

GARBAGE AND REFUSE*

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SOUTH PORTLAND CODE OF ORDINANCES

Chapter 9

GARBAGE AND REFUSE*

* **Cross reference(s)**--Department of public works to collect rubbish and operate the City dump, § 2-11.
State law reference(s)--Public dumps, generally, 30 M.R.S.A. § 4101 et seq.

Art. I. In General, §§ 9-1--9-32

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ARTICLE I. IN GENERAL**Sec. 9-1. Definitions.**

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

Garbage shall mean residential offal, household garbage and kitchen waste.

Person shall mean any individual, natural person, sole proprietorship, firm, partnership, association, corporation or other legal organization of any kind whatsoever.

Refuse shall mean an accumulation of any putrid substance, garbage, rubbish, old lumber, debris, rubble, abandoned appliances or abandoned household furniture.

Rendering wastes shall mean any solid waste consisting of animal, fish, poultry or beef offal or waste products, whether in the form of raw product or finished product.

Responsible party shall mean the property owner for single-family dwellings. For multi-family dwellings, the responsible party shall be the property owner, property manager or agent.

Yard waste shall mean leaves, grass or plant cuttings, twigs, brush, branches or tree limbs.

(Code 1966, § 11-7-1; Ord. No. 7-70, 3-16-70; Ord. No. 13-83/84, 12-19-83, Ord. No. 7-92/93, 9-21-92; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-2. "Refuse," "garbage" to be used interchangeably.

For the purposes of this chapter, the terms "refuse" and "garbage" may be used interchangeably.

(Code 1966, § 11-7-1; Ord. No. 7-70, 3-16-70)

Sec. 9-3. Effect of chapter on other ordinances.

This chapter shall not interfere with, abrogate, annul or repeal any ordinance of the City, provided that where this chapter imposes greater restrictions than any other ordinance of the City, then its provisions shall control.

(Code 1966, § 11-7-16; Ord. No. 7-70, 3-16-70)

Sec. 9-4. Inspections.

The housing inspector and his/her designated agents shall have the right to enter at all reasonable times upon private or public property for the purpose of inspecting and investigating conditions relating to the enforcement and observance of the provisions of this chapter.

(Code 1966, § 11-7-13; Ord. No. 7-70, 3-16-70; Ord. No# 8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])

Sec. 9-5. Duty to give notice of violations; notice to be in writing and describe violation.

Whenever the housing inspector or his/her designated agents, determines that there has been a violation of any provision of this chapter or any regulation adopted pursuant thereto, he shall give notice of such alleged violation to the person or persons responsible therefor as hereinafter provided. Such notice shall be in writing and describe the violation.

(Code 1966, § 11-7-14; Ord. No. 7-70, 3-16-70; Ord. No# 8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])

Sec. 9-6. Authority to provide for collections; where collection is prohibited.

- (a) The City may provide for the regular collection of refuse as the City Manager may direct, pursuant to the provisions of this chapter. Such refuse shall be collected by the City from all residences except those described in the following sentence. Such refuse shall not be collected from apartment houses or apartment complexes of more than four (4) units in size if not receiving City refuse collection service as of September 3, 2014, cluster housing complexes of more than four (4) units in size if not receiving City refuse collection service as of September 3, 2014, nor from hotels, motels, stores, office complexes, manufacturing plants, restaurants, produce houses, food processing plants or any other business or commercial establishment. Owners of properties from which refuse is not collected by the City shall be responsible for the regular collection and disposal of refuse in compliance with the provisions of this chapter. Owners or occupants of residences within an apartment house or apartment complex of four (4) units or less in size or a cluster housing complex of four (4) units or less shall be responsible for placing their refuse at the curb of the street on which the complex has frontage and for otherwise complying with the provisions of this chapter. A list of those apartment houses, apartment complexes and cluster housing complexes receiving City refuse collection service as of September 3, 2014 is on file at the Public Works Department and available for public review and inspection.
- (b) Those apartment houses, apartment complexes and cluster housing complexes receiving City refuse collection service as of September 3, 2014 must continue to provide and maintain a dumpster or dumpsters in accordance with specifications prescribed by the Director of Public Works and which comply with the following requirements in order to be eligible to continue to receive City refuse collection service:
- (1) Each dumpster shall be situated at least twenty (20) feet from a street;
 - (2) Each dumpster shall be situated no closer to a contiguous lot than as permitted for accessory buildings in the zoning district within which the complex is located;
 - (3) Each dumpster shall be site-oriented in such a manner that City equipment has ready and convenient access thereto, and such access route shall be kept free of any obstruction, including snow, at all times on the scheduled day of collection;
 - (4) Each dumpster shall be covered at all times, and each dumpster and dumpster area shall be maintained in a clean, sanitary condition at all times with no refuse on or outside the dumpster;
 - (5) Each dumpster shall be screened and buffered with landscaping or fencing such that it is not visible from the street or any contiguous lot; and
 - (6) Such other requirements as the Director of Public Works or the City Manager may promulgate to carry out the purposes and provisions of this chapter.
- (c) For purposes of this section, a cluster housing complex shall mean two (2) or more dwelling units contained in one (1) or more buildings situated on a lot of record, at least one (1) unit of which is individually owned. A lot of record shall include adjacent lots in common ownership, whenever acquired, unless any such adjacent lot was improved on the date of acquisition or unless any such adjacent lot was approved by the planning board as part of an approved final subdivision plan. Street shall mean a publicly dedicated way accepted by the City or, if not accepted, approved by the planning board with the proposed improvements conditioned by a performance bond in accord with the subdivision or site plan ordinance, as applicable.
- (d) The City shall not be liable for damage or injury to private property or to persons on private property caused by the reasonable operation of City refuse collection equipment.
- (e) In addition to other remedies provided in this chapter and at law, the provisions

of section 16-34 relating to the abatement and removal of public nuisances shall apply to any claimed violation of this chapter, except that the petition referred to in section 16-34(b) shall require three (3), not ten (10), such signatures.

- (f) The City may provide for the collection of heavy or bulky materials as its City Manager may direct, pursuant to the provisions of this chapter. Such materials may be acceptable at either the City's sanitary landfill site or the ecomaine disposal facility and shall not exceed six (6) cubic yards from any single residential building. The City reserves the right to refuse any material not acceptable under the terms of this section, in which event the property owner shall be responsible for the disposal of any such material in compliance with the provisions of this chapter.

(Code 1966, § 11-7-2; Ord. No. 7-70, 3-16-70; Ord. No. 22-87/88, 10-5-87; Ord. No. 44-87/88, 9-19-88; Ord. No. 18-89/90, 2-5-90; Ord. No. 18-89/90, 2-5-90; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 7-14/15, 8/18/14 [Fiscal Note: Less than \$1000])

Sec. 9-7. Authority to refuse collections; owner's duty to dispose.

