

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

***Subject:***

**ORDINANCE #4-16/17 – Amending Article VIII of Chapter 18, “Parks and Recreation,” and Article I of Chapter 23, “Streets and Sidewalks,” of the Code of Ordinances regarding smoking/tobacco use in parks and recreation facilities and at school bus stops. First reading. Passage requires majority vote.**

***Position:***

At last Monday’s workshop, Kevin Adams, Parks and Recreation Director along with Jana Richards from Opportunity Alliance Public Health Program addressed the issues regarding the establishment of Tobacco free and Vapor free zones in public parks and recreational areas. The Council also directed staff to add school bus stops to the list of areas where smoking would be prohibited.

The following are proposed changes to Sec. 18—81 through and including 18-86 in Article VIII, of Chapter 18

**Sec. 18-81. Title.**

This article shall be known as the “City of South Portland Tobacco-Free Parks and Recreation Facilities/School Bus Stops Ordinance.”

**Sec. 18-82. Purpose.**

This ordinance is enacted to protect, preserve, and promote the health, safety and welfare of the residents and visitors that use the City of South Portland’s parks, beaches, outdoor recreation facilities, and school bus stops. The purpose of this ordinance is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

**Sec. 18-83. Definitions.**

*Electronic smoking device means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an*

electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

Smoking means carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

Tobacco products means any of the following: (1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; or (2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic smoking device. ~~Cigarettes, cigars, pipes, snuff, dip, chewing tobacco, weed, plant, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.~~ "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

#### **Sec. 18-84. Tobacco use prohibited.**

(a) \_\_\_ It shall be unlawful for any person to use tobacco products at or within 25 feet of all parks, beaches and outdoor recreation facilities owned and/or maintained by the City, including, but not limited to, the following:

Anthoine Creek Park  
Bug Light Park  
Clarks Pond Trail System  
Firefighters Park  
Ge Erskine Park  
Greenbelt Walkway  
High Street Park  
Hinckley Park  
Fisherman's Point Park  
Legere Park  
Legion Square Park  
Mill Creek Park  
Mountain View/Nelson Park  
Pierce Street Park  
School Street Park  
Spring Point Shoreway  
Thomas Knight Park  
Wainwright Recreation Complex  
Wilkinson Park

Willard Beach  
Willard Park

(b) It shall be unlawful for any person to use tobacco products at or within 25 feet of all designated school bus stops within the City limits. The designated school bus stops are posted annually on the City of South Portland School Department website.

(c) Nothing in this ordinance shall prohibit smoking on privately owned residential property.

**Sec. 18-85. Signage.**

The Parks and Recreation Department shall work with the Public Works Department to post signage notifying the public of this prohibition at or near the parks, beaches and outdoor recreation facilities specified herein, as well as in such other locations that, in its sole discretion, the Parks and Recreation Department deems necessary to notify the public of this ordinance.

**Sec. 18-86. Enforcement.**

The South Portland Police Department shall investigate and enforce the provisions contained in this ordinance. Nothing in this ~~Tobacco-Free Ordinance~~ shall prevent the enforcement agent from obtaining voluntary compliance by way of warning, notice or education.

The following are proposed changes to Sec. 23-19, Smoking at school bus stops, in Article I, of Chapter 23

**Sec. 23-19. Smoking at school bus stops.**

Smoking/tobacco use at school bus stops is regulated under Article VIII (Tobacco-Free Parks and Recreation Facilities/School Bus Stops) of Chapter 18, "Parks and Recreation," of the Code of Ordinances.

These ordinance amendments to Chapter 18, "Parks and Recreation," and Chapter 23, "Streets and Sidewalks" are brought forward to for first reading and to set October 17th for second reading and action.

**Secs. 23-1920--23-24. Reserved.**

***Requested Action:***

Council passage of first reading and set October 17, 2016 for second reading and action.

A handwritten signature in black ink that reads "Donald H. Gurish". The signature is written in a cursive style with a large initial "D".

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Interim City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

DON GERRISH  
Interim City Manager

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

EMILY F. CARRINGTON  
City Clerk

IN CITY COUNCIL

ORDINANCE #4-16/17

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 18, "Parks and Recreation," and Chapter 23, "Streets and Sidewalks," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby are amended as follows (additions are underlined; deletions are ~~struck out~~):

Chapter 18

PARKS AND RECREATION

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**ARTICLE VIII. TOBACCO-FREE PARKS AND RECREATION FACILITIES/SCHOOL BUS STOPS**

**Sec. 18-81. Title.**

This article shall be known as the "City of South Portland Tobacco-Free Parks and Recreation Facilities/School Bus Stops Ordinance."

**Sec. 18-82. Purpose.**

This ordinance is enacted to protect, preserve, and promote the health, safety and welfare of the residents and visitors that use the City of South Portland's parks, beaches, ~~and~~ outdoor recreation facilities, and school bus stops. The purpose of this ordinance is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

District One  
CLAUDE V. Z. MORGAN

District Two  
PATRICIA A. SMITH

District Three  
EBEN C. ROSE

District Four  
LINDA C. COHEN

District Five  
BRAD FOX

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

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**Smoking** means carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

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- Clarks Pond Trail System
- Firefighters Park
- Ge Erskine Park
- Greenbelt Walkway
- High Street Park
- Hinckley Park
- Fisherman's Point Park
- Legere Park
- Legion Square Park
- Mill Creek Park

Mountain View/Nelson Park  
Pierce Street Park  
School Street Park  
Spring Point Shoreway  
Thomas Knight Park  
Wainwright Recreation Complex  
Wilkinson Park  
Willard Beach  
Willard Park

(b) It shall be unlawful for any person to use tobacco products at or within 25 feet of all designated school bus stops within the City limits. The designated school bus stops are posted annually on the City of South Portland School Department website.

(c) Nothing in this ordinance shall prohibit smoking on privately owned residential property.

**Sec. 18-85. Signage.**

The Parks and Recreation Department shall work with the Public Works Department to post signage notifying the public of this prohibition at or near the parks, beaches and outdoor recreation facilities specified herein, as well as in such other locations that, in its sole discretion, the Parks and Recreation Department deems necessary to notify the public of this ordinance.

**Sec. 18-86. Enforcement.**

The South Portland Police Department shall investigate and enforce the provisions contained in this ordinance. Nothing in this ~~Tobacco-Free Ordinance~~ shall prevent the enforcement agent from obtaining voluntary compliance by way of warning, notice or education.

**Sec. 18-87. Penalties.**

Any person in violation of any provision of this ordinance shall be subject to a civil penalty and upon adjudication thereof shall be fined in the amount of one hundred dollars (\$100.00) for the first offense; two hundred and fifty dollars (\$250.00) for a second offense; and five hundred dollars (\$500.00) for each violation thereafter.

Chapter 23

STREETS AND SIDEWALKS

ARTICLE I. IN GENERAL

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**Sec. 23-19. Smoking at school bus stops.**

Smoking/tobacco use at school bus stops is regulated under Article VIII (Tobacco-Free Parks and Recreation Facilities/School Bus Stops) of Chapter 18, "Parks and Recreation," of the Code of Ordinances.

**Secs. 23-~~2019~~-23-24. Reserved.**