine.

(Ord. No. 32-75, 12-15-75; Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-207. Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directory.

- (a) *City arborist* is the designated official of the city assigned to carry out the enforcement of this article.
- (b) *Property owner* shall mean the person owning such property as shown by the assessor's maps of the city, unless proof to the contrary is available and presented.
- (c) *Property line* shall mean the outer edge of a street or highway right-of-way.
- (d) *Public places* shall include all grounds owned by the city.
- (e) *Public trees* shall include all shade and ornamental trees now or hereafter growing on any street or any public areas.
- (f) *Street or highway* means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right.
- (g) *Trees:*

- (1) Large trees are designated as those attaining a height of forty-five (45) feet or more.
 - (2) Medium trees are designated as those attaining a height of thirty (30) to forty-five (45) feet.
 - (3) Small trees are designated as those attaining a height of less than thirty (30) feet.
- (h) *Treelawn* is that part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

(Ord. No. 32-75, 12-15-75; Ord. No. 4-79, 3-19-79, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-208. Duties of arborist.

The city arborist shall have the authority to promulgate the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the city and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the city. He shall cause the provision of this article to be enforced. In his absence these duties shall be the responsibility of a qualified alternate designated by the city manager.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-209. Authority of the city arborist.

- (a) *Generally.* The city arborist shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of public trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites.
- (b) *Supervision.* The city arborist shall have the authority and it shall be his duty to supervise or inspect all work done under a permit issued in accordance with the terms of this article.
- (c) *Condition of permit.* The city arborist shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this article.
- (d) *Master street tree plan.* The city arborist shall have the authority to formulate a master street tree plan with the advice and approval of the city council. The master street tree plan shall specify the species of trees to be planted on each of the streets or other public sites of the city. From and after the effective date of the master street tree plan, or any amendment thereof, all planting shall conform thereto.

- (1) The city arborist shall consider all existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites of the city.
 - (2) Amend. The city arborist, with the approval of the city council, shall have the authority to amend or add to the master street tree plan, at any time that circumstances make it advisable.
- (e) *Authority over privately owned trees.* The city arborist shall have the authority to order the trimming, spraying, preservation or removal of trees or plants located on private property when he shall find such action necessary for public safety or to prevent the spread of disease or insects to public trees or places.

(Ord. No. 32-75, 12-15-75; Ord. No. 4-79, 3-19-79, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-210. Permits required.

(a) Planting, maintenance or removal.

(1) No person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree on any street or city-owned property without first filing an application and procuring a permit from the city arborist or otherwise specified municipal authority. The person receiving the permit shall abide by the arboricultural specifications and standards of practice adopted by the city arborist. In emergency situations, such as storm damage to trees, requiring immediate pruning or removal, the work may be done. The arborist must, however, be informed of such action within two (2) days thereafter.

(2) Application for permits must be made at the office of the city arborist not less than forty-eight (48) hours in advance of the time the work is to be done.

(3) Standards of issuance The city arborist shall issue the permit provided for herein if, in his judgment, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

(4) Notice of completion shall be given within five (5) days to the city arborist for his inspection.

(b) Planting.

(1) Application data. The application required herein shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information as the city arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

(2) **Improper planting.** Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the city arborist to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

(c) *Maintenance.*

(1) **Application data.** The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise preserved; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the city arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

(d) *Removal, replanting and replacement.*

(1) Whenever it is necessary to remove a tree or trees from a treelawn in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the city shall replant such trees or replace them. Provided that conditions prevent planting on treelawns, this requirement will be satisfied if any equivalent number of trees of the same size and species as provided for in the arboricultural specifications are planted on the adjoining property.

(2) No person or property owner shall remove a tree from the treelawn for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the city arborist, and without replacing the removed tree or trees in accordance with the adopted arboricultural specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the city arborist. The person or property owner shall bear the cost of removal and replacement of all trees removed.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-211. Abuse or mutilation of public trees.

Unless specifically authorized by the city arborist, no person shall intentionally damage, cut, carve, transplant or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-212. Interference with city arborist.

No person shall hinder, prevent, delay, or interfere with the city arborist or any of his assistants while engaged in carrying out the execution or enforcement of this article; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-213. Protection of public trees.

All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree equal to the diameter of the trunk in inches D.B.H., whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit from the city arborist.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-214. Placing materials on public property.

No person shall deposit, place, store, or maintain upon any public place of the city, any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein, except by written permit of the city arborist.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Sec. 2-215. Arboricultural specifications and standards of practice.

The city arborist shall have the authority to promulgate the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning and bracing of trees on the streets of other public sites in the city. Any such regulations shall be posted for seven (7) days in the city hall prior to the effective date thereof and shall be available at the office of the city clerk during regular office hours.

(Ord. No. 32-75, 12-15-75, Ord. No. 8-07/08, 2/20/08, [Fiscal Note: Less than \$1000])

Secs. 2-216--2-220. Reserved.