The City may refuse to accept for collection any refuse which has been put out for collection in a manner which does not comply with the requirements of this chapter or which is too large to fit into standard containers. The owner of such refuse has the responsibility of promptly disposing of it in a proper manner.

(Code 1966, § 11-7-7; Ord. No. 7-70, 3-16-70)

Sec. 9-8. Responsibility to maintain premises in sanitary condition.

The holder of a valid permit for the private collection of refuse within the City or any occupant of any premises within the City will be responsible for maintaining premises in a sanitary and healthful condition.

(Code 1966, § 11-7-11.1; Ord. No. 7-70, 3-16-70)

Sec. 9-9. Unlawful to place, deposit refuse in violation of chapter.

It shall be unlawful for any person to place, deposit or allow to be placed or deposited on his premises any refuse, except as designated by the terms of this chapter.

(Code 1966, § 11-7-11.1; Ord. No. 7-70, 3-16-70)

Sec. 9-10. Duty to provide containers; storage of containers.

Containers shall be stored in a sightly and sanitary manner on the premises at locations reasonably accessible to the tenants.

(Code 1966, § 11-7-9; Ord. No. 7-70, 3-16-70; Ord. No. 15-70, 5-4-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Cross reference(s)--Duty to provide garbage and rubbish receptacles in house-car trailer camps, §§ 11-33, 11-34.

Sec. 9-11. Repealed.

(Code 1966, § 11-7-5; Ord. No. 7-70, 3-16-70; Ord. No. 15-70, 5-4-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

State law reference(s)--Use of containers required for deposits of garbage, etc., 17 M.R.S.A. § 2251.

Sec. 9-12. Repealed.

(Code 1966, § 11-7-5; Ord. No. 7-70, 3-16-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-13. Containers not to be mutilated, removed, etc.

No person shall willfully remove, destroy, mutilate or utilize for another purpose other than the holding of garbage, rubbish or other waste matter, containers which have been provided in accordance with this chapter.

(Code 1966, § 11-7-8; Ord. No. 7-70, 3-16-70)

Sec. 9-14. Repealed.

(Code 1966, § 11-7-4; Ord. No. 7-70, 3-16-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-15. Ashes.

No hot ashes shall be placed for collection by the City. Any ashes put out for collection must be separated from other refuse.

(Code 1966, § 11-7-6; Ord. No. 7-70, 3-16-70)

Sec. 9-16. Disposal of yard wastes.

Yard wastes shall be disposed of at the appropriate municipal solid waste disposal facility as designated by the City manager.

(Code 1966, § 11-7-6; Ord. No. 7-70, 3-16-70, Ord. No. 7-92/93, 9-21-92)

Sec. 9-17. When to make deposits for collection.

No person shall put out refuse for collection sooner than sunset on the day preceding the date on which such refuse will be collected by the City in such location.

(Code 1966, § 11-7-3; Ord. No. 7-70, 3-16-70)

Sec. 9-18. Duty to remove empty containers from street or sidewalk.

No person shall allow any empty refuse container to remain on any street or sidewalk more than eight (8) hours after the collection of such refuse.

(Code 1966, § 11-7-3; Ord. No. 7-70, 3-16-70)

Sec. 9-19. Unlawful to rake leaves into streets, rights-of-way.

It shall be unlawful to rake leaves into any paved street or right-of-way.

(Code 1966, § 11-7-6; Ord. No. 7-70, 3-16-70)

Sec. 9-20. Refuse which may be deposited at City deposit area.

Only refuse originating within the boundaries of the City may be deposited at the City disposal area/transfer facility.

(Code 1966, § 11-7-11.2; Ord. No. 7-70, 3-16-70; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000])

State law reference(s)--Location of solid waste disposal areas, 38 M.R.S.A. § 421.

Sec. 9-21. Permitting vehicles conveying substances having offensive odors and permitting said substances on or near streets prohibited; duty to remove substances.

- (a) No person conveying offal, refuse matter, garbage or any substance having offensive odors through the City shall leave the conveyance or vehicle on which such substances are being transported so that such conveyance or vehicle will remain in any part of the street, or in its vicinity, for a period of time longer than one-half (1/2) hour.

- (b) No person shall allow such conveyance or vehicle or the contents thereof to remain overnight in or near any of the streets of the City. Any person violating this subsection shall, if requested by any municipal officer or police officer, remove the same without delay.

(Code 1966, § 11-1-1)

Cross reference (s)--Conveying dead animals through or upon streets, § 3-14.

Sec. 9-22. Disposition of soot, oysters, dead animals, etc., in public places prohibited.

- (a) No person shall throw or deposit, or cause to be thrown or deposited, in any street or public place any sawdust, soot, ashes, cinders, shavings, hair shreds, manure, oysters, clams or lobster shells, waste or dirty water or any animal, vegetable or offensive matter whatever.
- (b) No person shall throw or cast any dead animal or any offensive matter in any dock or in any place between the channel and the shore nor shall land any foul or offensive animal or vegetable substance within the City, nor shall cast any dead animal in the waters of the harbor or cove.

(Code 1966, § 11-1-1)

State law reference (s)--Littering, dumping generally, 17 M.R.S.A. § 2251.

Secs. 9-23--9-32. Reserved.

ARTICLE II. PRIVATE COLLECTION AND DISPOSAL*

 * **Cross reference(s)**--Licenses, permits and business regulations generally, Ch. 14; licensing provisions relative to the removal of ashes and rubbish by truck, §§ 14-3, 14-33.

Sec. 9-33. Annual permit required; application to be filed; contents of application.

(a) No person shall collect or transport solid waste of another person for a fee within the corporate limits of the City without first obtaining an annual permit from the City Clerk or the City Council, as applicable upon payment of such fees as the Council may prescribe by Council order. This permit requirement does not apply to the City of South Portland Public Works Department's residential trash collectors and transporters.

(b) Any person desiring a permit required by this Article shall make written application to the City Clerk.

(c) The application shall contain the following information:

- (1) The name of the applicant;
- (2) The applicant's residence;
- (3) The address of the applicant's place of business;
- (4) A description of the equipment to be used;
- (5) A written statement of its current and proposed collection and transportation hours of operation;
- (6) A list of the street addresses of its current and proposed customer base in South Portland;
- (7) A written statement of whether the applicant seeks to operate in (A) any zoning districts that are considered residential zoning districts within the meaning of Chapter 27 of the Code of Ordinances (at the time of enactment of Ordinance #18-17/18, those districts are RF, AA, A, G, VR, RT, WR, A-1, G-1, G-2, G-3 and G-4) or (B) any of the following mixed use/commercial zoning districts as described in Chapter 27 of the Code of Ordinances: LB, VC, VCW, SP, MSCC, VE, WNC, and MHCC; and
- (8) An acknowledgement that the applicant understands and agrees that all acceptable waste collected in the City must be disposed of at the ecomaine facility or other licensed solid waste facility designated in writing by the City.

(Code 1966, § 11-7-10.1; Ord. No. 7-70, 3-16-70; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000], Ord. #14-02/03, 6/16/03 [Fiscal Note: Less than \$1000]; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000], Ord. No. 18-17/18, 3/6/18 [Fiscal Note: Less than \$1000])

Sec. 9-34. Issuance of permit.

- (a) Permitting authority. All permit applications, whether new or renewal, shall be reviewed and may be approved by the City Clerk upon the positive recommendation, in writing, of the Chief of Police and the Director of Public Works that the applicant is a responsive, responsible waste hauler and otherwise complies with the terms of this chapter; provided, however, that in the event that an applicant seeks a waiver of the standard term and condition of the annual permit contained in subsection (b)(ii) below, the application shall be reviewed and may be approved by the City Council upon the positive recommendation, in writing, of the Chief of Police and the Director of Public Works that the applicant is a responsive, responsible waste hauler and otherwise complies with the terms of this chapter. Prior to action on an application by the City Council, the City Clerk shall give public notice of the application by posting a sign in a conspicuous place at City Hall at least seven (7) days prior to action and by publication in a newspaper of general circulation in the City at least seven (7) days prior to action, both notices indicating that the applicant is seeking a waiver of the City's standard hours of operation and/or locational limits for waste haulers. The City Council shall only grant a waiver of subsection (b)(ii) below upon a showing by the applicant that such hours of operation and/or locational limits impose an undue hardship on the applicant due to customer site specific traffic and/or access features and/or other operational logistics of the applicant. Any waiver granted shall be in writing and shall identify the specific terms upon which the applicant may operate either outside the normal hours of operation and/or locational limits for permit holders. Once a waiver is granted by the City Council, the waiver remains valid until it or the permit is suspended or revoked. Any renewal application may be reviewed and approved by the City Clerk, applying the same review standards for renewal of the permit as applied to the initial issuance of the permit, unless the City Clerk determines that a public hearing on a renewal application is necessary and appropriate, in which case the City Clerk may elect to defer action on a renewal application and refer the matter to the City Council for hearing and action.
- (b) Terms and conditions for annual permit. To be issued an annual permit, the person who will hold the permit must agree to the following terms and conditions, which terms and conditions are a part of any permit issued:
- (i) All acceptable waste collected in the City must be disposed of at the ecomaine facility or other licensed solid waste facility designated in writing by the City;
- (ii) Unless approved by the City Council pursuant to subsection (a) above, hours of waste removal, collection or disposal services are limited to 7 a.m. to 9 p.m. in any zoning district that is considered a residential zoning district within the meaning of Chapter 27 of the Code of Ordinances (at the time of enactment of Ordinance #18-17/18, those districts are RF, AA, A, G, VR, RT, WR, A-1, G-1, G-2, G-3 and G-4) and in all of the following mixed use/commercial zoning districts as described in Chapter 27 of the Code of Ordinances: LB, VC, VCW, SP, MSCC, VE, WNC, and MHCC.
- (iii) Continued compliance with Sec. 9-38 regarding regulation of transportation of solid waste over public streets.
- (c) Appeal of City Clerk decision. Any appeal of a decision of the City Clerk under the provisions of this Article shall be made to the City Council within ten (10) days after notification thereof is mailed to the applicant. The City Council shall conduct a *de novo* hearing in which it will hear evidence on the application and make its own findings of fact and conclusions of law on the issue of whether the application meets the requirements of this Article.
- (d) Appeal of City Council decision. Any appeal of a decision of the City Council under the provisions of this Article shall be to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

Sec. 9-35. Duration and permit fee.

The fee for a permit required by this Article shall be established by order of the Council. The permit is valid from January 1 through December 31.

(Code 1966, § 11-7-10.1; Ord. No. 7-70, 3-16-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-36. Expiration of permit.

A permit issued under this Article shall expire on the last day of December in each year.

(Code 1966, § 11-7-10.2; Ord. No. 7-70, 3-16-70)

Sec. 9-37. Renewal of permits.

Permits issued under this Article shall be renewable annually in the same manner as required by section 9-33 and upon payment of the fee required by section 9-35.

(Code 1966, § 11-7-10.2; Ord. No. 7-70, 3-16-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-38. Transportation of solid waste over streets regulated.

No private collector shall transport any solid waste including garbage or putrescible waste or other rubbish over any public way, street or place within the limits of the City except in properly constructed vehicles or containers. Such vehicles and containers shall be covered, except during the act of filling or emptying them, and no such vehicle or container shall be permitted to become foul or offensive.

(Code 1966, § 11-7-11.3; Ord. No. 7-70, 3-16-70; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-39. ecomaine notification and authorization.

A copy of each waste hauler permit issued and of each application therefor shall be sent by the City to ecomaine.

A waste hauler with a permit under this Article shall comply with the terms of any rules and/or regulations of ecomaine for disposal of waste collected or transported by such collector or transporter, and the City shall request ecomaine to notify the City Clerk of any noncompliance with any such rules and/or regulations.

Ord. No.14-02/03, 6/16/03 [Fiscal note: Less than \$1000]; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-40. Violations.

Any failure to comply with the requirements of this Article shall be considered a violation. In addition to the penalty provisions set forth in Article III, the City may suspend a refuse hauler permit for up to thirty (30) days for a first violation of this Ordinance and for up to sixty (60) days for a second violation. The City may suspend a refuse hauler permit for any period of time for any subsequent violation or may revoke the permit for the remainder of the year. The City may deny a refuse hauler permit to any person who has received two (2) or more suspensions during the prior year or whose permit was revoked during the prior year. Prior to taking any action on a potential suspension or revocation of a refuse hauler permit, the City shall notify any person to whom the permit was issued and shall hold a hearing.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Secs. 9-41--9-100. Reserved.

ARTICLE III. SOLID WASTE DISPOSAL ORDINANCE*

 * **Editor's note**--Ord. No. 7-89/90, adopted Sept. 6, 1989, repealed Art. III, §§ 9-101--9-103, 9-201, 9-301, 9-401, 9-501--9-503, 9-601, which pertained to solid waste disposal and added provisions designated as a new Art. III to read as herein set out. Former Art. III derived from Ord. No. 22-84/85, 6-3-85. The section numbers in Art. III have been retained per City instructions.

Cross reference(s)--Rodent control, § 10-18 et seq.; harmful wastes prohibited in sewers, § 22-25.

Sec. 9-101. Short title.

This article shall be known as and may be cited as the "City of South Portland Solid Waste Disposal Ordinance" and shall be referred to hereinafter as this article.

(Ord. No. 7-89/90, 9-6-89)

Sec. 9-102. Purpose.

The purpose of this article is to protect the health, safety and general well-being of the citizens of South Portland; enhance and maintain the quality of the environment; conserve natural resources; prevent water and air pollution; gain management control over solid waste; and enable the reclamation of natural resources, including energy, from solid wastes by providing for a comprehensive, rational and effective means of regulating the disposal of solid waste generated in South Portland.

(Ord. No. 7-89/90, 9-6-89)

Sec. 9-103. Definitions.

For the purposes of this article and the preceding article, the following words and phrases shall have the meanings ascribed to them in this section.

- (A) *Acceptable waste* shall mean ordinary household, municipal, institutional, commercial and industrial Solid Waste including, but not limited to, the following:
- (1) Garbage, trash, rubbish, paper and cardboard, plastics, refuse, beds, mattresses, sofas, and automobile or small vehicle tires, to the extent that ecomaine determines that the air emission criteria and standards applicable to and at the ecomaine disposal facility are not violated; and
 - (2) Processible portions of commercial and industrial solid waste; and
 - (3) Residential recycleable materials and commercial recycleable materials.
- (B) *Ashes* shall mean the residue from the burning of wood, coal, coke or other combustible material.
- (C) *Commercial recycleable materials* means that portion of commercial solid waste which consists of recycleable materials.
- (D) *Commercial solid waste* means solid waste generated by a sole proprietorship, partnership, professional association, corporation or other business organization, provided that commercial solid waste shall not include residential solid waste, or solid waste generated by a municipal or quasi-municipal organization or by a state-approved school administration.
- (E) *Construction and demolition debris* shall mean solid waste consisting of one or more of the following materials resulting from construction, remodeling, repair, and demolition of structures:
- (1) Inert fill;
 - (2) Land clearing debris;

- (3) Asphalt;
 - (4) Masonry;
 - (5) Wall board;
 - (6) Pipes; and
 - (7) Metal conduits.
- (F) *Council* shall mean the South Portland City Council.
- (G) *Disposal* shall mean the discharge, deposit, dumping or placing of any solid waste into or on any land.
- (H) *ecomaine* shall mean ecomaine, a non-capital stock, non-profit corporation created pursuant to Title 30-A, Chapter 115 and Title 13-B, and Title 38, Section 1304-B(5) of the Maine Revised Statutes, or any successor thereto or assignee thereof.
- (I) *ecomaine disposal facility* shall mean any land or structure or combination of land area and structures, including dumps and transfer stations owned or operated by or under a contract with ecomaine, and/or any other site designated by ecomaine or its assignee used for storing, salvaging, reducing, incinerating, reclaiming or disposing of acceptable waste pursuant to the waste handling agreement and amendments thereto entered into between the City and ecomaine.
- (J) *Hazardous waste* shall mean a waste substance or material in any physical state, designated as hazardous by the terms of a certain waste handling agreement between the City and ecomaine.
- (K) *Infectious waste* shall include those wastes so defined by the solid waste management regulations promulgated by the Department of Environmental Protection pursuant to 38 M.R.S.A. § 1304.
- (L) *Municipal disposal facilities* shall mean any land or structure or combinations of land area and structures owned or operated by, or under contract with, or approved by the City, including a transfer station or similar facility used in connection with the disposal of acceptable waste.
- (M) *Municipality* or *City* shall mean the City of South Portland.
- (N) *Public solid waste disposal facility* or *disposal facility* shall mean any land or structure or combination of land area and structures, including transfer stations, used for storing, salvaging, reducing, incinerating, reclaiming or disposing of solid wastes; this term shall include the ecomaine disposal facility and municipal disposal facilities.
- (O) *Recyclable materials* shall mean solid waste which has useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes, including: newspapers; magazines; paperboard; paper products; cardboard; plastics; metal; foil; and glass.
- (P) *Residential recyclable materials* means that portion of residential solid waste which consists of recyclable materials.
- (Q) *Residential solid waste* means household waste, residential refuse, or solid waste generated in a residence.
- (R) *Solid waste* shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septage tank sludge nor agricultural or hazardous wastes; it shall include acceptable waste, unacceptable waste and construction and demolition debris as defined herein.
- (S) *Unacceptable waste* shall mean that portion of solid waste which is not acceptable waste and includes, but is not limited to, sewage and its derivatives,

construction and demolition debris, products containing asbestos, asphalt, fluorescent light bulbs, junk vehicles, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and hazardous waste, including hazardous chemicals.

(Ord. No. 7-89/90, 9-6-89; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000] Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-201. Designation.

In accordance with the provisions of Title 38 M.R.S.A. §1304-B the City hereby designates the ecomaine disposal facility in Portland, Maine and the municipal disposal facilities as its public solid waste disposal facilities for the purposes cited in this article. The disposal by any person, including any person licensed as a waste hauler under Article II of this Chapter, of any acceptable waste, except commercial recyclable materials, generated with the City at any place other than at the municipal disposal facility or the ecomaine disposal facility of any acceptable waste generated within the City is prohibited; provided, however, the owner of any lot, or any other person with the permission of the lot owner, may dispose of inert substances such as earth, rocks, concrete or similar material at such lot for fill purposes only, subject to state or local land use regulations.

(Ord. No. 7-89/90, 9-6-89; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-301. Governing body.

- (a) The council shall establish any necessary rules and regulations governing the availability and use of the designated public solid waste disposal facilities.
- (b) The operation of the designated public solid waste municipal disposal facilities shall conform to all pertinent regulations or directives of all local, county, state or federal agencies which may have jurisdiction.

(Ord. No. 7-89/90, 9-6-89; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-401. Restrictions.

- (a) No person shall permanently dispose of solid waste of any kind upon any land within the corporate limits of the City unless such land has been designated by the council as a public solid waste disposal facility.
- (b) Certain materials may be excluded by regulation from that solid waste which may be deposited at a public solid waste disposal facility. These excluded materials may include junk automobile bodies and similar bulky waste which may require special processing prior to any disposal; burning materials or materials containing hot or live coals; hazardous wastes; and other materials which the City deems necessary to exclude. Hazardous wastes shall be handled in accordance with 38 M.R.S.A. § 1319-0.
- (c) Except for licensed disposal of hazardous or infectious wastes, it shall be unlawful for any person to burn or incinerate any solid waste within the City other than leaves.

(Ord. No. 7-89/90, 9-6-89)

Sec. 9-501. Authorized disposal facility users.

- (a) The availability and use of the designated public solid waste disposal facilities shall be limited to residents of the City and to those residents of any other municipality which may, by mutual agreement, be authorized to use the designated public solid waste disposal facilities.
- (b) As a means of user control, the transfer station attendant shall:
 - (1) Authenticate a users right to use the facility;
 - (2) Affix permit stickers only onto vehicles registered in the City.

- (c) Vehicles hauling commercially, or vehicles and trucks with carrying capacities of more than $\frac{3}{4}$ ton, except City vehicles, shall not be permitted access to or use of the transfer station.

(Ord. No. 7-89/90, 9-6-89; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000])

Sec. 9-502. Resource recovery.

The City may require solid waste to be separated into such categories as may be established by City regulation and disposed of only in such manner and at such sites and locations as designated.

(Ord. No. 7-89/90, 9-6-89)

Sec. 9-503. Property rights.

Any solid waste disposed of within the designated public solid waste disposal facilities shall become the property of the City or ecomaine, pursuant to the terms of said waste handling agreements. No one shall salvage, remove, or carry off any such disposed of solid waste without prior approval of the City.

(Ord. No. 7-89/90, 9-6-89; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-601. Miscellaneous.

- (a) Whoever violates any of the provisions of this article shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than three thousand dollars (\$3000.00) for each day of violation plus any costs to the City, including legal fees and costs, which fine shall be recovered on complaint to the use of the City. In addition, the City may seek injunctive relief, including attorney's fees, to ensure compliance with the terms of this article.
- (b) It shall be the duty of the City or its designee to enforce the provisions of this article.
- (c) In case of conflict with other inconsistent ordinances, the provisions of this article shall prevail.
- (d) If any section, subsection, sentence or part of this article is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this article.

(Ord. No. 7-89/90, 9-6-89; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000]; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

ARTICLE IV. TRANSFER STATION**Sec. 9-701. Short title.**

This article shall be known as and may be cited as the "City of South Portland Sanitary Transfer Station Ordinance" and shall be referred to hereinafter as the "transfer station ordinance."

(Ord. No. 14-87/88, 8-17-87; Ord. No. 26-93/94, Fiscal Note: Less than \$1,000 per year)

Sec. 9-702. Purpose.

The purpose of this transfer station ordinance is to protect the health, safety and general welfare of the citizens of South Portland; to enhance and maintain the quality of the environment; to conserve natural resources; to prevent water and air pollution; and to regulate the use of the City's transfer station site or sites. It is intended that this transfer station ordinance supplement the provisions of the solid waste disposal ordinance set forth in Article III of this chapter, and that both ordinances be read to achieve uniformity of interpretation and consistency of result.

(Ord. No. 14-87/88, 8-17-87; Ord. No. 26-93/94, 7-6-94, Fiscal Note: Less than \$1,000 per year)

Sec. 9-703. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them in this section.

- (1) *Director* shall mean the Public Works Director.
- (2) *Transfer station* shall mean any transfer station or transfer station site owned or operated by the City.

(Ord. No. 14-87/88, 8-17-87; Ord. No. 26-93/94, 7-6-94, Fiscal Note: Less than \$1,000; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-704. Prohibition.

It shall be unlawful for any person to dispose of or deposit any material or substance at a transfer station in violation of any provision of this transfer station ordinance.

(Ord. No. 14-87/88, 8-17-87; Ord. No. 26-93/94, 7-6-94, Fiscal Note: Less than \$1,000)

Sec. 9-705. Operation.

- (a) The Public Works Director shall be responsible for operation of the transfer station and enforcement of this chapter according to sound environmental principles, and the director may promulgate and amend regulations and operational practices not contrary to the provisions of this transfer station ordinance.
- (b) The Director shall determine and post at the entrance to each transfer station site the days and hours the site is open. The Director shall designate attendants who shall control the access and egress of the facility. The attendant shall deny admittance to any person who does not have a vehicle permit or is not a current resident of the City or who proposes to deposit at the transfer station any materials determined to be "unacceptable waste".

(Ord. No. 14-87/88, 8-17-87; Ord. No. 8-88/89, 9-7-88; Ord. No. 26-93/94, 7-6-94, Fiscal Note: Less than \$1,000; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000])

Sec. 9-706. Allowed solid waste.

- (a) Solid waste which may be deposited at a transfer station is restricted to the

following:

- (1) Recyclable cans, plastics, newspapers, glass and flattened cardboard, sorted and placed into appropriate bins;
- (2) Leaves, grass, yard clippings; cut or decayed wood less than six (6) inches in diameter and eight (8) feet in length;
- (3) Waste oils, provided that such oils must be poured directly into provided holding tanks;
- (4) Wood, lumber, brush, branches, logs or small stumps up to six (6) inches in diameter and eight (8) feet in length. Wood products must not be mixed with or attached to non-wood products;
- (5) Sheetrock, fiberglass insulation, clean scrap metal, vinyl siding;
- (6) Household white good including stoves, refrigerators, washing machines and clothes dryers. Other used or scrap residential or office furniture including tables, desks, and filing cabinets;
- (7) Any used, scrapped or otherwise discarded rubberized vehicle tire, including shredded or chipped tires or crumb rubber;
- (8) Roofing Shingles; and
- (9) Any other material which the attendant deems reasonably similar in composition and character to the material designated in (1) through (8) and which is not prohibited by subsection (b).

(b) The following shall be prohibited from deposit at a City transfer station:

- (1) Contents of cesspools or septic tanks;
- (2) Explosives or other volatile materials or any chemical or waste found to be hazardous by any federal or state agency;
- (3) Hot coals or ashes;
- (4) Junk vehicles, trailers and construction equipment bodies;
- (5) Products with asbestos contents;
- (6) Combustible material of any kind including but not limited to gasoline, kerosene and paint thinner;
- (7) Fuel, gas;
- (8) Paper, plastic, or styrofoam packaging;
- (9) Masonry products, asphalt, mixed demolition materials;
- (10) Medical or other potentially infectious or pathogenic wastes;
- (11) Excavation materials;
- (12) Items eligible for disposal at the solid waste disposal facility designated under Article III;
- (13) Any material which the attendant because of character or quality considers hazardous or detrimental to the efficient or sanitary operation of the area; and
- (14) Any refuse or material collected from premises outside the City of South Portland.

Sec. 9-707. Fee schedule.

- (a) No commercial vehicles, except those with the sole purpose of disposing leaves, grass and yard clippings derived from South Portland residential properties or trucks larger than one ton may dispose waste materials at the transfer facility. City vehicles, may dispose of waste materials at the facility.
- (b) As a means of covering expenses associated with operating a transfer facility, the City shall set and charge user fees for disposable items and refuse. Amount of such fees may be adjusted by order of the City Council, as needed. User fees must be paid at the transfer facility at the time of disposal.

(Ord. No. 14-87/88, 8-17-87; Ord. No. 8-88/89, 9-7-88, Ord. No.8-91/92, Ord. No. 6-92/93, 9-21-92; Ord. No. 26-93/94, 7-6-94, Fiscal Note: Less than \$1,000; Ord. No. 9-94/95, 11-21-94, Fiscal Note: Less than \$1,000; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000]; Ord. No. 15-01/02, 7/1/02' [Fiscal Note: Less than \$1000])

Sec. 9-708. Suspension and revocation of permit or license.

- (a) The Director or attendant may refuse to admit to a transfer station or revoke the permit of any person who violates any provision of this transfer station ordinance, regardless of whether that person has a vehicle permit.
- (b) Whoever violates any of the provisions of this article shall be punished by a fine of not more than one thousand dollars (\$1000) per violation plus any cost to the City.
- (c) Any person whose permit or license has been suspended or revoked by the Director may, within thirty (30) days after notice of said action, appeal in writing to the City Council, which may after notice and public hearing affirm, reverse or modify the action of the Director, subject to the provisions of this transfer station ordinance.
- (d) An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

(Ord. No. 14-87/88, 8-17-87; Ord. No. 26-93/94, Fiscal Note: Less than \$1,000; Ord. No. 13-97/98, 12/1/97 [Fiscal note: less than \$1000])

Sec. 9-709. Penalty.

Whoever violates any of the provisions of this transfer station ordinance shall be punished by a fine of not more than one thousand dollars (\$1,000.00) plus costs, which fine shall be recovered on complaint to the use of the City. In addition, the City may seek injunctive relief to ensure compliance with the terms of this transfer station ordinance, and to rectify or abate any condition or nuisance proximately resulting from a violation of this transfer station ordinance. Each day that a violation continues shall be treated as a separate offense. These penalty provisions are in addition to any action which the City Council may take under section 9-708.

(Ord. No. 14-87/88, 8-17-87; Ord. No. 26-93/94, 7-6-94, Fiscal Note: Less than \$1,000)

Sec. 9-710-9-725. Reserved.

Article V. AUTOMATED REFUSE & RECYCLING COLLECTION ORDINANCE**Sec. 9-726. Introduction**

The City of South Portland provides residential refuse and recyclable material collection using automated collection vehicles and special collection containers. This collection system provides an efficient service, while reducing collection costs and minimizing employee injuries, litter, and customer complaints. This ordinance governs automated refuse and recyclable material collection in the City. It shall be unlawful for any property owner, occupier of land or responsible party to dispose of residential refuse and recyclable materials in violation of this Article.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-727. Containers

The Public Works Department shall issue two (2) special collection containers to each residence receiving municipal trash and recyclable material collection services. Residents shall use only the special containers issued by the Department for disposing of their household refuse and recyclable material. Refuse or recyclable material placed in non-standard containers shall not be collected. Each special container shall remain the sole property of the City of South Portland and must remain at the residence it is assigned to. Containers may not be moved to any other location.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-728. Container sizes

The Public Works Department may offer each residence receiving municipal trash and recyclable material collection services a choice of one of three container sizes: 35-gallon, 65-gallon and 95-gallon. The 65-gallon container is the standard size issued and the only size issued for recycling efforts. For solid waste residents may request an alternate size container from the Public Works Department. Upon receiving a request for a smaller or larger container, the Department shall evaluate the request and determine whether a larger or smaller container is appropriate. In general, a 35-gallon container shall be deemed appropriate for a 1-2 person household; a 65-gallon container shall be deemed appropriate for a 3-5 person household; and a 95-gallon container shall be deemed appropriate for a household of 6 or more persons. Notwithstanding these general standards, the Department may issue a different size container on request when it deems the different size container to be appropriate. Residents may appeal a decision of the Department on a request for a different size container to the Public Works Director or the Director's designee.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-729. Container repair and replacement

Residents shall be responsible for the proper use and security of their assigned containers. If the container is damaged by the City's collection equipment, the City shall repair or replace the container. If a container is damaged or lost by the resident's use, misuse or neglect, the resident must pay for necessary repairs or replacement. If a container is lost or stolen through no fault of the resident, the City shall replace the container.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

Sec. 9-730. Lost or stolen containers

If a container is lost or stolen, the resident must report the loss or theft to the Public Works Department. Any person who knowingly removes a City refuse container from a residence may be prosecuted.

Sec. 9-731. Location of containers

For a resident's trash and recyclable materials to be collected, the containers must be placed at the curb no sooner than sunset on the day preceding the date on which such refuse will be collected by the City in such location. The containers must be placed at the curb with the arrows toward the street and the handle and wheels toward the residence. The containers must not be placed closer than three (3) feet to any obstruction such as a parked car, another container, pole, hydrant, tree, mailbox or recycling bin. Overhead clearance for trees, wires or other obstructions must be at least ten (10) feet. Two containers of the same size may be placed next to each other, but no more than two. If containers are not placed properly at the curb in an area free from obstructions as described, the refuse may not be collected.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-732. Acceptable waste

Acceptable solid waste includes normal household refuse, including residential offal, household trash and kitchen waste. Unacceptable waste shall not be collected, and must be disposed of properly by the resident. Unacceptable waste includes, but is not limited to: leaf and yard waste; dirt; sod; concrete; rock; large appliances or furniture; televisions or other electronic equipment; computers; construction, remodeling or demolition debris; hazardous waste; commercial or industrial waste; medical waste; hazardous materials; mercury containing products such as fluorescent lamps, ballast, thermometers, and thermostats; and liquid and flammable waste such as non-latex paint, gasoline, diesel, oil, pesticides, herbicides, and hot ashes.

A list of acceptable recyclable material shall be distributed with the recycling container and posted to the City's website for resident reference.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-733. Separation of waste; prohibition of contamination of recyclable materials

Acceptable solid waste and acceptable recyclable materials shall be separated and then placed and maintained in the separate containers provided by the City. Recyclable materials placed in the recycling container shall be free of any contaminants. Contaminants include, but are not limited to, liquids, non-recyclable materials, unacceptable waste, hazardous waste and infectious waste. If recyclable materials are contaminated, the responsible party shall be subject to penalties.

(Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-734. Overflow waste and recyclable material

Waste that will not fit in the container is defined as "overflow waste" and shall not be collected. Only waste that is within the container shall be collected. If overflow waste packed tightly into the container causes it not to empty completely during the collection process, the overflow shall be left. If overflow waste prevents the cover from fully closing and waste falls out during the collection process, it shall be left, and the resident shall be responsible for collecting and properly disposing of it. Overflow waste may be disposed of at the City Transfer Station; the charge for disposal shall be established by the City Manager.

Overflow recyclable materials can be disposed of free of charge at any one of the locations, which currently house "silver-bullet" recycling containers.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No.9-12/12, 2/22/12 [Fiscal Note: less than \$1000])

Sec. 9-735. Snow cancellation

When winter weather conditions cause cancellation of refuse and recyclable material collection on the regular collection day, collection shall be rescheduled for either the following Saturday or the next regularly scheduled collection day. If cancellation will cause an "overflow waste" situation for the resident for the following week, the resident may bring the refuse to the City Transfer Facility during its normal hours of operation. Overflow waste fees will be waived for one week following any cancellation of collection by Public Works.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: less than \$1000])

Sec. 9-736. Dead end streets

If a dead end street has insufficient width to turn the collection truck, the Public Works Department may request residents on that street to set their containers on only one side of the street for collection. Failure to set the containers on the designated side of the street shall result in no collection of the refuse and recyclable materials.

Additionally, some unusually narrow streets shall not have curbside collection. Residents on the following streets must take their containers to the designated collection street:

Myrtle Lane: take containers to Myrtle Avenue for collection

Garden Lane: take containers to Preble Street for collection

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-737. Private roads

Residents on private roads who are eligible for refuse and recyclable material collection must transport their containers to an area designated by the Public Works Department for collection.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-738. Schedule of collection

Residential refuse and recyclable material shall be collected once a week on Tuesday, Wednesday, Thursday or Friday.

(Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-739. Exceptions

If a resident is unable to comply with the required container placement, the Public Works Department may make alternate arrangements to collect the refuse.

(Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-740. Multi-family dwelling recycling

The responsible party for each multi-family dwelling that is provided collection containers pursuant to this Article shall work with the City to improve its recycling collection efforts in accordance with the terms set forth herein if so requested by the Public Works Director. Even if a multi-family dwelling unit is not

provided City refuse collection service under Article I of this chapter, in an effort to increase multi-family dwelling unit recycling collection efforts, the Public Works Department shall issue special recyclable collection containers and provide recycling collection service to those multi-family dwellings, regardless of size, requesting such service; provided, however, that the responsible party, tenants, occupants and employees, as applicable, shall place the recycling collection container at the curb of the City street on which the unit has frontage and otherwise comply with this chapter.

To improve multi-family dwelling recycling collection efforts, the responsible party shall notify, in writing, its tenants, occupants and employees, as applicable, that recycling participation is mandatory. Written notification (e.g., letter, newsletter, e-mail notice) shall be provided by the responsible party within fifteen (15) days to all new tenants, occupants and employees and no less frequently than bi-annually thereafter to all existing tenants, occupants and employees. The written notification shall set forth the requirements of this Article and include, at a minimum, the following:

- (a) What materials will be recycled;
- (b) How the recyclables are to be prepared;
- (c) Curb-side set-out requirements;
- (d) Location of recycling containers;
- (e) Prohibition against contamination or recyclables; and
- (f) Any other requirements necessary.

(Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000]; Ord. No.7-14/15, 8/18/14 [Fiscal Note: Less than \$1000])

Sec. 9-741. Violations; civil penalties

Violation of any provision of this Article shall be deemed a civil violation. Violations are enforceable by the Public Works Director or any South Portland police officer by an action in the name of the City in the form of a civil infraction in Maine District Court; upon a determination by said court on a violation that occurred, the violator shall be subject to a civil penalty of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00). Each violation of a separate provision of this Article, and each day of violation, shall constitute separate offenses. In addition, if the City is the prevailing party in an enforcement action, said person shall also be liable for all reasonable expenses incurred by the City in the enforcement of this Article, including, but not limited to, attorney's fees and costs. All civil penalties shall inure to the benefit of the City. In addition to the civil penalties provided herein, the City may enjoin or abate any violation of this Article by appropriate action, including, without limitation, action to discontinue service to a property.

(Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-742. Discontinuance of service; hearing

The City may cause residential refuse and recyclable material collection service to be discontinued to a property as forth herein. A written warning must first be issued by the Public Works Director or his designee to the responsible party notifying the responsible party of the occurrence of a violation of this Article. In order to discontinue service to that property following the issuance of a written warning to the responsible party, a written notice of violation shall be sent by the Public Works Director to the responsible party, with a copy to any known tenants, giving the responsible party at least fourteen (14) days notice of discontinuance of service and notice of the right to protest the City's action at a hearing before the Public Works Director. Service may not be discontinued for delinquencies of a previous owner.

The responsible party must request, in writing, that a hearing be held and such request must be received by the Public Works Director before the date the service is to be discontinued. At such hearing, the responsible party may present such evidence as it deems appropriate. The Public Works Director may affirm, overrule or modify the decision to discontinue service. The decision of the Public Works Director shall be final. In the event a hearing is requested, service shall not be discontinued until and in accordance with the decision of the Public Works Director.

The Public Works Director may establish rules and procedures for such hearings and for discontinuance of service not in conflict herewith. Upon discontinuance of service, the City-issued container(s) shall be returned to the City's Public Works Department.

(Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

Sec. 9-743. Effective date

This ordinance shall take effect on February 7, 2006.

(Ord. No. 16-05/06, 2/6/06 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

ARTICLE VI. SINGLE USE BAGS**Sec. 9-745. Findings; purpose.**

WHEREAS, the City Council believes it has a duty to protect the natural environment and the health of its residents and visitors;

WHEREAS, the use of single-use carryout bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation;

WHEREAS, the use of single-use plastic bags has significant impacts on the marine and land environment of all coastal communities, including, but not limited to, contributing to the potential death of fish, fowl, and wildlife through ingestion and entanglement and altering marine ecosystems by smothering plants;

WHEREAS, despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled;

WHEREAS, numerous studies have documented the prevalence of single-use carryout bags contributing to pollution of the land environment, creating a burden to solid waste collection and recycling facilities, and clogging storm drainage systems;

WHEREAS, the City and its taxpayers must bear costs associated with the effects of single-use carryout bags on the solid waste stream, drainage infrastructure, amount of litter, and wildlife;

WHEREAS, the City, through its policies, programs, and ordinances, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy, landfill) and supports efforts to achieve City and State recycling goals;

WHEREAS, from an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping;

WHEREAS, the City Council aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors;

WHEREAS, evidence indicates that the vast majority of single-use carryout bags are used for the bagging and carryout of products purchased from Stores, as defined in this Article;

WHEREAS, studies document and participating municipalities report that prohibiting the free distribution of single-use carryout bags will dramatically reduce the use of those types of bags;

WHEREAS, the City Council believes that residents and visitors should use reusable bags and that the prohibition on free distribution of single-use carryout bags by stores is appropriate and will incentivize the use of reusable bags; and

WHEREAS, it is in the best interests of the health, safety and welfare of residents and visitors of South Portland to reduce the cost to the City of solid waste disposal, and to protect the environment and natural resources by reducing the distribution of single-use carryout bags and incentivizing the use of reusable bags at Stores, as defined in this Article.

Sec. 9-746. Definitions.

As used in this Article, the following terms shall have the following meanings:

Single-use Carryout Bag. Single-use Carryout Bag means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other

point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single-Use Carryout Bag includes compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, Product Bags or bags provided by pharmacists to contain prescription drugs.

Produce Bag or Product Bag. The terms *Produce Bag* or *Product Bag* means any bag without handles used exclusively to carry produce, meats, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.

Reusable Bag means a bag that:

- (a) is designed and manufactured to withstand repeated uses over a period of time;
- (b) is machine washable or, made from a material that can be cleaned and disinfected regularly;
- (c) is at least 2.25 mil thick if made from plastic;
- (d) has a minimum lifetime of 75 uses; and
- (e) has the capability of carrying a minimum of 18 pounds.

Store. The term *Store* means any of the following retail establishments located within the City:

- (a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items; or
- (b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

Store does not mean businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than two percent (2%) of the business' gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

Sec. 9-747. Single-Use Carryout Bag.

- (a) No Store shall provide a Single-Use Carryout Bag to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this section.
- (b) A Store may make available for sale to a customer a Single-Use Carryout Bag for a minimum charge of five cents (\$0.05).
- (c) All monies collected by a Store for Single-Use Carryout Bags under this Article may be used by the Store for any lawful purpose.
- (d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout Bags.
- (e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless the amount of the sale of the Single-Use Carryout is separately itemized on the sales receipt.
- (f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in subsection (b).

Sec. 9-748. Exemptions.

A Store shall be exempt from the provisions of this Article in a situation deemed by the City Manager, in his/her sole discretion, to be an emergency for the immediate preservation of the public health, safety or welfare.

Sec. 9-749. Record Keeping and Inspection.

Every Store shall keep complete and accurate records or documents of the purchase

and sale of any Single-Use Carryout Bag for a minimum period of three (3) years from the date of purchase and sale, which records shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information, including incomplete records or documents, to the City shall be a violation of this Article.

Sec. 9-750. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be civil violations punishable by fines as follows:

- (a) A fine not exceeding \$250 for the first violation in a one-year period;
- (b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

Sec. 9-751. Effective Date.

The provisions of this Article shall become effective on March 1, 2016.

Sec. 9-752. Severability.

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

(Ord. No. 3-15/16, 9/9/15 [Fiscal Note: Less than \$1000])

ARTICLE VII. POLYSTYRENE FOAM**Sec. 9-755. Findings; purpose.**

WHEREAS, the City is located on Casco Bay, an area known world-wide for its natural beauty, fish and other wildlife;

WHEREAS, the City Council of the City believes that the City has an obligation to maintain and preserve the City's special natural environment;

WHEREAS, maintenance of the City as litter-free as possible is important to protect and preserve its natural environment and enhance its quality of life for residents and visitors;

WHEREAS, polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City;

WHEREAS, there is no economically feasible means of recycling polystyrene foam locally;

WHEREAS, the State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions (see 38 M.R.S. §§ 1651-1654);

WHEREAS, polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them;

WHEREAS, disposable food containers made from polystyrene foam constitute a portion of the litter in City streets, parks, and public places that is highly durable, buoyant, and non-biodegradable and, therefore, persists and detracts from the appearance of the area longer than many other types of litter;

WHEREAS, the City desires to replace polystyrene foam food containers with reusable, recyclable or compostable alternatives; and

WHEREAS, such alternatives are readily available.

Sec. 9-756. Definitions.

As used in this Article, the following terms shall have the following meanings:

"*Food Packager*" means any person located within the City who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

"*Prepared food*" means food or beverages which are served at the food vendor's location having been previously prepared elsewhere or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Prepared food" does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

"*Polystyrene foam*" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this Article, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."

"*Retail Vendor*" means any person, restaurant, store, shop, sales outlet or other establishment, including, without limitation, a grocery store, convenience store or a delicatessen, located within the City and that offers prepared food for retail sale.

Sec. 9-757. Prohibitions.

(a) No retail vendor in the City shall serve or sell prepared food in polystyrene foam containers and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) No retail vendor in the City that sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.

(d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.

(e) All parties who contract with the City shall be prohibited from using polystyrene foam food and beverage containers in City facilities or on City-funded projects within the City.

Sec. 9-758. Exemptions.

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) A retail vendor or food packager that is currently existing or is established in the City before the effective date of this Article may be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the City Manager or his/her designee if the retail vendor or food packager requests an exemption in writing from the City Manager and demonstrates to the City Manager or his/her designee that compliance with the provision constitutes undue hardship for the retail vendor or food packager. Undue hardship includes, but is not limited to, situations unique to the food vendor that are not generally applicable to other retail vendors or food packagers in similar circumstances. The City Manager or his/her designee shall make a written decision on each exemption request.

(c) Retail vendors, food packagers, City departments, City facilities and City contractors are exempt from the provisions of this Article in a situation deemed by the City Manager, in his/her sole discretion, to be an emergency for the immediate preservation of the public health, safety or welfare.

Sec. 9-759. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the retail vendor or food packager that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be civil violations punishable by fines as follows:

(a) A fine not exceeding \$250 for the first following the warning notice;

(b) A fine not exceeding \$500 for the second and each subsequent violation following the warning notice.

Sec. 9-760. Effective Date.

(a) This Article shall become effective on March 1, 2016.

(b) This Article shall be automatically repealed if and as long as there is, as determined by the City Council by order, a developed and maintained effective City-wide recycling program approved by the City's Public Works Director for polystyrene foam food and beverage containers.

(c) This Article shall be automatically repealed on the day, as determined by the City Council by order, that statewide legislation or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this Article or in the event, as determined by the City Council by order, that a pertinent Maine or federal administrative agency enacts regulations preempting such action.

Sec. 9-761. Severability.

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.